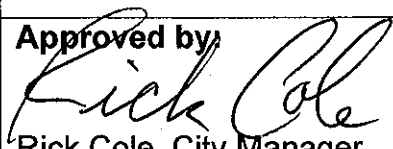
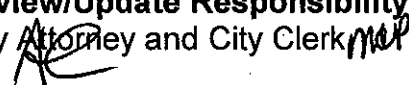


ADMINISTRATIVE POLICY & PROCEDURES

Subject: Subpoenas Received by the City	APP: 8.4
Issued by: City Attorney and City Clerk	Approved by:  Rick Cole, City Manager
Date Issued: March 22, 2010	Expiration Date: N/A
Review/Update Frequency: Every two years	Review/Update Responsibility: City Attorney and City Clerk 
Date of this Revision: N/A	Dates of Previous Revisions: N/A
Departments/Divisions Affected by Policy/Procedure: All City Offices and Departments	Authority: Various Government Code and Code of Civil Procedure Sections

SUBPOENAS

A subpoena is an order for a person to appear in court. In modern legal practice, a lawyer usually issues the subpoena as part of a criminal or civil case. Subpoenas can also be used to order a person to produce documents and/or things in court, at a specific location, or to a copy service. Sometimes subpoenas order a person to appear and/or bring documents to a non-court proceeding called a "deposition." Depositions are interrogations that take place under oath before a case goes to trial.

The purpose of this policy is to inform City employees of their responsibilities if they receive (are "served") a civil subpoena. Subpoenas are time sensitive court orders.

1. TYPES OF CIVIL SUBPOENAS

Civil subpoenas for trials or deposition in state courts usually come on preprinted forms with the following headings:

A. TRIALS

- (1) CIVIL SUBPOENA for personal appearance at trial or hearing.

- (2) CIVIL SUBPOENA (DUCES TECUM) for personal appearance and production of documents and things at trial or hearing and declaration.

B. DEPOSITIONS

- (1) DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE
- (2) DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS
- (3) DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

2. APPLICATION OF THIS POLICY

- A. All subpoenas should be treated in the same manner unless this policy or the City Attorney's Office directs otherwise.
- B. This policy applies to all City employees and all subpoenas.
- C. All subpoenas are to be personally served. The City does not accept service by facsimile or by mail. Any subpoena received and all accompanying documents shall be kept by the department.
- D. The Records Coordinator is the person designated in each department/division to be responsible for compiling the necessary documents and/or things to be produced and assuring their production. That person may also receive subpoenas for personal service under the circumstances noted in Section 3, below, and in those instances, the Records Coordinator would also be responsible to comply with Section 5.
- E. Every department is responsible for keeping the City Clerk's Office informed regarding the persons designated as the Records Coordinators.

3. POLICY EXCEPTIONS

Under the following circumstances, subpoenas are to be handled as described:

- A. **Police Matters:** All subpoenas for police records and/or things, or for personal appearance, are to be served on the Records Coordinator at the Ventura Police Department, 1425 Dowell Drive, Ventura CA.
- B. **Non-Police Personnel Records:** Subpoenas concerning personnel-related matters, other than for police records, are to be served on and handled by the Records Coordinator at the Human Resources Department, 501 Poli Street, Room 210, Ventura, CA.

- C. **Fire Matters:** All subpoenas for matters handled by the Ventura Fire Department are to be served on and handled by the Records Coordinator at the Ventura Fire Department, 1425 Dowell Drive, Ventura, CA.
- D. **Criminal Cases:** Subpoenas for criminal cases must be served on the Records Coordinator at the Ventura Police Department, 1425 Dowell Drive, Ventura, CA.
- E. **Worker's Compensation:** Any subpoena for a Worker's Compensation matter relating to an employee should be served on the Records Coordinator of the Risk Management Division, 501 Poli Street, Room 210, Ventura, CA.
- F. **Federal and State Government Agency Subpoenas:** All federal and state government agency subpoenas should be served on the City Attorney's Office. If the server insists on serving someone in the department, the subpoena may be accepted by the Records Coordinator and immediately forwarded to the City Attorney's Office, 501 Poli Street, Room 210, Ventura, CA.
- G. **Notice to Consumer:** When a subpoena relating to personal medical, financial, and employment records is served, it should be accompanied by a Notice to Consumer. The Notice is a separate document directed to the person whose records are sought informing that person that he/she has a designated amount of time to object to production of those records sought. No records may be made available as to the person named in the Notice until the time to respond to this Notice has lapsed and no objections to the production of the materials requested is made.

4. CITY ATTORNEY'S OFFICE REVIEW

It is the responsibility of the City employee who is served to provide a copy of the subpoena to the Records Coordinator. When, in the discretion of the Records Coordinator, the subpoena calls for City Attorney Office review, a copy of the subpoena should be provided to the City Attorney's Office without delay.

Any communication (conversation, voicemail, e-mail, etc.) between the requesting party and the employee is discouraged except where a person is required to appear, in which case, a person may feel free to discuss availability and scheduling.

5. PROCEDURE FOR SUBPOENA FOR PERSONAL APPEARANCE ONLY

- A. **Acceptance of Service.** Subpoenas for personal appearance should be served in person on the named individual.

With respect to trial and hearing subpoenas, the person (usually a lawyer) who sent the subpoena should be contacted to confirm that an appearance at the date and time noted in the subpoena is actually required, or whether the employee can be "on call."

With deposition subpoenas, the subpoenaing party should be contacted to schedule a mutually convenient date, time, and place for the deposition.

- B. **Witness Fees and Mileage.** The employee shall demand witness fees at the time of service. The check shall be payable to the City of San Buenaventura in the amount of \$150 per day. If no check is provided at time the subpoena is served, the employee must demand and receive a check prior to the date of appearance. If payment has not been received at least five (5) days before the appearance date, the employee must contact the person who sent the subpoena to demand the fee. The failure to tender witness fees when demanded in a civil proceeding excuses the duty of the witness to appear (Government Code Section 68097). The exception is in the case of a firefighter or police officer, whose failure to appear may be punished as contempt (Government Code Section 1991). In the case of police officers and firefighters, a legal action may be brought to recover expenses in the event reimbursement for expenses is not made.

With respect to civil and administrative matters, the subpoena will indicate if the employee is entitled to mileage. Mileage may be paid at the time of service or at the time of the deposition at the rate of \$.20 per mile. (Code of Civil Procedure, Section 2065; Government Code, Section 68093.)

Any checks shall be held and not negotiated by the department, until the employee has actually appeared. If no appearance is required, the check(s) must be returned.

- C. "Disobedience of a subpoena or the refusal to testify (under other than constitutional grounds) is a misdemeanor." (San Buenaventura Municipal Code Section 1.040.070).

6. PROCEDURE FOR SUBPOENA DUCES TECUM FOR PRODUCTION OF BUSINESS RECORDS ONLY

- A. **Acceptance of Service.** Subpoenas for the production of City business records should be served in person on the City Clerk's Office.

The City Clerk's Office will deliver a copy of any subpoena and all accompanying documents without delay to the appropriate department(s)

Records Coordinator for processing and response. All documents sent interoffice, including subpoenas, may be sent electronically.

- B. **Compilation and Review of Documents.** The Records Coordinator will compile and review any documents in response to the subpoena to ensure confidential information is redacted prior to production. Copies or a list of the compiled documents may be kept with the subpoena for reference by the department. The Records Coordinator shall execute a Declaration of Custodian of Records for the documents compiled in response to the subpoena, a copy of which is attached. The Records Coordinator must use the City's Declaration of Custodian of Records.

In the event time is of the essence or the requesting party requests hand delivery or on-site copying, the Records Coordinator shall make arrangements for the same with the requesting party.

- C. **Document Fees For Production Of Business Records.** A check in the amount of \$15, made payable to the City of San Buenaventura, is required if the subpoena requests that a true and legible copy be made of the business records and mailed or delivered to a particular location by a certain date. Public entities currently may only charge for copying costs and postage if documents are to be mailed. If the costs of reproduction and mailing exceed \$15, the department/division Records Coordinator shall contact the requesting party and notify the requesting party of the amount due and owing prior to reproduction of the records requested. Staff time is not recoverable.

No deposit is required at the time of service if the subpoena requests that original business records be made available for inspection and copying by the requesting party on site. No fee is required from another governmental entity. (Government. Code Section 6103.)

- D. **Public Records Requests.** If a Public Records Act request is received, City staff should determine whether a related civil litigation matter is pending. These public records requests should be brought to the attention of the City Attorney's Office immediately.

7. PROCEDURES FOR SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF RECORDS

The policies and procedures noted above in Sections 5 and 6 must be complied with if the subpoena demands both the personal appearance of a City employee and the production of records and/or things.

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