



REPORT TO CITY COUNCIL

DATE: OCTOBER 14, 2009
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: GREG RAMIREZ, CITY MANAGER 
BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER 
SUBJECT: APPROVE RESOLUTION NO. 09-1552; AMENDING THE EMPLOYEE HANDBOOK TO INCLUDE A CELL PHONE USAGE POLICY

Under the Internal Revenue Code (IRC), cell phones are considered "listed property", and as such, the employer is required to have a method to track and account for cell phone records that distinguish business and personal use. To ensure compliance with the IRC, staff has implemented a Cell Phone Usage Policy. The policy addresses the following items:

1. The assignment of cell phones, and the methods the City will use to implement the IRC requirements for both business and personal use.
2. The City's right to access, review and/or disclose any communications, data, stored information or records related to any City-provided cell phone and its use.
3. Ensure that cell phones are not used for improper or illegal purposes, such as harassing, discriminatory and defamatory use.
4. The Finance Director and/or her designee have the responsibility to routinely audit the cell phone records, monitor cell phone use, and/or access information to ensure compliance with City policies, the IRC, investigate misconduct, and/or locate needed information or diagnose technical problems.
5. Formally establish proper cell phone usage by prohibiting use while operating a City-owned pool or privately-owned vehicle in the course of conducting business, unless operated using a hands-free device.

The City Attorney has reviewed the attached resolution and policy and approved them as to form.

RECOMMENDATION

Staff recommends the City Council approve Resolution No. 09-1552; amending the Employee Handbook to include a Cell Phone Usage Policy.

Attachments: Resolution No. 09-1552
Cell Phone Usage Policy

RESOLUTION NO. 09-1552

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AGOURA HILLS, CALIFORNIA, AMENDING THE EMPLOYEE
HANDBOOK TO INCLUDE A CELL PHONE USAGE POLICY**

WHEREAS, under the Internal Revenue Code (IRC), cell phones are considered “listed property”, and employers who issue cell phones to employees are required to have a method to track and account for cell phone records that distinguish business and personal use; and

WHEREAS, the City has implemented a Cell Phone Usage Policy, attached hereto and by this reference incorporated herein; which addresses:

Section 1. Implementation of the IRC requirements for both business and personal use.

Section 2. City’s right to access, review, and/or disclose any communications, data, stored information or records related to any City-provided cell phone and its use.

Section 3. Identifies what is considered illegal or improper use of cell phones, including proper use of cell phones while operating a City-owned pool or privately owned vehicle in the course of conducting business, unless the cell phone is operated with a hands-free device.

Section 4. The Finance Director and/or her designee have the responsibility to routinely audit the cell phone records, monitor cell phone use, and/or access information.

NOW, THEREFORE, the City Council of the City of Agoura Hills does hereby resolve to approve the Cell Phone Usage Policy to be included as part of the Amended Employee Handbook.

PASSED, APPROVED and ADOPTED this 14th day of October, 2009, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

Resolution No. 09-1552
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Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk



Cell Phone Usage Policy

I. PURPOSE

To ensure compliance with Internal Revenue Code (IRC) regarding governmental employers who provide or issue cell phones to employees and to provide employees with additional information regarding cell phones and their use. Under the IRC, cell phones are considered "listed property" and as such, the employer is required to have a method to track and account for cell phone records that distinguish business and personal use.

II. POLICY

The City, in its effort to meet compliance with IRC, is requiring employees who are issued or provided with a cell phone to adhere to the following:

- A. City-issued cell phones will be issued as determined by need and as directed by the City Manager.
- B. The issuance of a City-owned phone is a privilege and should be treated as such during its usage.
- C. Should employees who are issued or provided a cell phone choose to use the cell phone for business purposes only, which means no personal use at all, then the employee will be asked to sign an agreement acknowledging that the employee understands the City policy and IRC regarding employer-issued cell phones. The employee also commits not to use the phone for personal use and acknowledges that the Finance Director, or his/her designee, will routinely audit cell phone bills to ensure there is no personal use.
- D. Should employee use the cell phone for ANY personal use, it is the EMPLOYEE'S responsibility to accurately track the usage and report it to the Finance Director prior to the payment of the monthly cell phone bills being processed. Employee agrees to pay \$0.65 for each usage minute, which covers the cost of usage, a portion of the monthly service fee, special fee costs, and administrative oversight costs. Should a special usage fee cost more than the above listed fee allocation, the employee will be solely responsible to immediately reimburse the City for that cost, plus the usage minute fee of \$0.65/minute. Due to the fact that the City has limited staff and resources, and the continual need to utilize these limited resources is caused by a use not on behalf of the City's normal business activities, employees who continually have personal usage on a month-to-month basis will be restricted to business use only and will be required to follow the procedures described in Policy Item C.

- E. Should employee choose to use City-issued cell phone for business and personal use, the monthly service and any other usage fees will be calculated as income, reportable on the employee's W-2 form. This amount will be taxed at the appropriate rate specific to that employee's individual withholdings, reportable annual income, and the IRC.
- F. The City reserves the right to access, review and/or disclose any communications, data, stored information or records related to any City-provided cell phone and its use. A supervisor may require that an employee surrender a City-provided phone at any time and may review any data or information stored on that device. Thus, employees do not have a reasonable expectation of privacy in their use of a City-provided cell phone. Cell phone records and stored information could be subject to disclosure under the Public Records Act.
- G. Cell phones shall not be used for improper or illegal purposes, such as harassing, discriminatory, and defamatory use.
- H. The City's Finance Director and/or his/her designee are hereby designated with the duty and responsibility to routinely audit the cell phone records, monitor use or access information, to ensure compliance with City policies, the IRC, investigate misconduct, and/or locate needed information or diagnose technical problems.
- I. Employees shall refrain from using cellular phones (both talking and texting) while operating a City-owned pool or privately-owned vehicle in the course of conducting City business, unless the cell phone is operated using a hands-free device.

III. ACKNOWLEDGEMENT

Upon receipt of this policy, each employee shall sign a form acknowledging that he/she is aware of this policy, including the IRC regarding cell phones issued by governmental employers.

City of Agoura Hills Cell Phone Usage Policy Acknowledgement

By my signature below, I acknowledge that I have received, read, understand, and will adhere to the City's Cell phone Usage Policy.

Signature

Date

Print Name

By my signature below, I am stating that I will use the cell phone issued to me by the City for **business related purposes only**. I have read the policy of cell phone usage and am aware that should non-business use occur relating to the use of the cell phone, that I will follow the established policy guidelines and will be required to follow Internal Revenue Code relating to listed property.

Signature

Date

Print Name