

**Business and Fiscal Affairs
DRAFT as of 3/12/13**

AP 6450 WIRELESS AND CELLULAR TELEPHONE USE

References:

Vehicle Code Sections 12810.3, 23123, and 23124;
Internal Revenue Code (I.R.C.) Sections 274(d)(4) and 280F(d)(4)

NOTE: This procedure is legally advised.

The Chancellor shall determine if it is in the best interests of the District to provide a cellular or wireless telephone at District expense.

Cellular telephones provided by the District for compensatory reasons are classified by the Internal Revenue Service as a fringe benefit, the value of which must be included in an employee's gross income.

The value of a cellular telephone provided by the District primarily for non-compensatory business purposes is excludable from an employee's income. Employees will generally not be required to keep notes of business and personal use of District-issued cellular telephones when the telephones are issued for non-compensatory business reasons.

NOTE: The value of the business use of a District-provided cellular telephone is excludable from an employee's income as a working condition fringe benefit to the extent that, if the employee paid for the use of the cellular telephone themselves, such payment would be allowable as a deduction under Income Tax Regulations Section 162 for the employee. A District will be considered to have provided an employee with a cellular telephone primarily for non-compensatory business purposes if there are substantial reasons relating to the District's business, other than providing compensation to the employee, for providing the employee with a cellular telephone. When a District provides an employee with a cellular telephone primarily for non-compensatory business reasons, the IRS will treat the employee's use of the cellular telephone for reasons related to the employer's trade or business as a working condition fringe benefit, the value of which is excludable from the employee's income and, will treat the value of any personal use of a cellular telephone provided by the employer primarily for non-compensatory business purposes as excludable from the employee's income as a de minimis fringe benefit.

These rules do not apply to wireless or cellular telephones owned by employees. Any reimbursements to employees for use of their own wireless or cellular telephones may be excluded from wages if the employee accounts for the expense pursuant to the Internal Revenue Service accountable plan.

Motor vehicle drivers may not use wireless or cellular telephones while operating their vehicles without a hands-free listening device. Drivers may use a wireless or cellular telephone to contact a law enforcement agency or public safety entity for emergency purposes. Drivers of motor trucks or truck-tractors, farm vehicles, tow trucks, a listed or described implement of husbandry, or a commercial vehicle, used in commercial agricultural operations may use a digital two-way radio service that utilizes a wireless or cellular telephone.

There is no expectation of privacy in the use of a District-issued cellular telephone.

NOTE: The **red ink** signifies language that is **legally advised** and recommended by the Policy and Procedure Service and their legal counsel. Barbara Yesnosky reviewed this procedure on March 12, 2013.

Date Approved:

(This is a new procedure recommended by the Policy and Procedure Service)