



City Council Policy Regarding Councilmember Use of City Provided Telecommunication Equipment

Legal Background:

Government Code section 37350 authorizes the City to authorize the acquisition of personal (i.e. computers, chairs, cars, telephones, etc.) property. That section also authorizes the City to establish controls for the use of such property. One limitation on the use or disposition of public property is the gift of public funds prohibition in Article 16, Section 6 of the California Constitution. That section prohibits the Legislature from authorizing cities to make gifts of public money or things of value to any individual. The courts have, however, upheld expenditures which have an incidental private benefit, where the primary purpose of the expenditure is for a public purpose.

The ability of councilmembers to receive information or communicate with city staff and constituents through telephone contact or e-mail or to research city-related business on the Internet does serve a public purpose. Thus, providing telephones and computers with e-mail and Internet capabilities for use for city business does not violate the gift of public funds prohibition. A secondary issue is whether this equipment may be used for personal, non-city related business. There is no case law which would expressly prohibit such use provided that the use is incidental to the primary use of the computer for city business.

2. Usage Policy for Telecommunications Equipment:

A. City-owned telecommunications equipment including cellular telephones, computers and fax machines (collectively "telecommunications equipment") shall be used primarily for public purposes. Such public purposes include, but are not limited to, usage related to City business, communication with City employees, communications with constituents, and communications with other persons related to City business. The communications equipment may be used for incidental private purposes. "Incidental private purposes" means that usage of the telecommunications equipment for non-public purposes constitutes 33% or less of the total usage of the telecommunications equipment and does not involve the City incurring any additional expense.

B. Each councilmember shall receive on a quarterly basis an invoice of all calls associated with his or her cellular telephone for the three month period ending on the last day of the preceding month. Within thirty days of receipt of the invoice, each councilmember shall reimburse the City for all private telephone calls shown on the invoice.

C. No data related to usage for incidental private purposes shall be stored on the City-owned computer's hard drive. If a councilmember desires to download data or files for incidental private purposes, the data or files shall only be downloaded to a diskette or other storage media purchased by the councilmember. A councilmember may load commercially available, properly licensed, software into their computer.

D. With respect to software and data files that the user did not create on the computer, the user shall not load either onto the computer unless they have been provided by the City or they have been checked for viruses. This limitation is intended: (1) to limit the potential exposure of the city system to viruses; and (2) with regard to new software, to allow the City to possess proper evidence of authorized ownership of all software on City-owned computers.

E. The telecommunications equipment shall not be used for any campaign activities or any partisan election purposes. The telecommunications equipment may be used for objective, non-partisan informational purposes.

F. All use of telecommunication's equipment shall comply with the restrictions of the Brown Act.

G. Upon leaving office, a councilmember shall have the option of purchasing surplus City-provided telecommunications equipment at market value. The value of the equipment should be determined by standard market evaluation processes for personal property, which include searches on online auction sites such as eBay and identification of the South San Francisco book value. All non-surplus City-provided equipment shall be returned to the City. Equipment shall be considered "surplus" when at the end of the normal usage period.