

**SANTA CLARA COUNTY  
ASSESSMENT APPEALS BOARD**



**LOCAL RULES**

Adopted by the  
Santa Clara County Board of Supervisors  
on \_\_\_\_\_, 2015

Approved: 11/03/2015

## **PREFACE: LEGAL AUTHORITY AND PURPOSE OF LOCAL RULES**

The Revenue and Taxation Code implements the constitutional provisions applicable to assessment appeals and other property tax matters and provides the basic framework for the assessment appeals process.

State regulations regarding the conduct of assessment appeals board hearings are set forth in Title 18 of the California Code of Regulations and are commonly known as the Property Tax Rules.

Article XIII section 16 of the California Constitution provides a county board of supervisors with the authority to adopt local rules related to noticing and other procedures required to facilitate the work of a county's Assessment Appeals Boards.

In addition to these local rules, the parties may wish to refer to Division A4, sections A4-13 through A4-39 of the County of Santa Clara Ordinance Code. This section of the County Ordinance Code sets forth local law pertinent to the Assessment Appeals Board.

The Board of Supervisors has adopted the local rules set forth herein pursuant to that constitutional authority. These rules do not claim or attempt to reiterate all state laws and regulations governing the property valuation process. Rather, they serve to supplement the provisions of the Revenue and Taxation Code and the Property Tax Rules by providing information specific to the appeals process in Santa Clara County.

Nothing in these Local Rules shall be construed to limit the authority of the Santa Clara County Assessment Appeals Board, and, to the extent the Revenue and Taxation Code or the Property Tax Rules grant to the Board powers not expressly included in these Local Rules, the Board reserves the right to exercise those powers as permitted by State law.

Each amendment to these Local Rules is retroactive to all Applications pending at the date the amendment is made effective by the Board of Supervisors, unless otherwise stated by these Rules.

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## 301-1 DEFINITIONS

*Reference:* Property Tax Rule 301.  
Revenue & Taxation Code § 110, 110.1, 1601, 1603.  
Government Code §31000.6.

The following definitions shall govern the construction of the Property Tax Rules and these Local Rules:

- (a) **“County”** is Santa Clara County.
- (b) **“Assessor”** is the assessor of Santa Clara County.
- (c) **“Auditor”** is the Santa-Clara County Auditor-Controller.
- (d) **“Board”** or **“AAB”** mean the Santa Clara County Assessment Appeals Board and include Board I, Board II and Board III and any special alternate assessment appeals board panel. Hearing Officer means the Santa Clara County Assessment Appeals Board Hearing Officers and includes the value hearing officers and the legal hearing officers. Legal hearing officers decide issues of real property change of ownership and new construction. Most references in these Local Rules to “AAB” or “Board” include Assessment Appeals Hearing Officers, unless otherwise indicated.
- (e) **“Chair”** means the chairperson of the Assessment Appeals Board.
- (f) **“Clerk”** means the Office of the Clerk of the Board of Supervisors, which also serves as Clerk of the Assessment Appeals Board.
- (g)-(k) **Reserved.**
- (l) **“County Legal Advisor”** is the County Counsel for the County of Santa Clara and the Deputy County Counsel who advises the AAB. Government Code section 31000.7 allows the County Counsel to represent both that Board and the Assessor. Separate deputies from the Office of the County Counsel shall represent the Board and the Assessor.
- (m) **Reserved.**
- (n) **“Appeal”** or **“Application”** means a completed “Assessment Appeal Application” form filed with the Clerk of the Assessment Appeals Board.
- (o) **“Applicant”** means a taxpayer or party affected who has filed an Application. “Applicant” includes the Applicant’s attorney or authorized

agent, unless it is obvious from the context that only the Applicant personally is meant.

- (p) **“Local Rules”** are these Local Rules of the Santa Clara County Assessment Appeals Board.
- (q) **“Property Tax Rules”** are the Property Tax Rules promulgated by the State Board of Equalization and found in Title 18 of the California Code of Regulations.
- (r) **“Waiver”** is a document that waives the requirement that an Appeal be heard within the statutory 2-year period. This executed document may be required when requesting a postponement, a continuance, an alternate hearing date; as a condition of reinstating an Appeal upon an Applicant’s request following a denial for lack of appearance; when an Applicant’s non-compliance with Revenue and Taxation Code Section 441d has required a 441-d non-compliance hearing; and upon any other Applicant request/ action that could impede the County’s ability to hear and decide an Appeal within the 2-year period.

### **301-2 AUTHORIZATION AND DIRECTION TO CLERK**

*Reference:* Revenue & Taxation Code §§ 1601,1603, 1605.5, 1611, 1611.5 1612, 1614, 1624.01, 1628.  
Property Tax Rules 305-308, 312-313,322.

Pursuant to Santa Clara County Ordinance Code section A4-33, the Clerk of the Board of Supervisors serves as the Clerk of the Assessment Appeals Board (“Clerk”) and performs all duties in connection with the proceedings of the Assessment Appeals Board as are required by law. The Clerk is also authorized and directed to take all such actions and perform such duties as necessary to comply with and carry into effect each and every provision of these Local Rules as well as other provisions of law that relate to assessment appeals.

### **302-1 FUNCTIONS AND JURISDICTION OF THE BOARD AND HEARING OFFICERS**

*Reference:* Revenue & Taxation Code §§ 531.1,1603, 1604, 1605.5,1636.  
Property Tax Rule 302.

#### **(a) Assessment Appeals Board**

The functions and jurisdiction of the Assessment Appeals Board are as set forth in the Revenue and Taxation Code and Property Tax Rule 302.

(b) **Hearing Officers**

*Reference:* Government Code §27720.  
Revenue & Taxation Code §1636.  
Santa Clara County Ordinance Code §§ A4-26 through A4-39.

The County has created the positions of Legal Hearing Officer (LHO) and Value Hearing Officer (VHO).

Pursuant to County Ordinance Code section A4-31, legal hearing officers shall conduct hearings on the sole issue of whether a “change of ownership” (Revenue and Taxation Code § 60 et seq.) or new construction (Revenue and Taxation Code § 70 et seq.) has occurred with regard to real property in the County so as to cause a reassessment of said property for ad valorem property tax purposes.

Pursuant to Revenue and Taxation Code section 1637 and County Ordinance Code section A 4-31, value hearing officers may conduct hearings solely to determine the value of real property in the County where the Applicant has requested that the hearing be held before a value hearing officer and where the total assessed value of the real property under consideration, as shown on the current assessment role, does not exceed five hundred thousand dollars (\$500,000); or the property under consideration is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value.

Pursuant to County Ordinance Code section A4-38, the AAB is bound by the decision of the hearing officer. On April 13, 2010, the Board of Supervisors adopted a resolution pursuant to Revenue and Taxation Code section 1641.5 providing that the Hearing Officer’s decision constitutes the final decision of the AAB without any further action. The decision of the hearing officer shall not constitute precedent for future proceedings initiated by the Applicant or other Applicants.

**305-1 APPLICATION**

*Reference:* Property Tax Rule 305, 313.  
Revenue and Taxation Code §§ 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1609.4, 1636, 5097 and 5097.02.  
Government Code § 25105.5.

(a)-(b) **Reserved**

(c) **Form, Contents and Corrections**

Application forms authorized by the State Board of Equalization will be made available during the filing period from the Clerk. Applications may also be downloaded from the Clerk's website. All applications must be made on forms so provided. The Clerk will not accept for filing any other application.

Where an Application addresses more than one parcel or one assessment of personal (unsecured) property for a single economic unit, the Application must specify each parcel of real property or each assessment of personal (unsecured) property in that economic unit.

If a duplicate application (as defined in Revenue and Taxation Code §1603.5) is filed, the Clerk may accept only the first Application and may reject any duplicate application.

An application that is not correctly completed may be accepted conditionally by the Clerk and must be corrected and filed with the Clerk within 30 days after notice provided by the Clerk or the last date for timely filing, whichever occurs later.

(d) **Time of Filing**

- (1) An Application appealing a regular assessment shall be filed with the Clerk during the regular filing period.
- (2) An Application appealing an escape assessment or a supplemental assessment must be filed with the Clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later.
- (3) An Application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the Clerk no later than six months after the date of the mailing of the notice of proposed reassessment by the Assessor. The decision of the Board regarding the damaged value of the property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.
- (4) When the notice of assessment described in section 619 of the Revenue and Taxation Code was not received at least 15 calendar days prior to the close of the regular filing period, an Application may be filed within 60 days of receipt of a notice of assessment or

within 60 days of the mailing of the tax bill, whichever is earlier. The Application must be filed with an affidavit from the Applicant declaring under penalty of perjury that the notice was not timely received.

(5)-(7) Reserved

(e)-(f) **Reserved**

(g) **Retention of Records**

If at the expiration of the retention period specified in Property Tax Rule 305(g), a lawsuit is pending in the judicial system regarding any assessment appeal the Clerk shall retain records pertaining to that appeal beyond the retention period specified in Property Tax Rule 305(g) and shall continue to retain the records during the pendency of any judicial proceedings related to the appeal until at least one year after any judicial determination is final. In those cases where a judicial determination results in a remand to the AAB, the Clerk shall retain the records until at least three years after the final action on the remanded Application.

(h) **Reserved**

(i) **Withdrawal of Applications**

- (1) Where a value stipulation on an Application has gone before the AAB/hearing officer and the AAB/hearing officer has either continued the matter for further information or rejected the stipulation and set the Application for value hearing, the Application may not be withdrawn unless the AAB/hearing officer first conducts a hearing on the request for withdrawal and grants permission to withdraw the Application. All parties, in person or represented by an authorized agent, are required to attend the hearing on the request to withdraw the Application.
- (2) Where, pursuant to Revenue and Taxation Code section 1609.4 and Property Tax Rule 313(f), the Assessor's Office has sent an increase letter giving notice that it intends to request that the AAB/hearing officer determines that the value of the property is higher than the value of the property on the roll, the Application may not be withdrawn unless the AAB first conducts a hearing on the request for withdrawal and grants permission to withdraw the Application. All parties, in person or represented by an authorized representative, are required to attend the hearing on the request to withdraw the Application.

- (A) To facilitate the Clerk's determination regarding whether the Clerk may administratively grant a withdrawal or must set the request for withdrawal for hearing, on the same day the Assessor's office sends a 10-day increase letter to the Applicant on any matter where an Appeal is pending, the Assessor's office shall also send a copy of that letter to the Clerk.
- (3) Except as set forth in subdivisions (i)(1) and (i)(2) above, the Clerk's office may administratively grant all requests for withdrawals.
- (4) Once an Application is withdrawn, the Clerk may administratively grant a request for reinstatement of the Application if that request for reinstatement is timely made within the original filing period for that Application. Otherwise, once withdrawn, an Application shall not be reinstated unless it falls within the circumstances set forth in paragraph 4(A) below.
  - (A) Where the reason for the requested reinstatement is that after the Applicant and Assessor reached a stipulation as to value the Applicant erroneously withdrew the Application before the AAB/hearing officer reviewed the value stipulation, the Clerk may reinstate that Application so that the fully signed stipulation can be scheduled for review by the AAB/hearing officer.

**305.2-1 PREHEARING CONFERENCES, STATUS HEARINGS, AND 441-D NON-COMPLIANCE HEARINGS**

*Reference:* Article XIII, Section 16, California Constitution.  
 Revenue and Taxation Code Section 1601 et seq.  
 Property Tax Rule 305.2.

- (a) **Prehearing Conferences/Status Hearings**
  - (1) The Board of Supervisors has established prehearing conferences and status hearings and adopted the following rules of procedure for prehearing conferences/status hearings
  - (2) Prehearing conferences/status hearings are to be used in those cases where they will facilitate orderly proceedings. The matters addressed at prehearing conferences may include, but are not limited to, the following: resolving issues; clarifying and defining issues; determining the status of exchange of information requests;

stipulating to matters on which agreement has been reached; combining Applications into a single hearing; bifurcating hearing issues; pre-hearing briefing; and scheduling a hearing date(s) for the AAB/Hearing Officer to consider evidence on the merits of the Application.

- (3) A prehearing conference/status hearing may be set by the Clerk at the request of the Applicant, the Applicant's agent, the Assessor, at the direction of the AAB/hearing officer, or at the Clerk's own initiative.
- (4) The Clerk shall give notice of the time, date, and place of the pre-hearing conference/status hearing not less than thirty (30) days prior to the conference, unless the Assessor and Applicant stipulate orally or in writing to a shorter notice period.
- (5) All parties, in person or represented by an authorized representative, are required to attend the prehearing conference.
- (6) At the prehearing conference/status hearing, the parties shall be prepared to discuss the scheduling of the hearing on the Application and time estimate for such hearing. In addition, the parties may apprise the Board of other issues such as:
  - (A) Status of any exchange of information pursuant to Revenue and Taxation Code § 1606;
  - (B) Requests for information pursuant to Revenue and Taxation Code Sections 408 and 441;
  - (C) Subpoenas pursuant to Revenue and Taxation Code sections 1609.4 and 1609.5;
  - (D) Consolidation of Applications for hearing;
  - (E) Bifurcation of issues.
- (7) At the prehearing conference/status hearing, the Board shall attempt to resolve issues properly before it. The Board may in its discretion defer resolution of any issue until a later prehearing conference or until the hearing on the Application.
- (8) The prehearing conference/status hearing shall be electronically recorded.

- (9) All parties shall act in full accordance with the rules, agreements reached, and resolutions made at the prehearing conference/status hearings.
- (10) Status hearings may be held before, during, or after hearing on an Application. The purpose of such hearing is to assist the AAB/hearing officer and/or the parties in the hearing and decision-making process.

(b) **441d Non-Compliance Hearings**

- (1) Where a matter has been scheduled for hearing but Applicant has not fully responded to a 441D request from the Assessor's Office, the matter shall be placed on the 441-D noncompliance portion of the Board's agenda.
- (2) For items placed on the 441D non-compliance portion of the Board's agenda, at the time of the hearing:
  - (A) The Assessor's Office shall provide the Board with a copy of the 441D letter and explain to the Board the nature of Applicant's non-compliance;
  - (B) The Applicant shall advise the Board regarding when compliance with the Assessor's 441D letter will be completed and explain the reason for any anticipated compliance issues to the Board;
  - (C) The parties shall advise the Board regarding what date they anticipate being ready to go to hearing;
  - (D) The AAB/Hearing Officer shall require the Applicant to sign a Waiver of the two-year statute of limitations if there is no Waiver already on file.

**307-1 HEARING CONFIRMATION FORM AND APPEARANCE NOT TIMELY CONFIRMED AGENDA**

*Reference:* Revenue & Taxation Code §§ 50, 51, 1601, 1603, 1606, 1610.8, 1620.  
Property Tax Rule 307.

**(a) Confirmation Form**

With the first notice of hearing only, the Clerk will include a hearing confirmation form that requires the Applicant to advise the Board whether the Applicant:

- (1) Intends to appear on the scheduled hearing date, ready to proceed with an evidentiary hearing on the issues raised by the Application; or
- (2) Requests that the hearing be postponed to another hearing date; or
- (3) Will not appear because the Applicant has returned a signed value stipulation agreement to the Assessor's Office; or
- (4) Withdraws the Application.

**(b) Deadline for Returning Confirmation**

For a confirmation form to be timely, the Applicant must complete the form and return it to the Clerk's office no later than the confirmation deadline set forth in the hearing notice. If the confirmation form is not timely returned, the hearing on the merits will not proceed on the originally scheduled date. Note: Timely submittal of a Request for Exchange of Information form does not constitute a confirmation of appearance.

**(c) Timely Return of Notice**

The Clerk shall advise the Assessor promptly regarding receipt of timely confirmation notices.

Where the Applicant returns the completed notice in a timely manner:

- (1) If the confirmation form indicates that the Applicant will appear, the Assessor shall be ready to proceed at the hearing as scheduled, unless the Assessor requests a postponement in accordance with Property Tax Rule 323 and Local Rule 323-1.

- (2) If the confirmation form indicates that the Applicant is requesting a postponement, the Clerk shall respond to the postponement request as provided in Local Rule 323-1.
- (3) Where the Applicant and the Assessor have reached a stipulation as to value, the Clerk shall postpone the hearing to a later date so that the completed stipulation can be submitted to the AAB/VHO for review on the stipulation portion of the AAB/VHO agenda.
- (4) If the confirmation form indicates that the Applicant is withdrawing the Application:
  - (A) If the AAB has previously considered a stipulation on the Application and either continued that hearing or rejected the stipulation, the Clerk shall schedule a hearing on the Applicant's request to withdraw the Application in accordance with Local Rule 305-1(i);
  - (B) If the Assessor has previously issued an increase letter, the Clerk shall schedule a hearing on the Applicant's request to withdraw the Application in accordance with Local Rule 305-1(i);
  - (C) Except as set forth in subdivisions (A) and (B) above, the Clerk shall grant the requested withdrawals.

**(d) Failure to Return Notice in Timely Manner**

- (1) If the Clerk does not receive a timely confirmation notice, the Clerk shall list the Application on the "appearance not timely confirmed" portion of the agenda for the hearing date and the Assessor is not required to be ready to proceed with the hearing on that date, and the hearing on the merits of the Application will not proceed on the originally scheduled hearing date.
- (2) If the Applicant fails to appear at the "appearance not timely confirmed" hearing, the AAB /Hearing Officer shall deny the Application for lack of appearance.
- (3) If the Applicant appears at the "appearance not timely confirmed hearing":
  - (A) The AAB/Hearing Officer shall schedule a new hearing date;

- (B) The Applicant shall be required to enter into a written agreement extending and tolling the two-year limitations period (“Waiver”) if there is no such Waiver already on file.

### **308-1 FINDINGS OF FACT**

*Reference:* Revenue & Taxation Code §§ 1603, 1611.5, 1611.6.  
Property Tax Rule 308, 325.  
County Ordinance Code §§, A4-21, A4-23.

#### **(a) Fee for Finding of Fact**

Under County Ordinance Code section A4-23 the party requesting writing findings must pay a fee for written findings of fact in the amount of \$200 per hour of time spent by the AAB Board Counsel plus any additional costs the County incurs in the preparation of such findings. A \$400 non-refundable deposit must be paid before the conclusion of the hearing. Any additional amount will be billed by the County and must be paid prior to the transmittal of the findings and conclusions to any party. If the final payment is not made, the findings will not issue.

#### **(b) Findings in Cases with Both Legal and Value Hearings**

When findings are requested on an Application that involves both legal issues heard by the LHO and value issues (heard by the AAB or a VHO), findings are completed after a final determination is made on the legal issues and value issues respectively.

#### **(c) Limit on Availability of Findings**

Findings cannot be requested and will not be prepared on hearings other than hearings on legal issues heard by the LHO, hearings on value issues heard by the AAB or VHO, and requests for the AAB to abate penalty assessments. Findings cannot be requested, and will not be prepared, for any other type of hearing conducted by the AAB. For example, findings will not be prepared for hearings on requests for reinstatement of Applications and on hearings regarding requests to amend Applications.

#### **(d) Preparation of Findings**

- (1) Unless otherwise specified by the AAB/Hearing Officer, in cases where Findings have been properly requested in writing and the deposit has been paid, the Findings shall be drafted by the counsel to the AAB pursuant to the direction of the AAB chairperson/Hearing Officer.

- (2) The AAB/ Hearing Officer has discretion to designate one or more of the parties to prepare proposed findings and set a schedule for submission of such proposed findings.
- (A) If the AAB/ Hearing Officer deems that the proposed decision clearly favors one party over the other, the AAB/Hearing Officer may designate the prevailing party to prepare proposed findings within a specified number of days. If the Board does not deem that the proposed decision clearly favors one party over the other, the AAB/Hearing Officer may designate both parties to prepare proposed findings within a specified number of days.
  - (B) Proposed findings are to be submitted to the Clerk of the AAB for transmittal to the AAB/Hearing Officer as well as submitted to the opposing party for comment. The copy provided to the Clerk must be provided in electronic format unless the party does not have reasonable access to a computer.
  - (C) If a prevailing party has been designated to prepare proposed findings, the opposing party may submit a response to the proposed findings within a number of days to be specified by the AAB/Hearing Officer. If a party fails to respond to proposed findings prepared by the opposing party, that party shall be deemed to have waived all objections to the proposed findings.
  - (D) If both parties have been designated to prepare proposed findings, the AAB/Hearing Officer may, but is not required to, provide each party an opportunity to review and comment on the proposed findings submitted by the other party.
  - (E) The AAB/Hearing Officer may, but is not required to, hold a hearing on the proposed findings and responses thereto.
  - (F) Once proposed findings have been submitted, any comments received, and any hearing (if any) on the proposed findings held, the County Legal Advisor shall prepare the final findings pursuant to the direction of the AAB/Hearing Officer.

### **308.5-1 CONFLICT OF INTEREST**

- (a) Section 1624.2 of the Revenue and Taxation Code provides that “no member of the Board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his/her judgment in the proceeding.” This section also provides that a violation of this section establishes cause for removal under section 1625 of the Revenue and Taxation Code, which allows a board of supervisors to remove any member of an assessment appeals board for cause.
- (b) Each AAB member and hearing officer is subject to Chapter 7, Article 1 of the Political Reform Act (Gov. Code §§ 87100 et seq.) which prohibits a member from making or attempting to influence a governmental decision in which he/she has a financial interest. A Board member shall disqualify himself or herself promptly upon becoming aware of any potential violation of these provisions.
- (c) An AAB member/ hearing officer may disqualify himself or herself from any matter pending before the Board/hearing officer for any reason which the member/hearing officer deems to constitute good cause. The reason shall be stated on the record.
- (d) Where a member of the AAB disqualifies himself/herself, the parties may opt to proceed with a two-member board. If, however, one or more of the parties objects to proceeding with a two-member board, then the Applicant shall be required to sign a Waiver of the two-year statute, the hearing shall be continued, and the Clerk shall select a substitute member to participate in and decide the matter, reassign the matter to a different AAB panel, or, if necessary in order to achieve a 3-member board with no conflicts, select a special panel comprised of AAB members from various panels.
- (e) Where a hearing officer disqualifies himself/herself, the Clerk shall select a substitute hearing officer to participate in and decide the matter.

**308.6-1 APPLICATIONS REQUIRED TO BE HEARD BY ALTERNATE ASSESSMENT APPEALS BOARD FROM ANOTHER COUNTY**

*Reference:* Revenue & Taxation Code §§ 1612.7, 1622.6.  
Property Tax Rule 308.6.

(a) **Applications Required to be Heard by Alternate Assessment Appeal Boards**

Each of the following persons shall notify the Clerk immediately upon filing an Application for equalization on his or her own behalf, or upon his or her decision to represent his or her spouse, registered domestic partner, parent, or child in an assessment appeal that is filed or pending in Santa Clara County:

- (1) a current member of an AAB, or any alternate member.
- (2) a current assessment hearing officer.
- (3) a current employee of the office of the Clerk.
- (4) a current employee of the County Counsel who advises the AAB/VHO or represents the Assessor before the AAB/VHO.

(b) **Referral to Alternate Assessment Appeals Board in Another County**

- (1) The Clerk shall refer an Application filed by a person included in subdivision (a) or an Application in which a person specified in subdivision (a) represents his or her spouse, registered domestic partner, parent, or child to a special alternate assessment appeals board panel convened to hear the Application, consisting of three members who are qualified and in good standing in another California county. Applications may only be referred to a county if that county's clerk of the assessment appeals board has consented to accept the referral.
- (2) The special alternate board may hear only the Application or Applications set forth in the transmittal document prepared by the Clerk for Santa Clara County.

(c)-(e) Reserved

- (f) **Clerk's Duties.** The Clerk shall perform any ministerial duties regarding an Application for equalization filed by a person specified in subdivision (a), or an Application in which a person specified in subdivision (a)

represents his or her spouse, registered domestic partner, parent or child, in the same manner as any other Application.

### **309-1 HEARING**

*Reference:* Revenue & Taxation Code §§ 441, 1603, 1604, 1606, 1624.4, 1641.1, 1641.2.  
Property Tax Rule 309.

- (a) The County of Santa Clara has a population of less than 4 million.
- (b) Assessment Appeals Board I meets regularly on the second Wednesday of each month, Assessment Appeals Board II meets regularly on the fourth Wednesday of each month. Assessment Appeals Board III meets regularly on the first Wednesday of each month, and the legal hearing officers and value hearing officers meet regularly as scheduled by the Clerk of the Board. The Clerk, AAB and VHOs may modify this schedule to accommodate holidays or the nature and duration of scheduled hearings. The AAB/VHO will continue to sit from time to time until the business of assessment appeals is completed. No later than the first meeting after each January 1, the AAB will adopt a schedule for the calendar year if regular meeting dates need modification for the holidays.
- (c) Unless alternate times and locations are determined and posted by the Clerk:
  - (1) Regular meetings of the AAB begin at 9:00 a.m. in the Isaac Newton Senter Auditorium located on the First Floor at the County Government Center, 70 West Hedding Street, San Jose, California;
  - (2) Regular meetings of the VHO begin at 9:00 a.m. in Room 157 located on the First Floor at the County Government Center, 70 West Hedding Street, San Jose, California;
  - (3) Regular meetings of the LHO begin at 9:30 a.m. in Room 157 located on the First Floor at the County Government Center, 70 West Hedding Street, San Jose, California.
- (d) Special meetings of the AAB may be called as deemed necessary, provided there is adequate time for the notification of all parties and the public. The AAB may adjourn any regular or special meeting to a time and place specified in the order of adjournment. If only two members are present, they may adjourn the meeting by unanimous vote. If only one member is present, the Clerk may declare the meeting adjourned to a stated time and place.

### **310-1 SELECTION OF BOARD CHAIR**

*Reference:* Revenue & Taxation Code §1609.

- (a) At its first regular meeting after July 1 of each year, AAB I, AAB II, and AAB III will each select a chairperson.
- (b) All other decisions of the AAB must be made by motion carried by a majority of the AAB members present and voting. The chairperson may make a motion.
- (c) In the chairperson's absence, provided a quorum is present, a chairperson pro tem shall be elected to preside over the meeting and will have all the powers and duties of the chairperson.
- (d) In addition to all powers and duties express or implied by law, the chairperson will: (1) have general direction of the meeting room and assign seats for use by members; (2) preserve order and decorum; prevent demonstrations; (3) assure that attendance of the public at meetings is limited to that number which can be accommodated by the seating facilities regularly maintained therein, and ask standees to leave when room capacity exceeds that number set by the Fire Marshal; (4) recess the meeting if deemed necessary due to disturbance; (5) remove from the meeting any person who commits: disorderly, contemptuous or insolent behavior toward the AAB or any member of the public or staff, tending to interrupt the due and orderly course of the meeting; a breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due and orderly course of the meeting; disobedience of any lawful order of the chairperson, including an order to be seated or to refrain from addressing the AAB; or any other unlawful interference with the due and orderly course of the meeting; and (6) prohibit or permit the distribution of literature, of whatever nature or kind, in the meeting room.

### **312-1 HEARINGS RECORDED**

*Reference:* Revenue & Taxation Code § 1611.  
Property Tax Rule 312.

- (a) All AAB/Hearing Officer proceedings will be electronically recorded.
- (b) Any person may obtain a copy of the electronic recording of that portion of the hearing that is open to the public upon payment of a reasonable fee to cover materials and any postage costs.

- (c) The County does not provide stenographic reporters. Unless all parties and the Clerk agree otherwise, any transcript of a proceeding must be prepared for and paid for by the party requesting it, based on a copy of the Clerk's official electronic recording. The party must provide a copy of the transcript to the Clerk as soon as it is completed.
- (d) The Clerk does not arrange for stenographic reporters. A party may arrange for a stenographic reporter. If a party arranges for a stenographic reporter, the party must give notice that it has done so and that notice must be received by the Clerk at least five days before the hearing. The expense of the reporter must be borne by the party arranging the stenographic reporter.
- (e) If a stenographic reporter is present at the hearing, the County may designate the reporter's transcript as the official record upon its being filed with the Board.
- (f) Private deliberations of the AAB/hearing officers will not be recorded.
- (g) Any party that believes the transcript contains trade secret materials, or is otherwise exempt from disclosure under the California Public Records Act (Government Code §6250 et seq.), bears the burden of demonstrating facts sufficient to support the claimed exemption(s). The party will also be required in writing to defend and hold the County harmless if the County denies a public records request on the basis of the party's asserted exemption(s) and legal action is initiated against the County.

### **313-1 HEARING PROCEDURE**

*Reference:* Article XIII A, California Constitution.  
Revenue & Taxation Code §§ 110, 167, 1605.4, 1607,  
1609, 1609.4, 1637.  
Evidence Code section 664.  
Property Tax Rule 313.

- (a) **Reinstatement following Failure to Appear**
  - (1) Any request for reinstatement following a denial for lack of appearance must be filed within sixty (60) days from the date of mailing of the notice of denial.
  - (2) If a request for reinstatement is not filed within sixty (60) days from the date of mailing of the notice of denial, the AAB/Hearing Officer does not have jurisdiction over the request for reinstatement. Any request for reinstatement following a denial for lack of appearance

not filed within sixty (60) days from the mailing of the notice of denial is untimely and shall be denied by the Clerk.

- (3) If, after requesting reinstatement following a failure to appear, the Applicant or agent does not appear in person at the Board Consideration hearing regarding that request for reinstatement, the AAB/Hearing Officer shall deny the Application and no second request for reinstatement shall be accepted by the Clerk or considered by the AAB/Hearing Officer.

(b)-(d) **Reserved**

(e) **Evidence and Communications**

- (1) **Reserved**

- (2) **No Ex Parte Communications.** After an Application for changed assessment has been filed no AAB member/hearing officer will discuss the Application with proponents, opponents or other interested parties, except in the course of and during the public hearing and authorized private deliberations thereon. No AAB member, however, is prohibited from discussing a pending matter with the Clerk or the County Legal Advisor.

- (3) **Case Information/Briefs.** With the exception of any motions or pre-hearing briefs filed by either party at the request of the AAB/Hearing Officer, and also with the exception of Board Consideration summaries prepared by the Clerk of the Board for cases on the Board Consideration portion of the Agenda, case information provided to the Clerk must not be provided to AAB members/hearing officers in advance of the scheduled hearing date because of the possibility that such information may change or not be admitted in evidence.

(f) **Reserved**

- (g) **Brown Act Does Not Apply.** The Attorney General of California has determined that the Brown Act (Gov. Code § 54950 et seq.) does not apply to assessment appeals boards when they hear property tax appeals. 79 Ops.Cal.Atty.Gen 124 (1996).

**314-1           LEGAL COUNSEL FOR APPLICANT AND ASSESSOR**

*Reference:* Revenue & Taxation Code §1620 et seq., 1638.  
Property Tax Rule 314.

If the Applicant or agent will use legal counsel, reasonable advance notice must be given so that the Assessor’s legal counsel may attend.

**316-1           EXAMINATION OF APPLICANT BY AAB/HEARING OFFICER**

*Reference:* Revenue & Taxation Code §§ 1605.5,1607, 1608, 1620 et seq.  
Property Tax Rule 316.

- (a) **Reserved**
- (b) **Written Stipulations.** Generally the AAB/Hearing Officer does not require the presence of the parties when considering written stipulations. In the event there is a fully signed written value stipulation and/or stipulation as to a determination regarding a change in ownership or new construction, which stipulation sets forth the facts upon which the agreed upon value is premised, the AAB/Hearing Officer may, at a public hearing:
  - (1) accept the stipulation, waive the appearance of the Applicant/Agent or waive the appearance of both the Applicant/Agent and the Assessor, and change the assessed value in accordance with section 1610.8 of the Revenue and Taxation Code;
  - (2) reject the stipulation and set the Application for a hearing;
  - (3) defer its decision on a proposed stipulation when it desires further information or clarification that is not immediately available from the Assessor at the hearing.

**317-1           PERSONAL APPEARANCE BY THE APPLICANT; APPEARANCE BY AGENT**

*Reference:* Revenue & Taxation Code §§ 1601, 1607, 1608, 1620, et seq.  
Property Tax Rule 317.

- (a)-(d) Reserved
- (e) A domestic partner registered with the State may also appear for his or her partner, and sons and daughters may appear for registered domestic partners who are their parents, and vice-versa.

### 322-1 SUBPOENAS

*Reference:* Revenue & Taxation Code §§ 1609, 1609.4, 1609.5.  
Property Tax Rule 322.

- (a) The Clerk may issue subpoenas after consulting with the County Legal Advisor and receiving oral approval from the Chair of the Assessment Appeals Board that will conduct the hearing, or if he/she is unavailable, then from the chairperson of one of the other Assessment Appeals Boards.
- (b)-(c) Reserved
- (d) The County will not authorize the expenditure of any funds to reimburse an Applicant, pursuant to Property Tax Rule Rule 322(d), for costs associated with issuing a subpoena to a State Board of Equalization employee.

### 323-1 POSTPONEMENTS AND CONTINUANCES

*Reference:* Gov. Code section 15606(c).  
Revenue & Taxation Code §§ 1605.6, 1606.  
Property Tax Rules 305(e)(2)(C)(iv), 305.1(c), 323.

- (a) **Postponement Requests.** Postponement requests made prior to the hearing date shall be made in writing and may be submitted to the Clerk in hardcopy, via fax or via e-mail. Postponement request forms are available from the Clerk.
  - (1) **First Postponement Requests**
    - (A) **First Postponement Request Made 21 Days Before the Hearing.** The Clerk is authorized to grant one (1) postponement as a matter of right to each party. The postponement request must be made in writing no later than 21 days before the hearing is scheduled to commence.
      - (i) If the Applicant requests a postponement as a matter of right within 120-days of the expiration of the two-year limitation period provided in Section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon Applicant's written agreement to extend and toll indefinitely the two-year period subject

to termination of the agreement by 120 days written notice by the Applicant (a "Waiver").

- (ii) The Assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year limitations period, but the AAB/Hearing Officer has discretion to grant such a request.

**(B) First Request for Postponement Made Less Than 21-Days Before the Hearing**

**(i) Request to Which the Other Party Does Not Object**

(a) Where a first request for postponement is made in writing less than 21-days before the hearing, and where both that postponement request and written confirmation from the other party that they do not object to the postponement are received by the Clerk no later than 4:00 p.m. at least seven (7) days in advance of the hearing, the Clerk shall grant that first request for postponement.

(b) If the Applicant is the requesting party, such postponement automatically results in extending and tolling indefinitely the two-year limitation period provided in Section 1604, subject to termination of the tolling agreement upon 120-days written notice by the Applicant. If the Applicant is the requesting party, the Applicant shall sign a written Waiver of the two-year limitations period. If, however, the Waiver is not signed, the two-year limitation period will nevertheless be automatically extended and tolled indefinitely subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

**(ii) Request to Which the Other Party Objects**

(a) Where a first request for postponement is made in writing less than 21-days before the hearing and received by the Clerk no later than 4:00 pm at least seven (7) days in advance of

the hearing, but the other side objects to the requested postponement, the AAB/Hearing Officer will determine whether or not good cause exists to grant the requested postponement. The requesting party is required to appear in person at the scheduled hearing so that the AAB/Hearing Officer can consider the postponement request, and must be prepared to proceed immediately with the scheduled hearing if the postponement request is denied.

- (b) If the Applicant is the requesting party and the AAB/Hearing Officer determines that good cause for the requested postponement exists and grants the requested postponement, such postponement automatically results in extending and tolling indefinitely the two-year limitation period provided in Revenue and Taxation Code Section 1604, subject to termination of the tolling agreement upon 120 days written notice by the Applicant. If the Applicant is the requesting party, the Applicant shall sign a Waiver of the two-year limitations period. If, however, the Waiver is not signed, the two-year limitation period will nevertheless be automatically extended and tolled indefinitely subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

**(2) Subsequent Postponement Requests**

**(A) Request to Which the Other Party Does Not Object**

- (i) After a party has made one request for postponement, any subsequent request by that party for postponement must be in writing, must show good cause for the requested postponement, and must be received by the Clerk no later than 4:00 p.m. at least seven (7) days in advance of the hearing.
- (ii) If the other party does not object to the postponement request, and if the written request for postponement and written confirmation that the other side does not object are received by the Clerk no later than 4:00

p.m. at least seven (7) days before the hearing, this shall be deemed to constitute good cause for the postponement and the Clerk shall grant the requested postponement.

- (iii) This unopposed postponement automatically results in extending and tolling indefinitely the two-year limitation period, subject to termination of the tolling agreement upon 120 days written notice by the Applicant. If there is not yet on file a written Waiver of the two-year limitations period provided in Revenue and Taxation Code Section 1604, the Applicant shall sign a written Waiver. If, however, the Waiver is not signed, the two-year limitation period will nevertheless be automatically extended and tolled indefinitely, subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

**(B) Request to Which the Other Party Objects**

- (i) Where a subsequent request for postponement is made in writing and received by the Clerk no later than 4:00 p.m. at least seven (7) days in advance of the hearing, but the other side objects to the requested postponement, the AAB/Hearing Officer will determine on the date of the hearing whether or not good cause exists to grant the requested postponement. The requesting party is required to appear in person at the scheduled hearing so that the AAB/Hearing Officer can consider the postponement request, and must be prepared to proceed immediately with the scheduled hearing if the postponement request is denied.
- (ii) If the Applicant is the requesting party and the AAB/Hearing Officer determines that good cause for the requested postponement exists and grants the requested postponement, such postponement automatically results in extending and tolling indefinitely the two-year limitation period provided in Revenue and Taxation Code Section 1605, subject to termination of the tolling agreement upon 120 days written notice by the Applicant. If the Applicant is the requesting party, the Applicant shall sign a Waiver of the two-year limitation period. If, however, the Waiver is not signed, the two-year limitation period will

nevertheless be automatically extended and tolled indefinitely subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

(b) **Continuance Requests**

(1) **Continuance Requests made at the hearing**

(A) **General Requests for Continuances.** On the date of the hearing, prior to the introduction of evidence and testimony in the case, the AAB/Hearing Officer has discretion to grant a continuance request made at the hearing.

(i) Where, within 90 days of the expiration of the two-year limitation period provided in Revenue and Taxation Code Section 1604, the Applicant requests a continuance at the hearing, the Applicant is required to sign a written Waiver extending and tolling the two-year limitation period provided in Revenue and Taxation Code Section 1604 indefinitely subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

(ii) Where, more than 90 days before the expiration of the two-year limitation period provided in Section 1604, the Applicant requests a continuance at the hearing, the AAB/Hearing Officer may request, as a condition of granting the requested continuance, that the Applicant sign a written Waiver extending and tolling the two-year period indefinitely, subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

(B) **Continuances upon Amendment of an Application**

(i) If the AAB/Hearing Officer grants a request to amend an Application, upon the request of the Assessor, the hearing on the matter shall be continued at least 45 days unless both parties are amenable to a shorter continuance.

(ii) Where the AAB/Hearing Officer grants a request to amend an Application and that amendment results in the continuance of the hearing, the Applicant shall be required to sign a written Waiver extending and tolling

the two-year period provided in Revenue and Taxation Code Section 1604 indefinitely, subject to termination of the tolling agreement upon 120 days written notice by the Applicant.

**(C) New Information Introduced at the Hearing**

- (i) Where, following a formal exchange of information pursuant to Revenue and Taxation Code section 1606 and Property Tax Rule 305.1, new material is introduced by a party at the hearing in accordance with Property Tax Rule 305.1(c), the other party, upon request, shall be granted a continuance for a reasonable period of time.

- (2) **Emergency Continuance Requests.** On occasion, unusual circumstances may arise where the Applicant has missed the deadline to request a postponement but has contacted the Clerk prior to the date of the hearing to report a serious emergency that will prevent the Applicant's appearance at the hearing (e.g., serious medical emergency, death in the family) and requested an emergency continuance. On such occasions, the Clerk will present the emergency continuance request to the AAB/Hearing Officer at the hearing and the AAB/Hearing Officer will decide whether to grant the requested emergency continuance or deny the requested emergency continuance and deny the case for lack of appearance.

**324-1 DECISIONS**

*Reference:* Government Code Section 15606.  
Revenue and Taxation Code §§ 402.1, 402.5, 1609,  
1610.8, 1611.5.

- (a)-(f) Reserved
- (g) If the AAB/Hearing Officer orders post-hearing briefing, the hearing is not complete until the date established by the AAB/Hearing Officer for the submission of the last-scheduled post-hearing brief. Where the AAB/Hearing Officer has heard a matter and taken the matter under submission, at any time before the AAB/Hearing Officer announces a decision on the matter, the AAB/Hearing Officer may, on their own motion, reopen the pending matter to order post-hearing briefing, the submission of additional evidence, a further hearing, and/or to request that the parties submit clarification regarding issues and/or evidence. In such circumstances, the hearing is not complete until the latest of the dates

established by the AAB/Hearing Officer for the submission of additional information and/or additional hearing.

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