

CITY OF BELMONT SUBPOENA PROCEDURES

I. OVERVIEW:

A. Intent

These Subpoena Procedures are designed to assist City employees in understanding subpoenas and how to process them. They establish clear procedures for City employees to follow when presented with a subpoena. A subpoena may order a City employee to appear as a witness at an oral deposition, at a court hearing or at trial. A subpoena duces tecum may order a City employee to appear as a witness and to produce documents, or may seek documents only. Subpoenas are not Public Records Act Requests and should not be treated as such. All Public Records Act Requests should be forwarded immediately to the City Clerk.

B. Applicability

These Subpoena Procedures apply only where the City is not a party to the lawsuit and either (1) a City employee is subpoenaed in connection with his or her duties as an employee to testify in a civil or criminal proceeding and/or to produce specified business records; or (2) the City (which is often identified on the subpoena as "Custodian of Records"), is subpoenaed to produce records which it retains in the ordinary course of business.

C. City as Party to the Lawsuit

These Subpoenas Procedures do not apply where the City is a party to a lawsuit. In such cases, a request for records and/or testimony from a City employee should be set forth in a request drafted on pleading paper and referred to as a discovery request. Such requests will normally be sent directly to the City Attorney. Any such request received by a City employee should be forwarded immediately to the City Attorney's Office as responses to such requests are time sensitive.

II. SUBPOENA PROCEDURE:

A. Step One: City Clerk to Accept, Evaluate and Process Subpoenas

General Rule: As a general rule, the City Clerk, or his or her designee, is responsible for accepting, evaluating and processing subpoenas and subpoenas duces tecum directed to the City and its employees. All subpoenas and subpoenas duces tecum, with the following exceptions, shall be referred to the City Clerk, or his or her designee, for acceptance or rejection.

B. Step Two: Cases Where the Person Served has Authority to Accept or Reject the Subpoena

Exceptions to General Rule: The following are two instances when a City employee other than the City Clerk, or his or her designee, has the authority to accept or reject a subpoena:

- **Named Individual:** The subpoena or subpoena duces tecum is served on the individual named in the subpoena; or,
- **Police, Fire and Building Inspector:** The subpoena or subpoena duces tecum is served on the supervisor of the individual named in the subpoena and that individual is a police officer, firefighter or building inspector.

C. Step Three: Subpoena Duces Tecum that Seeks Records Only

A Subpoena Duces Tecum that seeks records only is usually addressed to the City's "Custodian of Records" or the "City Clerk's Office". In these cases, proceed to Step Six below.

D. Step Four: Were Proper Witness Fees Provided?

The decision to accept or reject a subpoena depends on whether any required witness fees were tendered with the subpoena.

General Rule: All subpoenas requiring the personal appearance of a City employee (including police officers, firefighters and building inspectors) at a deposition, court hearing or trial in a civil lawsuit must be accompanied by a check, made payable to the "City of Belmont". The check shall be in the amount of \$150.00 for each day the employee is required to appear. For example, if the subpoena requires 2 days of appearance, the amount of the check should be \$300.00.

Exceptions to General Rule: The following are two instances when the failure of the subpoenaing party to tender witness fees is NOT a ground for rejecting a subpoena.

- **Criminal Matters:** Most subpoenas in criminal matters will be directed to the City's Police Department. Criminal subpoenas will state in the subpoena caption area: "The People of California v. (Person's Name)". The subpoenaing party is generally relieved of tendering witness fees in criminal matters.
- **Court Ordered Waiver:** A court may relieve the subpoenaing party of the duty to pay witness fees by waiving such fees. In all non-criminal cases, witness fees should be demanded unless the subpoenaing party can show proof of such waiver.

E. Step Five: Was Service of the Subpoena Effectuated Properly?

Determining whether the method of service of the subpoena is proper depends on the type of subpoena served and on whom it is served.

General Rule: All subpoenas for the appearance of a City employee at a deposition, court hearing or trial must be personally served on the City employee.

- **Exception to General Rule for Criminal Matters:** Subpoenas in criminal matters directed to a police officer may also be served by mail, fax or e-mail upon the police officer's supervisor, a designated Subpoena Clerk or other designee of the supervisor.

- **Exception to General Rule for Civil Subpoenas Served on the Supervisor of a Police Officer, Firefighter or Building Inspector:** Subpoenas in civil matters directed to a police officer, firefighter or building inspector are proper if two (2) copies of the civil subpoena are personally delivered to the supervisor of the police officer, firefighter or building inspector, or his or her designee. A supervisor may designate a Subpoena Clerk or other designee to accept service of civil subpoenas.

F. Step Six: Does the Subpoena Seek Information and/or Records about an Employee or Consumer?

Subpoenas requesting personal information about or records of an employee or a consumer are subject to additional requirements. A “consumer” is a non-employee who has obtained services or transacted business with the City. Disclosure of such information in violation of these requirements may violate the employee’s or consumer’s privacy or other rights.

General Rule: The City should not produce the requested records prior to the date of production indicated in the subpoena in order to give the employee or consumer an opportunity to object to the subpoenaing party’s request.

- **Personal Information or Records of City Employee or Consumer:** A subpoena which seeks personal information about or records of a City employee or consumer, including but not limited to, the person’s social security number, physical description, home address, home telephone number, education, financial matters or medical or employment history must be accompanied by proof that a copy of the subpoena was provided to the employee or consumer at least five (5) days prior to the subpoena being served on to City or its Custodian of Records. Such proof is entitled “Notice to Consumer”.
- **Information Contained in Police Officer’s Personnel File:** Requests by a defendant in a criminal case for records maintained by the Police Department on the arresting officer, including records of internal affairs investigations, citizen complaints, records in the Human Resources Division, and records containing psychological or other medical information concerning the arresting officer can only be disclosed pursuant to a Pitchess Motion, and should not be disclosed in response to a subpoena. Any subpoenas requesting such information should be forwarded immediately to the City Attorney’s Office.

G. Step Seven: Processing the Subpoena

If the subpoena is in order, i.e., properly served with the appropriate witness fees, then the City employee accepting it should:

- (1) sign for it;
- (2) enter the date and time of receipt on the copy received; and,
- (3) forward the subpoena to the City Clerk.

If the subpoena is not in order, it should not be accepted.

The City Clerk, upon receipt of a subpoena, shall immediately notify the City Attorney of the subpoena by providing him or her with a copy. The City Clerk shall take no further action on the subpoena until her or she receives instructions from the City Attorney.

Members of the Police Department should continue to follow the Department's existing policy concerning the processing of subpoenas.

III. REIMBURSEMENT TO CITY OF COST OF WITNESS APPEARANCES:

A. City Employee Witnesses

The party subpoenaing a City employee, Custodian of Records, Police Officer, Firefighter or Building Inspector in a civil or criminal matter to which the City is not a party regarding observations made during the course of the employee's duties must reimburse the City for the employee's actual salary or other compensation plus traveling expenses paid by the City to the City employee.

B. Tracking Expenses

The witness fee paid by the subpoenaing party to the City is a deposit against the actual costs incurred by the City in complying with the subpoena. It is vitally important for each City employee to keep track of his or her actual time spent preparing to testify, traveling to testify and testifying and to track the related costs of his or her appearance so that the City may recover these expenses. City employees should forward this information to their supervisor, who will notify the City Clerk.

If the actual costs to the City are more than \$150.00 per day, the City may charge the subpoenaing party for the difference. If the amount is less than \$150.00 per day, then the City must reimburse the subpoenaing party the difference. An itemized statement of actual costs should be submitted to the subpoenaing party. Since the City continues to pay a City employee witness his or her salary and pays the travel expenses incurred as a result of the subpoena, all amounts reimbursed to the City belong to it, not to the City employee witness.

C. Mileage

City employee witnesses are entitled to twenty cents per mile from City Hall to and from the place of deposition, court hearing or trial; employees must keep track of mileage and report that amount to their supervisor after they complete their appearance.

D. Appearance by City Attorney

The City Attorney or other designated legal counsel may attend the oral deposition, court hearing or trial where a City employee witness will testify. This should be coordinated with the relevant supervisor.