



Policy

Use of Cellular / “Smart” Telephones

- I. Introduction
- II. Use While Driving on County Business
- III. Personal Use on County Time
- IV. Sunshine Law
 - a. Invoices
 - b. Text Messages and/or E-Mails
- V. Payments
 - a. General Terms
 - b. Who Is Eligible
 - c. Reimbursed Accounts
 - d. Public Accounts
- VI. Documentation, Sunshine Law, and other Hassles
- VII. Text Messaging, Data Plans, and other Concerns
- VIII. Disclosure Form

I. Introduction

The purpose of this policy is to establish fair guidelines for the use of cellular telephones (including “smart phones”) by Elected Officials, Department Heads, and Employees of Webster County.

II. Use While Driving on County Business

Use of a cellular telephone (including texting & e-mail) for any purpose (public or private) while operating any motor vehicle on County business is strictly forbidden. This applies to all county officials and all categories of employees, whether full-time, part-time or temporary. Violations of this policy will be grounds for appropriate discipline.

If the use of a cellular telephone is required to conduct County business while operating any motor vehicle, the official or employee should pull the vehicle to the side of the road or any safe location. If it is not possible to do so, cellular telephones should not be used.

Exceptions may be made for use via a ‘hands-free’ device, or for emergencies where the belief exists that use of a cell-phone is necessary to save a life or property.

III. Personal Use on County Time

Personal use of cellular telephones during the workday (including texting & e-mail) can create substantial distractions to the employee and to others. Therefore, as a general rule, employees should keep personal use to a minimum.

Employees who do not respect these guidelines, and exceed what their elected official (or supervisor) believe to be an appropriate level of personal use on public time, will be subject to discipline. Such discipline may include: verbal warning; written warning; and ultimately termination.

IV. Sunshine Law

Chapter 610 of the Revised Statutes of Missouri – often called the Sunshine Law – provides rules regarding public records. The following is our best understanding of how these rules affect cellular telephones.

a. Invoices

Invoices for cellular telephones (including lists of calls received/made) are public record IF the account is paid by the County (see definition of “Public Accounts” later in this Policy). Unless explicitly closed for some legal purpose pursuant to Chapter 610 of the Revised Statutes of Missouri, these records must be kept together with other expenditure documentation in the office of the Elected Official making payment (i.e. County Clerk or County Treasurer). There, the statements (including documentation of call activity) are subject to public review upon receipt of a written Sunshine Law request.

Therefore, if any part of a county-paid invoice should be a closed record, it is the responsibility of the individual user to redact the information before the invoice is submitted for payment. If the entire bill is considered closed, the individual should present a substitute statement for payment, and secure the invoice with the other closed records under their control.

It is the opinion of Webster County that private invoices and/or statements (see definition of “Reimbursed Accounts” later in this policy) are not public record.

b. Text Messages and/or E-mails

A strict interpretation of the Sunshine Law may indicate that any text message or e-mail sent/received on a cellular telephone provided by County funds (regardless of content) is a public record. Given the difficulty of creating a system to retain and archive all such digital communication, it is the policy of Webster County not to provide texting and/or e-mail capability on any cellular telephone account provided by County funds. Anyone deviating from this policy is responsible for providing a method of retaining these records (for example, regular transfers to other media).

Texts and/or e-mails sent/received on private cellular telephones *generally* are not public record. We believe this is true even for private accounts for which an official or employee receives partial reimbursement (stipend). However, there are exceptions. For instance, a text message sent between two County Commissioners (which constitute a quorum of the County’s governing body) – regardless of content or even who owns the phone – can be construed to be a public record. Officials or employees involved in such digital communication are responsible for retaining

these messages pursuant to Chapter 610. If there is any doubt whether a given text message falls under the Sunshine Law, it should be retained.

V. Payments

a. General Terms

In general, the policy is based on the distinction between:

Category One: Reimbursed Accounts

- a) Cellular telephone accounts where the contract for service is issued in the name of the individual Elected Official, Department Head or Employee; and
- b) For which a person receives a regular stipend to offset private expenses incurred in their public duties; and
- c) Where the phone device itself was purchased by private funds.

Category Two: Public Accounts

- a) Cellular telephone accounts where the contract for service is issued in the County's name; or
- b) Where the phone device itself was purchased with public funds; or
- c) Cellular telephone accounts where payments are paid directly from public funds to the company providing service.

These categories were determined for the purposes of this policy only. It is not intended to infer that these distinctions were established by statute or have more legal standing than any other county policy.

b. Who is Eligible

It is deemed acceptable that any Elected Official, Department Heads, and Deputy Sheriffs are eligible to establish either a Reimbursed Account or Public Account for cellular telephone service - subject to appropriations. However, no contract for cellular telephone or any other service may be executed in the County's name (or under an Elected Official's 'veil of authority'; i.e. *John Doe, County Clerk*) without approval of the County Commission.

It may also serve a public purpose to provide certain employees with a Reimbursed Account for cellular telephone service. The criteria for determining which employees are eligible are:

- Frequent Travel for Public Benefit
- Employees who are often “On-Call”

For all such employees, the reimbursement must be a reasonable use of public funds, and the amount of reimbursement should be roughly proportional to the amount of expense incurred for public benefit.

The determination of eligibility is to be made by the Elected Official or Department Head who acts as their supervisor – subject to appropriations.

c. Reimbursed Accounts

Payment of cellular telephone stipends will be made as part of the regular bi-weekly payroll cycle. Therefore, all such re reimbursements must be paid through the General Revenue, Assessment, or Road & Bridge funds. By federal law, stipend payments are considered taxable income *unless* documentation is provided that: a) personal cellular telephone service exists; b) the business use of that personal account is greater or equal to the amount of the stipend.

The dollar amount of reimbursement should be determined annually by the responsible Elected Official or Department Head, as part of the County Budget. Elected Officials who wish to provide reimbursement from discretionary “Side Funds” may accomplish this by arranging with the County Treasurer for periodic transfers to the General Revenue Fund.

To comply with IRS guidelines, officials and/or employees should provide one complete invoice for personal cellular telephone service (demonstrating the service exists and the business use is equal to or greater than the stipend). Then, once every year, individuals receiving a stipend must provide the front page of their personal cellular telephone bill to document that such services continues (and the amount paid for that service). If this is not done, the total annual amount of reimbursement received will be reported as taxable income on the individual’s W-2.

d. Public Accounts

Payments made by public funds directly to the cellular telephone service provider may be made from any Fund (including discretionary 'side funds'), subject to the normal invoice-approval procedures of that Fund.

The question of private use of a public cellular telephone account is somewhat complicated.

Cellular telephones are a basic tool in contemporary society. It is not practical to restrict use of cellular telephones paid by public funds solely to public use, as the result would require individuals to carry two devices and somehow segregate calls by their content. Therefore, a large degree of latitude is given to eligible individuals – as long as such usage does not represent a significant additional financial burden to Webster County.

In general, options purchased (i.e. amount of monthly airtime and features such as internet access) should reflect the public use of that device. If personal use results in repeated additional costs not covered by the normal charges under the Public Account, the Elected Official or Department Head with oversight should consider making the individual reimburse the County for those expenses.

VI. Disclosure Form

Any eligible person must complete and return the form on the following page (with required attachments) **prior** to receiving a stipend (reimbursable account) or being issued a county-paid cellular phone (public account).

**Webster County Cell Phone Policy
Disclosure Form**

I, _____ , affirm that I was given a copy of Webster County's Policy regarding use of cellular telephones.

The number of the cellular telephone concerned is: _____ .

For purposes of this policy, my usage falls under the definition and guidelines of a:

- _____ Reimbursable Account*
- _____ Public Account

Position / Department: _____

Signed this the _____ day of _____ , _____ .

Signature

* For Reimbursable Accounts, please attach a copy of one complete invoice of your personal cellular telephone service. Periodically, you will be required to provide a copy of the front page of a current invoice documenting you are maintaining the service for which you are being reimbursed.