

Process to be Used for an Appeal from a Notice and Order of Abatement
(PMC 9.16.080)

- A. The hearing will be conducted in public session and will be recorded. All those who offer testimony shall be sworn in by the Clerk.
- B. The borough employee who issued the Notice and Order of Abatement ("the building official") shall testify, and present other employees and third parties having relevant testimony as witnesses.
- C. The party who filed the appeal ("the appellant") shall be permitted to testify, as well as any witness having relevant testimony called by such appellant.
- D. Parties may be represented by counsel or other representative to assist them. The Assembly may permit telephonic participation.
- E. The appellant and the building official may offer relevant written documents into the record. The party offering documents shall also provide copies of such documents to the other party. All such documents presented to the Assembly shall be maintained by the clerk.
- F. Members of the Assembly, as well as the building official and the appellant, may ask questions of witnesses. Such questioning may be conducted in an informal manner, but shall be limited to relevant testimony only. The Assembly may establish reasonable time limits for the presentation of testimony.
- G. The order of presentation is set out below:
1. The building official.
 2. Other borough employees and witnesses presented by the building official.
 3. The appellant.
 4. Witnesses presented by the appellant.
 5. Rebuttal testimony by the building official.
 6. Rebuttal and Closing Comments by the appellant.
 7. Closing Comments by the building official.

H. The building official bears the burden of proof that a nuisance exists and that abatement is required.

I. If the appellant fails to appear at the hearing, the Assembly shall proceed to hear testimony and receive evidence from the building official and the official's witnesses, and base its decision upon the record before it.

J. After the evidence and argument portion of the hearing has been completed, the Assembly shall close the hearing and proceed with deliberations. The deliberations are permitted to occur in a closed session (A.S. 44.62.310(d)(1)). If the Assembly chooses to deliberate in a closed session, the following motion language can be used: *A motion to deliberate on an adjudicatory proceeding, as permitted under Alaska Statute 44.62.310(d)(1)*. It is advisable to vote upon the decision in public session. If deliberations have occurred in a closed session, sufficient information should be set out in the motion to allow for preparation of a written document containing the basis for the decision (paragraph K).

K. The Assembly is to issue a written decision on the appeal. The written decision shall contain findings of fact and, if the Assembly affirms that a nuisance subject to abatement exists, an order based upon its findings, directing the abatement within such time period and upon such terms and conditions as it may prescribe. After the vote, the Mayor should direct the building official to prepare a draft written decision for the Assembly's consideration at the next meeting. The decision shall also state the potential consequences should the nuisance not be abated as directed.

L. The written decision shall be mailed or personally served upon the appellant.