



# ADMINISTRATIVE POLICIES


## Office of the City Manager

**Policy Number** CM-08  
**Version** 2  
**Effective Date** 6/4/2021  
**Responsible Department** City Manager

### TITLE: Service of Process Lawsuits & Subpoenas Policy

- New  
 Supersedes AP Number 17-03, Version 1, effective 2/27/2017

#### APPROVAL

  
\_\_\_\_\_  
City Manager Signature

6/4/2021

\_\_\_\_\_  
Date Approved

1. **PURPOSE.** The purpose of this policy is to set forth the procedures for City staff when responding to a service of process for either a lawsuit or subpoena. City staff should contact the City Attorney as soon as possible if there are any questions or concerns.

California Code of Civil Procedure provisions concerning subpoenas requesting an employee of the city to submit to (1) an oral deposition (Section 2025.010); (2) a written deposition (Section 2028.010)<sup>1</sup>; (3) the production of business records and things for copying only (Section 2020.410) or production and testimony (Section 2020.510); or (4) both an oral deposition and production of business records (Section 2025.010).

This Policy serves to outline the procedure when the City is not a party to a lawsuit and (1) an employee is subpoenaed in connection with their 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 only records which it retains in the ordinary course of business.<sup>2</sup>

#### 2. **DEFINITIONS**

- 2.1. **Service of Process.** The delivery of copies of legal documents such as summons, complaint, subpoena, order to show cause (order to appear and argue against a proposed order), writs, notice to quit the premises, and certain other documents, usually by personal delivery to the defendant or other person to whom the documents are directed. In certain cases of absent or unknown defendants, the court will allow service by publication in a newspaper. Once all parties have filed a complaint, answer, or any pleading in a lawsuit, further documents usually can be served by mail or even fax.

- 2.2. Deposition Subpoena. A document from the court (or authorized attorney) that orders a person to testify in a trial, deposition or administrative hearing. A deposition subpoena may order (a) attendance and testimony, or (b) only the production of business records, or (c) attendance, testimony and production of business records. (CCP 2020.020)
- 2.3. Subpoena Duces Tecum. A document from a court (or authorized attorney) that orders a person to provide (produce) documents or physical evidence (either by mail, or to deliver in person together with the person's testimony). (CCP1985(a))
- 2.4. California Codes. Parenthetical abbreviations in the Policy refer to sections of the following: Code of Civil Procedure (CCP); Evidence Code (EC); Government Code (GC); and Penal Code (PC).

### 3. POLICY.

- 3.1. Acceptance of Service. Only the Office of the City Clerk is designated to accept subpoenas or service of process for the City of Tulare. The exceptions to this policy are subpoenas served:
  - 3.1.1. directly on the employee named in the subpoena; *[The Office of the City Clerk may accept service of process on lawsuits for City Council, City Attorney, City Clerk and City Manager, ONLY if the City of Tulare is named a party thereto.]*
  - 3.1.2. directly on the Chief Building Official (CBO) for one of their employees (GC 68097.1)<sup>3</sup>;
  - 3.1.3. directly on a firefighter or City police officer (GC 68097.1)<sup>3</sup>.

The process server should return to serve the subpoena if the Clerk or designee are unavailable to accept.

On occasion, a process server may be advised that the City cannot accept service for various reasons. Do not get involved in an altercation with them. If they leave the document on the counter or at the front desk and walk away, write "improper service" on post-it note and indicate what happened, i.e. "date & time, left at counter, thrown on desk, etc." and scan to the City Attorney.

- 3.2. Prerequisites to Acceptance of Service. If the subpoena requires a personal appearance at a trial, deposition or hearing (and not just the production of records), the following requirements apply before the Office of the City Clerk or CBO) will accept subpoenas:
  - 3.2.1. Witness Fee. Witness fees must be submitted with the subpoena, with a check made payable to the City of Tulare. If the subpoena is related to a civil case, the party issuing the subpoena must submit \$275 to the City of Tulare for each day the public employee is required to remain in attendance (GC 68096.1). A witness subpoenaed, must be given written

notice on the subpoena that the witness may be entitled to receive fees and mileage (CCP 2065).

*Exceptions: The following are two instances when the failure of the subpoenaing party to tender Witness Fees would not serve as a ground for rejection:*

*Criminal Matters – the City will rarely receive subpoenas in criminal matters (with the exception of the Police or Fire Departments); generally, the subpoenaing party will be relieved of submitting a witness fee in criminal matters – recognizing a criminal case, e.g. The People of California v. John Doe.*

*Court Ordered Waiver – a court may relieve the subpoenaing party of the duty to pay witness fees. Fees should be demanded, unless proof of waiver can be shown.*

The requesting party is responsible for the cost of salary and other compensation the employee is normally entitled to, for the time preparing, traveling and attending, and for the actual necessary and reasonable traveling expenses, at 20¢ per mile from employee's reporting office to and from the place of deposition, hearing or trial; therefore employees should keep track of mileage and report that amount to their supervisor after they complete their appearance. Excess fees must be refunded to, or increased fees collected from, the party who issued the subpoena (CCP 1987; GC 68096.1; 68097.2, 68093).

Different rules apply if the employee is being subpoenaed as an expert witness, such as an architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding (GC 68092.5).

- 3.2.2. Affidavit with a Subpoena Duces Tecum. An affidavit must be served with a subpoena duces tecum, showing good cause for the production of documents or things described in the subpoena, specifying the exact documents or things to be produced, setting forth how the items are material to the case, and stating that the witness has these documents or things under their control (CCP 1985(b), 1987.5).
- 3.2.3. Timing of Service. The subpoena must be served at least 10 days before the appearance, or 20 days if requesting records (CCP 2025.270, 1987; EC 1560).
- 3.3. Processing the Subpoena. If the subpoena meets the requirements of subsections (a) and (b) above, the Office of the City Clerk should; (i) sign for it; (ii) enter the date and time of the receipt on the copy received; and (iii) if the recipient is not the Office of the City Clerk, immediately forward the subpoena to

the Department/Employee, City Attorney, Risk Management and route fees to Finance.

Neither the subpoenaed person nor the Office of the City Clerk should respond to the subpoena until directed to do so by the City Attorney. This is because any of the following may apply:

- Some documents may be exempt from disclosure and releasing them could subject the City to potential lawsuits;
- The City Attorney may want to provide advice to the employee;
- The City Attorney may first want to quash (eliminate) or modify the subpoena in court; or,
- The City Attorney may want to forward the request to another attorney to handle the matter.

3.4. Subpoenas for Records Only. This will normally be called a subpoena duces tecum, or a deposition subpoenas for the production of business records.

3.4.1. Timing. The date (deadline) set for production of documents should be no sooner than 20 days after the subpoena was served (CCP 2025.270, 1987; EC 1560).

3.4.2. Personal Records (Consumer or Employee). Special rules apply when personal records are sought. In these cases, the subpoena must be accompanied by proof a Notice to the Consumer or employee was served at least five (5) days prior to the subpoena being served.

3.4.2.1. Consumers. Consumers must be notified and given an opportunity to formally object to the subpoena if personal records are sought regarding: medical, real property, financial, telephone, or school issues. As defined, *Consumer* includes a *City Employee* (CCP 1985.3; 1985.4).

3.4.2.2. Employees. Employees must be notified and given an opportunity to formally object to the subpoena if employment records or personal records are sought (CCP 1985.6; 1985.5). Entirely separate procedures apply to a request for police officer personnel records (PC 832.7).

3.4.3. Police Officer 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 office can only be disclosed pursuant to a Pitchess Motion, and should not be disclosed in response to a subpoena. Direct these subpoenas immediately to the City Attorney or designee.

- 3.4.4. Compliance. When a subpoena duces tecum is served on the custodian of records, it is sufficient compliance if the custodian delivers by mail or otherwise a copy of all the records described to the clerk of the court (or to another person described) within 15 days, or the time agreed upon with the party who issued the subpoenas (EC 1560(b)-(d)).

When the City provides records, the custodian of records (generally the Office of the City Clerk) must state the following in an affidavit: (1) the affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records; (2) the records transmitted with this declaration are true copies of all the records within our possession as described and delivered to the named party as set forth in the subpoena duces tecum; (3) the records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event; (4) the identity of the records; and (5) a description of the mode of preparation of the records (EC 1561 (a)), to be reviewed and approved by the City Attorney prior to transmitting.

- 3.4.5. Costs. Reasonable costs include, but are not limited to: 10¢ per page for standard copying; reasonable clerical costs incurred in locating and making records available at the maximum rate of \$24/hour/person; actual postage (EC1563(b)(1)). The City will demand payment before delivery of records, after submitting an itemized statement (EC 1563(b)(2)-(3)).

Alternatively, the City may make records available for copying by the attorney or representative (usually a copy service) at the City. In this case, the fee for complying may not exceed \$15 (EC 1563(b)(6)).

*[Note: under the California Public Records Act, the City may only charge a fee for the direct cost of duplication (10¢ per page), or a statutory fee, if applicable.]*

3.5. Appearance.

- 3.5.1. General. An employee subpoenaed must appear at the trial, deposition or other hearing, after coordinating with their supervisor. If a request is to the custodian of records, other qualified witness, or the most knowledgeable person, the department must designate the person most qualified to testify on behalf of the City. The City Attorney may attend and/or may assist in preparing the witness in anticipation of the appearance, if the subject matter involves City work.
- 3.5.2. Fees and Expenses. The Witness Fee paid by the subpoenaing party is a deposit against the actual costs incurred by the City in complying with the subpoena. Therefore, it is important for the employee to keep track of their time spent preparing to testify and for the related costs of their appearance so that the City may recover these expenses. If the actual costs to the City are more than \$275 per day, it may charge the

subpoenaing party. If the amount is less, then the City must reimburse the subpoenaing party. Since the City continues to pay the “employee-witness” salary and travel expenses incurred as a result of the subpoena, all reimbursement amounts collected by the City belong to it, not the “employee-witness”. An itemized statement of actual costs should be submitted to the subpoenaing party.

- 3.6. Lawsuits. A summons and complaint is being served, and the City is not a party. The named individual must be personally served, do not accept service. EXCEPTION: If the named individual is obviously being sued directly because of their capacity in the City, the Office of the City Clerk may accept serve on behalf of that individual.

Once service has been effected upon the Office of the City Clerk, time and date stamp the copy of the summons, scan all documents and email to Risk Management, City Attorney and City Manager.

**4. APPLICATION.**

<b>Type of Document</b>	<b>City Named?</b>	<b>Accept Service?</b>	<b>Forwarded To?</b>	<b>Fees and Payments</b>	<b>Comments</b>
Lawsuit (Summons & Complaint)	Yes	Yes	Risk/City Attorney/City Manager	None	If named individual is being sued because of their official City capacity, handle as if City is named.
	No	No	N/A	N/A	N/A
Subpoena for Records (Subpoena Duces Tecum)	Yes	Yes, if City records required	City Attorney; applicable department	\$15 (EC 1563(b)(6)) \$.10/per page	Notice needed: 20 days to respond, 30 days to produce + 5 days if mailed.
	No	Yes, if City records required	City Attorney; applicable department	\$.10/per page	Notice needed: 15 days before trail or 20 days after subpoena issued
Subpoena for Records (Subpoena Duces Tecum) & Attend Trial or Deposition	Yes	Yes	City Attorney; applicable department	\$15 (EC 1563(b)(6)) \$.10/per page \$275 (GC 68096.1(b))	Notice needed: Reasonable time (usually 20 days)

	No	No	N/A	N/A	N/A
Subpoena for Attendance at Trial or Deposition	Yes	Yes	City Attorney; applicable staff	\$275 (GC 68096.1(b))	Notice needed: Reasonable time (usually 10 days)
	No	No	N/A	N/A	N/A

5. REVISION HISTORY

<u>Version #</u>	<u>Date</u>	<u>Approved By</u>
2	6/4/2021	Rob A. Hunt, City Manager
1	2/27/2017	Joe Carlini, City Manager

Attachments

- A. Affidavit of Custodian of Records
- B. Notice of Appointment
- C. Itemized Demand for Payment Form

<sup>1</sup> A party to a lawsuit may obtain discovery by written questions instead of by oral examination. This type of request is not often used in litigation and should be immediately submitted to the City Attorney’s Office.

<sup>2</sup> Parties to a lawsuit may obtain documents under the public Records Act (the PRA) without obtaining a subpoena. The PRA allows for the inspection and copying of public records subject to certain exceptions. Subpoenas should not be evaluated as a PRA request as different laws are applicable to such requests and the City has no affirmative duty to evaluate a subpoena as a PRA request. All PRA requests should be forwarded to the Office of the City Clerk in accordance with the City’s Administrative Policy related thereto.

<sup>3</sup>GC 68097.1(a) Whenever an employee...who is a..., building inspector, firefighter, or city police officer is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally, or by delivering two copies to his or her immediate superior at the public entity by which he or she is employed or an agent designated by that immediate superior to receive that service.

**Affidavit of Custodian of Records**  
(California Evidence Code Section 1561)

Records Produced By: \_\_\_\_\_  
Pertaining To: \_\_\_\_\_  
Case Name: \_\_\_\_\_  
Case Number: \_\_\_\_\_  
Arbitration Date: \_\_\_\_\_  
Deposition Date: \_\_\_\_\_  
Trial Date: \_\_\_\_\_

☞ CUSTODIAN OF RECORDS ☞

State of California )  
County of Tulare ) ss.  
City of Tulare )

I, the undersigned, do hereby declare as follows:

On [DATE], the City of Tulare was served with a [TYPE OF SUBPOENA] issued out of [COURT] requesting copies of [RESTATE REQUEST].

- The records transmitted with this declaration are true copies of all records described in the subpoena within our possession, custody and control. To the best of my knowledge, all of the records transmitted were prepared or compiled by personnel of the City of Tulare [INSERT DEPARTMENT] in the ordinary course of business at or near the acts, conditions, or event recorded. Attached, hereto, is a list of the records transmitted.
- A thorough search of our files, carried out under my direction and control, revealed no records as described in the subpoena. To the best of my knowledge:
  - no such record(s) exist.
  - any such record(s) have been destroyed pursuant to our Records and Information Management Program Policy and Records Retention Schedules.

I declare under penalty of perjury, under the law of the State of California, that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name and Title



**Notice of Appointment**

GC 40813. Provides for the appointment of deputies that may serve at the pleasure of the City Clerk for whose acts s/he and his/her bondsmen are responsible.

GC 40814. Provides that the City Clerk and his/her deputies may certify affidavits pertaining to City affairs and business which may be used in any court or proceedings in the State. Such acknowledgment may be made before a City Clerk and his/her deputies within the City in which they were elected or appointed.

**NOTICE IS HEREBY GIVEN** that I, \_\_\_\_\_, City Clerk of the City of Tulare, do hereby temporarily deputize \_\_\_\_\_ as Deputy City Clerk for the purposes of accepting subpoenas and/or summons that may be required of the Office of the City Clerk as set forth by the laws of the State of California. This temporary appointment shall be in effect from \_\_\_\_\_ to \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Authorized Signature of City Clerk

\_\_\_\_\_  
Print Name

**Declaration of Itemized Statement of Costs for Subpoena & Demand for Payment**

Records of: \_\_\_\_\_  
Name of Applicant or Plaintiff

- Witness fee of \$275.00 (to be paid at time of service of subpoena).
- Receipt for third party costs of retrieval from off-site storage company (attached).

Date: \_\_\_\_\_ Amount Paid: \$ \_\_\_\_\_

Clerical costs for retrieval and copying of records:

- \$24/hour/person \$ \_\_\_\_\_
- \$0.10/page \$ \_\_\_\_\_
- Postage \$ \_\_\_\_\_

Total Costs: \$ \_\_\_\_\_

Name of Person Retrieving Records: \_\_\_\_\_

Date of Service: \_\_\_\_\_

Time Start/Time End: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name and Title