

PETERSBURG BOROUGH

ORDINANCE #2016-08

AN ORDINANCE AMENDING CHAPTER 9.32 OF THE BOROUGH CODE, THE SMOKE FREE AIR ACT OF 2010; and AMENDING CHAPTER 9.12 OF THE BOROUGH CODE, LITTERING, BY AMENDING THE DEFINITION OF LITTER.

INCORPORATION

Whereas, on January 3, 2013 the Election Division for the State of Alaska, certified the election results of the December 18, 2012 incorporation election for the Petersburg Borough; and

Whereas, the certified election confirmed the incorporation of the Petersburg Borough and dissolved the City of Petersburg; and

Whereas, Petersburg Borough Charter, Section 19.06 requires all ordinances, resolutions, regulations, orders and rules in effect for the former City of Petersburg continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the assembly.

Therefore the Petersburg Borough ordains, the existing provisions for providing smoke free public places and places of employment within Service Area 1 of the Borough (formerly the City of Petersburg), as noted with amendments below, are hereby approved and adopted as a borough ordinance.

Section 1. Classification: This ordinance is of a permanent nature and shall be codified in the Petersburg Borough Code.

Section 2. Purpose: The purpose of this ordinance is to continue to protect the public health and welfare by prohibiting smoking in public places and places of employment within Service Area 1 of the Borough.

Section 3. Substantive Provisions – Chapter 9.32: The provisions of the former City of Petersburg Municipal Code, Chapter 9.32, Smoke Free Air Act of 2010, are hereby transferred and incorporated into this borough ordinance, and shall read as follows:

Sections:

9.32.010 - **Application --** Definitions.

9.32.020 - **Smoking prohibited in** ~~Application of ordinance to city~~ **borough** owned facilities.

9.32.030 - Smoking prohibited in enclosed public places.

9.32.040 - Smoking prohibited in places of employment.

9.32.050 - Smoking prohibited in private clubs.

9.32.060 - Smoking prohibited in enclosed residential facilities.

9.32.070 - Smoking prohibited in outdoor areas.

9.32.080 - Where smoking not regulated.
9.32.090 - Declaration of nonsmoking establishment.
9.32.095 - Conditions under which smoking is permitted.
9.32.100 - Posting of signs.
9.32.105 – Receipt~~acles~~icals.
9.32.110 - Nonretaliation; nonwaiver of rights.
9.32.120 - Enforcement.
9.32.130 - Violations and penalties.
9.32.140 - Other applicable laws.
9.32.150 - Liberal construction.

Section 9.32.010 Application -- Definitions

A. Application of this chapter is limited to Service Area 1 of the Borough.

B. The following words, terms and phrases, when used in this title shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

“Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered; and private clubs.

“Common area” means an area inside or outside of a building or facility that is available for use by all members of the public; or employees of a business; or tenants and their guests of multi-unit residential facilities.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit and a person who volunteers his or her services for a non-profit entity.

“Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employ~~ees~~es the services of one or more individual persons.

“Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways) which extend from the floor to the ceiling.

“Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological, or psychological conditions, including but not limited to: hospitals, clinics, nursing homes, long-term care and assisted

living facilities, laboratories, and the individual offices within these facilities. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms and wards.

“Marijuana Retail Store” means an establishment that is devoted to the sale of marijuana and consumable marijuana products and is properly licensed by the State of Alaska, as set out in section 6.04.010 of this Borough Code.

“Non-service area” is an area within a business where employees are not required to provide patrons with any service or goods.

“Place of Employment” means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, excluding mobile marine vessels. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

“Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on **city borough owned or operated** grounds.

“Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

“Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, taxi cabs, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail and wholesale stores, shopping and office malls, sports arenas, theaters and waiting rooms. A private residence is not a “public place” unless it is used as **a s** child care, adult day care, or health care facility.

“Restaurant” means an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands and school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

“Service Line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines.

“Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

“Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form, **or utilizing any form of electronic cigarette nicotine delivery system or other vapor or aerosol producing device.**

“Sports Arena” means sports pavilions, stadiums, playing fields, gymnasiums, swimming pools, roller and ice rinks and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

Section 9.32.020 ~~Application of ordinance to city~~ **Smoking prohibited in city borough owned facilities**

Smoking shall be prohibited in aAll enclosed facilities, including buildings and vehicles, owned, leased or operated by the ~~City of Petersburg~~ **Borough.** ~~shall be subject to the provisions of this ordinance.~~

Section 9.32.030 Smoking prohibited in enclosed public places

~~With the exception of a properly licensed Marijuana Retail Store under paragraph Q below,~~
Smoking shall be prohibited in all enclosed public places within **Service Area 1 of** the ~~City of Petersburg~~ **Borough**, including but not limited to:

- A. Galleries, libraries and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.

- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, and ticket, boarding and waiting areas of public transportation facilities, including airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways and other common-use areas.
- Q. Retail stores, ~~excepting properly licensed Marijuana Retail Stores, where the smoking of marijuana only, as defined in section 6.04.010H of this Borough Code, is permitted.~~
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or ~~assembly council~~ of the ~~City of~~ Petersburg ~~Borough~~, or another political subdivision of the State.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals or other similar performances.

Section 9.32.040 Smoking prohibited in places of employment

- A. ~~With the exception of licensed Marijuana Retail Stores, where the smoking of marijuana only, as defined in section 6.04.010H of this Borough Code, is permitted,~~ Smoking shall be prohibited in all enclosed facilities within places of employment. This includes common work areas, auditoriums, classroom, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.
- B. Prohibition on smoking in the workplace shall be communicated by the employer to all ~~existing employees by the effective date of this ordinance and to all~~ prospective employees upon their application for employment.

Section 9.32.050 Smoking prohibited in private clubs

Smoking shall be prohibited in all private clubs.

Section 9.32.060 Smoking prohibited in enclosed residential facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes, including Petersburg Medical Center Long Term Care facility and ~~City of~~ Petersburg **Borough** Mountain View Manor Assisted Living and Elderly Housing facilities.
- B. All hotel and motel rooms that are rented to guests.
- C. All bed and breakfast rental units.

Section 9.32.070 Smoking prohibited in outdoor areas

Smoking shall be prohibited in the following outdoor places:

- A. Within 5 feet distance of outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke, vapor **or aerosol** does not enter those areas.
- B. In and within 5 feet of outdoor seating or serving areas of restaurants.
- C. In all outdoor arenas, stadiums, and playing fields. Smoking shall also be prohibited in and within 5 feet of bleachers and grandstands for use by spectators at sporting and other public events.
- D. In and within 5 feet of all outdoor public transportation stations or shelters.
- E. In all outdoor service lines.
- F. In outdoor common areas of apartment buildings, condominiums, retirement facilities, nursing homes and other multiple-unit residential facilities, except in designed smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 5 feet outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited.
- G. In and within 5 feet of outdoor playgrounds.
- H. In areas where combustible materials are stored and handled.

Section 9.32.080 Where smoking not regulated

Notwithstanding any other provision of this ordinance to the contrary, the following areas shall be exempt from the provisions of section 9.32.030 and 9.32.040:

A. Private residences, except when used as a childcare, adult day care or health care facility and except as provided in 9.32.060.

B. Outdoor areas of places of employment except those covered by the provision of Section 9.32.070.

C. Smoking rooms as provided in Section 9.32.095.

~~D. Licensed Marijuana Retail Stores, where the smoking of marijuana only, as defined in section 6.04.010H of this Borough Code, is permitted.~~

Section 9.32.090 Declaration of nonsmoking establishment

An owner, operator, manager, or other person in control of an establishment, facility or outdoor area may declare the entire establishment, facility or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9.32.100(A) is posted.

Section 9.32.095 Conditions under which smoking is permitted

An owner, operator, manager or other person in control of a business may elect to permit smoking in a clearly posted, designated smoking room that meets all of the following requirements:

A. The smoking room is a non-service area enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors; and

B. The smoking room maintains a negative air pressure (meaning more air is exhausted from the room than is directly supplied by the heating, ventilation or air conditioning (HVAC) systems); and

C. The smoking room's smoke-contaminated air is exhausted directly to the outdoors and is not returned to the HVAC system, and

D. The smoking room and any equipment contained therein are maintained and serviced when the room is not occupied by smokers, and

E. There is no need for employees, customers or vendors to pass through the smoking room to access restrooms, break areas or any other portion of the place of business which they might need to access, and the business does not require employees, customers or vendors to enter the smoking room when it is occupied by smokers.

Section 9.32.100 Posting of signs

A. The owner, operator, manager or other person having control of any place or area where smoking is prohibited by this chapter shall post at the main entrance to the place or area a conspicuous sign clearly stating that smoking is prohibited.

B. Every vehicle that constitutes a place of employment under this **chapter ordinance** shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.

~~C. Should the City determine that the signs required in subsections A and B above be of a specific size, design or material, the City shall provide, at the City's expense, the said signs to all owners of areas where smoking is prohibited by this ordinance.~~

Section 9.32.105 ~~Recepticals~~ Receptacles

~~A. The City shall supply, service and maintain public receptacles for the disposal of cigarette and cigar butts and other smoking paraphernalia in the downtown commercial area described as: on Nordic Drive, from Sing Lee Alley north to Petersburg Fisheries Bunk House; on Harbor Way, Chief John Lott Streets and Sing Lee Alley; on First Street from Haugan Drive north to Dolphin Street; and on all side streets running east and west between First Street and Harbor Way.~~

~~B.~~ The owner, operator, manager or other person having control of any building or area where smoking is prohibited by this **chapter ordinance** is encouraged to provide receptacles for the disposal of cigarette and cigar butts and other smoking paraphernalia at the entrances to their property. The service and maintenance of these receptacles shall be the responsibility of the property owner, operator, manager or person having control of the property.

Section 9.32.110 Nonretaliation; nonwaiver of rights

A. No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any right afforded by this **chapter ordinance** or reports or attempts to prosecute a violation of this **chapter ordinance**. **A person who retaliates against an employee, applicant or customer as prohibited by this section shall be guilty of a violation and subject to a fine as provided for in Chapter 1.16 of this Borough Code.** ~~Notwithstanding Section 9.32.130, violation of this subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.~~

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 9.32.120 Enforcement

A. This ordinance shall be enforced by the **Borough Public Safety Department**. ~~City Manager or the Manager's designee.~~

~~B. Notice of the provisions of this ordinance shall be given to all applicants for a business license in the City of Petersburg.~~

~~BC.~~ Any person who desires to register a complaint under this ordinance may initiate enforcement with the **Borough Public Safety Department, or with the Borough Building Official**. ~~City Manager or Manager's designee.~~

~~CD.~~ The **Borough Building Official and Code Enforcement personnel** ~~Department~~ and the Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.

~~DE.~~ An owner, manager, operator, or employee of an establishment regulated by this **chapter ordinance** shall inform persons violating this ordinance of the appropriate provisions thereof.

~~EF.~~ Notwithstanding any other provision of this ordinance, an employee or private citizen may bring legal action to enforce this **chapter ordinance**.

~~FG.~~ In addition to the remedies provided by the provisions of this Section, the ~~City~~ **Borough** Manager or Manager's designee or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this **chapter ordinance** may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 9.32.130 Violations and penalties

A. A person **smoking** ~~who smokes~~ in an area where smoking is prohibited by the provisions of this **chapter ordinance** shall be guilty of a **violation and subject to a fine as provided for in Chapter 1.16 of this Borough Code**. ~~n infraction, punishable by a fine not exceeding fifty dollars (\$50).~~

B. Except as otherwise provided in Section 9.32.110(~~Aa~~), a person who owns, manages, operates, or otherwise controls a public place or place of employment **where smoking is prohibited under this chapter** and who fails to comply **or ensure compliance** with the provisions of this **chapter ordinance** shall be guilty of a **violation, and subject to a fine as provided for in Chapter 1.16 of this Borough Code**. ~~n infraction, punishable by:~~

~~1. A fine not exceeding one hundred dollars (\$100) for a first violation~~

~~2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.~~

~~3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.~~

C. Each **instance in day-on** which a violation of this **chapter ordinance** occurs shall be considered a separate and distinct violation.

Section 9.32.140 Other applicable laws

This **chapter ordinance** shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 9.32.150 Liberal construction

This **chapter ordinance** shall be liberally construed so as to further its purposes.

Section 4. Substantive Provisions – Section 9.12.010: Section 9.12.010, entitled Litter Defined, is amended to read as follows:

Litter is “~~recyclables,~~ **garbage**, refuse, **rubbish and rubble** ~~and other trash~~ as defined in Section 14.12.010, and all other waste material, including cigarette and cigar butts and any other smoking paraphernalia which, if thrown or deposited as herein prohibited, tends to create a danger or nuisance to public health, safety and welfare.

Section 5. Fine Amounts: The following fine amounts are adopted for violations of Chapter 9.32 of the Borough Code, and shall be administratively incorporated into section 1.16.030 of the Borough Code:

<u>Section(s)</u>	<u>Description of Violation</u>	<u>Fine Amount</u>
9.32.110	Retaliation against employee, applicant or customer for exercising right, reporting or attempting to prosecute violation	\$500
9.32.130A (9.32.020-.070; 9.32.090)	Smoking in area where prohibited	\$50
9.32.130B	Failure to comply or ensure compliance by owner, manager, operator or other in control of facility	\$500

A future modification in a fine amount set out in this section shall be by amendment to section 1.16.030.

Section 6. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 7. Effective Date: This Ordinance shall become effective immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this _____day of _____, 2016.

ATTEST: _____
Mark Jensen, Mayor

Debbie Thompson, Clerk

Adopted:
Published:
Effective: