



Nice Matters!

Cell Phone Policy

March 1, 2020

I. PURPOSE:

Cell phone technology is a valuable communication tool for Town of Emerald Isle employees. Voice, text, and data functions-as well as other cell phone and smart phone features-make this tool necessary and effective for certain Town of Emerald Isle employees in transacting official Town of Emerald Isle business. The purpose of this policy is to outline legal requirements for electronic records regarding cell phone technology, as well as to establish policies around cell phone use by employees of Emerald Isle.

The Town of Emerald Isle reserves the right to review, audit and inspect information residing in or transferred over all information systems at any time with or without notice and that such access may occur during or after work hours. Such reviews may include auditing of use to make sure there is enough business use to merit the issuance of a Town cellphone stipend.

II. CELLPHONES FOR PERSONAL USE

The Town of Emerald Isle understands the need to be in touch with family and friends, however, personal cell phones should not be used to the point that it distracts an employee from serving its citizens and customers. Personal calls during work hours, regardless of phone used can interfered with employee productivity, safety, and may be distracting to others. Employees are encouraged to make personal calls during breaks and lunch and to ensure that friends and family members are aware of the Town's policy. Employees shall refrain from use of their personal cell phones during customer transactions, dealings with citizens, and during all Town meetings and minimize the use during working hours. Use of a personal cell phone includes talking, texting, and surfing the web.

Employees are encouraged to speak with their department heads if an emergency situation requires an employee to be in constant contact with a family member. Such situations will be allowed unlimited access to ensure open communication between employee and family to ensure their wellbeing.

Abuse of cell phone privileges could result in loss of cell phone privileges, as well as disciplinary action in accordance with Article IX of the Town of Emerald Isle Personnel Policy.

III. ELECTRONIC MESSAGES AS PUBLIC RECORD

Public records include anything created in the course of public business *regardless of format*. Town of Emerald Isle business that is conducted on a cell phone is subject to public record law. Any record made or received in the transaction of public business is subject to public access unless an exception applies. Records created by government staff on personal devices are public records if the content involves public business. Electronic messages, including texts and emails, are considered public record under North Carolina General Statutes Section 132 and will be managed as such.

G.S. § 132-1(a)

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

Retention schedules for electronic records may vary by department and/or topic. Content created by Town of Emerald Isle staff, elected officials, appointed board members, and volunteers conducting town business is subject to state retention schedules.

In certain circumstances it is possible for an employee to be required to turn their cell phone over to Town Administration, law enforcement, and/or the court system.

III. EMPLOYEE CELL PHONE STIPEND

Requests for a cellphone stipend shall be submitted to, and approved, by the Department Head or designee prior to their procurement. These requests may be submitted during the normal budget review process or at other times provided that appropriate funding is identified.

Employees deemed by department managers as requiring cell phones to perform their work will receive a stipend to compensate for business use of an employee purchased, employee owned, and employee operated cell phone.

All Employees that conduct official Town of Emerald Isle business on their personal cell phone, whether receiving a stipend or not, are subject to public records laws (G.S. 132).

Requirements for the stipend include:

- Employees must retain an active cell phone contract as long as they receive a cell phone stipend. Department heads retain the right to receive a copy of an employee's cell phone payment invoice to verify an active contract.
- Employees are responsible for all costs related to the phone including accessories.
- The Town makes no distinction between brand or type of phone that an employee may choose to use.
- The Town of Emerald Isle is not responsible for any damages that occur to an employee's personal cell phone.
- Any costs incurred over and above the stipend are the responsibility of the employee.

The stipend is granted based on a 3-tier system. However, the department managers are ultimately responsible for approving employee's stipends. Explanations of the tiers are below.

Tier I (\$60 monthly stipend) The employees in this tier are required by their department managers to be available 24 hours a day, 7 days a week.

Tier II (\$30 monthly stipend) The employees in this tier have a frequent need to be in communication with their department managers, contractors, etc. during work hours and often when they are off duty.

Tier III (\$15 monthly stipend) The employees in this tier are sometimes required to be in communication with their department managers, contractors, etc. during work hours and when they are off duty.

Eligibility for Cell Phone Stipend

Eligibility is determined by Department Managers. Therefore, Department Managers are responsible for determining the need for eligible employees prior to employees receiving or applying for the stipend.

General eligibility involves:

Acknowledgement of receiving the TOEI Cell Phone Policy and completion of the necessary forms must be completed before employees receive a cell phone stipend.

IV. TAXABLE FRINGE BENEFITS

The Town has developed this program to assist employees based on their need for cell phones within their current job requirements.

IRS rules require employers to substantiate the non-compensatory business purpose for a cell phone or cell phone stipend. It is the Town's intention to only issue stipends for non-compensatory business purposes.

It is the desire of the Town to comply with IRS regulations regarding the taxation of any fringe benefit. According to the IRS Code Section 280F(d)(4)(A)(v), created in 1989, cell phones were considered “listed property” and were designated by the IRS as lending themselves easily to personal use. Section 2043 of the Small Business Jobs Act of 2010, Publication L. No. 111-240 removed the requirement that employer provided cell phones given for business use be considered “listed property”. IRS Notice 2011-72 “Tax Treatment of Employer-Provided Cell Phones” and IRS Memo SBSE-04-0911-083 provide guidance for employers who provide cell phones or cell phone stipends to their employees. This policy is, to the best of our knowledge, in agreement with these provisions.

V. DEPARTMENT DISCRETION OF CELL PHONE POLICY

Department managers may implement a department specific cell phone policy. Department specific policies must be approved by the Town Manager and/or the respective departments’ governing boards.

VI. GENERAL CELLPHONE USE GUIDELINES

When using a cellular telephone, employees should consider safety. Use of a cellular telephone while operating a motorized vehicle is strongly discouraged. Employees should plan to allow placement of calls prior to driving or while on rest breaks. When an employee must use their cellular telephone while driving, they should use hands free mode, keep conversations brief, avoid unnecessary calls, and no calls should be made if driving is hazardous. If it is necessary for the employee to read or write while taking the call, the employee should pull off the road.

Employees using cellular telephones shall maintain professional conduct during conversations. Cellular telephones are operated through radio frequencies, and are therefore subject to the Federal Communications Commission Rules and Regulations. Discussions of topics that are inappropriate or confidential either by law, Town policy, or for other reasons, should never be conducted via cellphone.

Town of Emerald Isle
Employee Cell Phone Policy
Acknowledgement and Agreement

Employee Name: _____ Employee ID: _____

Job Title: _____ Department: _____

I have read, understand, and agree to comply with the Town of Emerald Isle Cell Phone Policy. I acknowledge that my cell phone account records may in certain circumstances be considered public records in accordance with NC General Statutes and may need to be turned over to the Town upon request.

_____ Date: _____

Employees Signature

_____ Date: _____

Department Managers Approval Signature



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Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

252-354-3424 voice
252-354-5068 fax

www.emeraldisle-nc.org

Mayor
Eddie Barber

Mayor Pro-Tem
Floyd Messer, Jr.

Board of Commissioners
Candace Dooley
Steve Finch
Jim Normile
Mark Taylor

Town Manager
Matt Zapp



Cell Phone Agreement (Tier I)

This agreement is made and entered into this _____ day of _____, 2020 by the Town of Emerald Isle, hereinafter called the "Town" and Town of Emerald Isle Employee, hereinafter called the "Employee".

The Town agrees to pay Employee a sum, not to exceed sixty (\$60.00) dollars a month, towards the cost of their cell phone service. All charges over the sixty (\$60.00) dollars will be the responsibility of the Employee.

The Employee agrees to keep their cell phone service active at all times and maintain the phone in good working order. Failure to maintain an active account is grounds for disciplinary action.

The Town agrees that employee may use his/her cell phone for work as well as personal use.

The contract with the cell phone company will be in the name of the Employee and Employee will be responsible for paying any and all charges for his/her cell phone.

Upon agreement to receive the monthly stipend, the Employee agrees and acknowledges that the physical phone and phone records are considered public records under the North Carolina General Statutes Section 132.

Additionally, the Employee acknowledges that they have read the Town of Emerald Isle Cell Phone Policy.

If for any reason the Employee leaves the Town of Emerald Isle, this agreement will be null and void.

Town of Emerald Isle

Employee

Department Manager

Town Manager



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Cell Phone Agreement (Tier II)

This agreement is made and entered into this _____ day of _____, 2020 by the Town of Emerald Isle, hereinafter called the "Town" and Town of Emerald Isle Employee, hereinafter called the "Employee".

The Town agrees to pay Employee a sum, not to exceed thirty (\$30.00) dollars a month, towards the cost of their cell phone service. All charges over the thirty (\$30.00) dollars will be the responsibility of the Employee.

The Employee agrees to keep their cell phone service active at all times and maintain the phone in good working order. Failure to maintain an active account is grounds for disciplinary action.

The Town agrees that employee may use his/her cell phone for work as well as personal use.

The contract with the cell phone company will be in the name of the Employee and Employee will be responsible for paying any and all charges for his/her cell phone.

Upon agreement to receive the monthly stipend, the Employee agrees and acknowledges that the physical phone and phone records are considered public records under the North Carolina General Statutes Section 132.

Additionally, the Employee acknowledges that they have read the Town of Emerald Isle Cell Phone Policy.

If for any reason the Employee leaves the Town of Emerald Isle, this agreement will be null and void.

Town of Emerald Isle

Employee

Department Manager

Town Manager



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Cell Phone Agreement (Tier III)

This agreement is made and entered into this _____ day of _____, 2020 by the Town of Emerald Isle, hereinafter called the "Town" and Town of Emerald Isle Employee, hereinafter called the "Employee".

The Town agrees to pay Employee a sum, not to exceed fifteen (\$15.00) dollars a month, towards the cost of their cell phone service. All charges over the fifteen (\$15.00) dollars will be the responsibility of the Employee.

The Employee agrees to keep their cell phone service active at all times and maintain the phone in good working order. Failure to maintain an active account is grounds for disciplinary action.

The Town agrees that employee may use his/her cell phone for work as well as personal use.

The contract with the cell phone company will be in the name of the Employee and Employee will be responsible for paying any and all charges for his/her cell phone.

Upon agreement to receive the monthly stipend, the Employee agrees and acknowledges that the physical phone and phone records are considered public records under the North Carolina General Statutes Section 132.

Additionally, the Employee acknowledges that they have read the Town of Emerald Isle Cell Phone Policy.

If for any reason the Employee leaves the Town of Emerald Isle, this agreement will be null and void.

Town of Emerald Isle

Employee

Department Manager

Town Manager
