

ORDINANCE NO. 93-23

**AN ORDINANCE AMENDING THE PERSONNEL POLICY MANUAL
FOR THE CITY OF AVON, SECTION 7.3 (TOOLS, SUPPLIES,
EQUIPMENT, TELEPHONES, AND CELL PHONES)
AND DECLARING AN EMERGENCY**

WHEREAS, Council, on December 23, 2008, passed Ordinance No. 176-08 adopting the City's Personnel Policy Manual; and

WHEREAS, the City Administration recently reviewed Section 7.3 of the Personnel Policy Manual dealing with personal use of cell phones provided to certain city employees and Form 11.19, the Cell Phone Business Usage Substantiation Form; and

WHEREAS, the current policy dictates that the Finance Department provide employees using city cell phones with a copy of the monthly usage invoice and the employee must review the invoice and identify any personal calls by highlighting them.

WHEREAS, under current cell phone plans, no extra charges are incurred for talk, text or data and as such, it is not necessary for employees to itemize their calls as they do not represent increases to the flat monthly rate (any charges outside the standard plan incurred by the employee for personal use such as charges for international calls will remain the employee's responsibility) and

WHEREAS, if the employee(s) incurred personal charges on their city issued cell phone, they will be required to submit Form 11.19 to the Finance Department within fourteen (14) days; and

WHEREAS, Council finds that the proposed amendments to the City's Personnel Policy Manual should be adopted and doing so would be in the best interests of the health, safety and welfare of the citizens of Avon in maintaining well qualified staff.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the proposed amendments to the Personnel Policy Manual, Section 7.3 entitled, "Tools, Supplies, Equipment, Telephones, and Cell Phones" and the revised Form 11.19 are hereby adopted as set forth in the attached Exhibits A and B, respectively, which are incorporated herein by reference. Furthermore, this amended policy shall be retroactive to the first pay period of 2023. Employees who made reimbursements under the previous policy shall be entitled to reimbursements of any sums paid in 2023.

Section 2 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3 - That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to amend Section 7.3 concerning personal use of city provided cell phones as soon as possible to prevent further overpayments by affected city employees; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: August 14, 2023 DATE SIGNED: August 14, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR August 15, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

POSTED: August 16, 2023
Electronically and at City Hall as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 93-23, passed by the Council of said City on August 14, 2023.

IN WITNESS WHEREOF, I have on this 15th day of August, 2023, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

SECTION 7.3 – TOOLS, SUPPLIES, EQUIPMENT, TELEPHONES, AND CELL PHONES

G. Cell Phones

1. The City provides certain employees with cell phones for use in the performance of their job duties and the conduct of City business. City cell phones are not provided for personal use. However, it is recognized that extenuating circumstances may exist that result in the cell phone being used for a personal call or calls. Further, it is expected cell phones be utilized in an appropriate and responsible manner.

2. The Internal Revenue Service (IRS) considers cell phones as "listed property," meaning items obtained for use in business but lending themselves easily to personal use. Therefore, to be able to exclude the use of a City provided cell phone from taxable income, procedures must be established to distinguish between business and personal calls, and to provide for timely reimbursement of personal calls.

Each employee who has been provided a cell phone for the conduct of City business must comply with the following procedures:

- a. The Finance Department will provide the employee with a copy of his/her monthly usage invoice and the employee must review the invoice and identify any personal calls or texts that **are out of area, international or otherwise being billed separately as outside the calling plan** by highlighting them.

- b. The copy of the invoice and a signed Cell Phone Business Usage Substantiation Form (Form 11.19) is to be completed, signed, and returned to the Finance Department with the appropriate payment within fourteen (14) calendar days.

- ~~e. If an employee fails to timely return the copy of the monthly invoice and the Cell Phone Business Usage Substantiation Form, the entire amount of the invoice will be considered as personal usage and will be treated as taxable income.~~

- dc. An employee will **not be required** to reimburse the City for personal cell phone usage on a monthly basis **if the current telephone plan is based on unlimited number of minutes, and the personal phone calls are local. Any personal phone calls that are out of area or international will be charged the standard rate per minute. In addition, if the City's phone plan changes and the number of minutes is affected,** reimbursement will be made based upon an established standard rate per minute, which includes the pro rata share of the monthly service charge. Payment, **if required,** is to be submitted to the Finance Department and made payable to the City of Avon along with the invoice and the signed Cell Phone Business Usage Substantiation Form. The standard rate per minute shall be established by the Finance Department and will be updated as service plans and/or participants change.
 - ed. The Finance Department will oversee the review and reimbursement process, and will routinely audit cell phone invoices. The final decision regarding disputes or errors shall rest with the Finance Director/designee.
3. Elected officials, directors, and department heads shall review, at least annually, the provision of City cell phones within their department/jurisdiction to ensure the following:
- a. that the issuance of each cell phone is necessary for the conduct of City business and efficient service.
 - b. that employees who are provided cell phones understand and accept the limitations of usage and the importance of complying with this policy and IRS regulations.
4. Failure to comply with this policy or misuse or abuse of a City-provided cell phone may result in rescission of the cell phone and /or disciplinary action.

EXHIBIT B TO ORDINANCE NO. 93-23

**FORM 11.19 – CITY OF AVON
CELL PHONE BUSINESS USAGE SUBSTANTIATION FORM**

Employee Name _____

Department _____

Date Monthly Usage Invoice Forwarded _____

(This Form is to be Returned to the Finance Department Within 14 Calendar Days of the Above Date.)

I Have Reviewed the Attached Monthly Invoice and Have Highlighted All Personal Calls and Affirm That the Remainder of the Calls Were for Business Purposes.

Reimbursed Amount \$ _____ (The cost of identified calls.)

Employee Signature

Date