

**AN ORDINANCE AUTHORIZING THE ADOPTION OF EMPLOYEE CELL PHONE AND PAGER  
POLICIES 7.04, 7.05A, 7.05VI, AND 7.06 AND THE ADDITION OF THE POLICIES  
AS DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK**

WHEREAS, Brewster Village Council desires to adopt policies to address Employee cell phone and pager use and to modify the Village Employee Handbook to include such Employee Cell Phone and Pager Policies.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:**

**SECTION 1:**

The Village shall adopt a Section 7.04 - Employee Cell Phone Authorization Policy and shall add said policy to the Village Employee Handbook as follows:

**7.04 Cell Phone Authorization Policy**

**A. PURPOSE**

The Village of Brewster recognizes the need for certain Village employees to use cell phones to complete and to conduct Village business effectively and efficiently. Some positions may require that the employee be readily available via cell phone throughout his or her work period and/or during non-work hours.

That need can be met either by the provision/issuance of a Village cell phone and/or pager OR the payment of a Cell Phone allowance. This policy establishes procedures for the authorization of the provision/issuance of a Village cell phones or pagers OR the payment of a Cell Phone allowance.

This policy establishes procedures for their authorization, to contain costs, and to ensure personal and departmental accountability.

**B. SCOPE**

This policy applies to all Village of Brewster employees who will be receiving a Village issued cell phone and/or pager OR the payment of a Cell Phone allowance for their personal cell phone.

**C. OVERSIGHT, ELIGIBILITY AND APPROVAL - GENERAL**

1. Individual department heads are responsible for identifying employees who hold positions that include the need for a cell phone. Each department is strongly encouraged to review whether a cellular device is necessary, and to select alternative means of communication -e.g., land- lines, pagers, and mobile radios - when such alternatives would provide adequate and less costly service to the Village.
2. The department head is responsible for overseeing employee cell phone needs and assessing each employee's continued need of a cell phone for business purposes. The need for a cell phone allowance should be reviewed annually, to determine if existing cell phone allowances should be continued as-is, changed, or discontinued.
3. The Village Administrator will have the final approval authority.

**D. ELIGIBILITY AND APPROVAL – JUSTIFICATION CRITERIA**

Employees whose job duties include the need for a cell phone may be approved for a Village cell phone and/or pager OR the payment of a Cell Phone allowance based upon the following criteria (at least one of the following criteria is met):

1. The job function of the employee requires considerable time outside of his/her assigned office or work area and it is important to the Village that s/he is accessible during those times;
2. The job function of the employee requires him/her to be accessible outside of scheduled or normal working hours where time sensitive decisions/notifications are required;
3. The job function of the employee requires him/her to have wireless data and internet access; and/or

4. The employee involved in frequent off hours/on-call activity.
5. The employee is a key staff member needed in the event of an emergency.
6. The employee is designated as a "first responder" to emergencies.
7. The cell phone and/or pager will enhance emergency response, employee safety, or work efficiency.

**E. ELIGIBILITY AND APPROVAL – BALANCING CRITERIA**

Once one or more of the foregoing criteria have been met, those should be weighed against the following:

1. Given the adequacy of the present system of communication, is a cell phone and/or pager an appropriate and economical option?
2. Is the cell phone and/or pager merely a convenience or is it a necessity for job duties?
3. How frequently will the cell phone and/or pager be needed?
4. Can the user share a Village issued cell phone and/or pager with other employees?
5. Is the cost justified when compared with alternative communication choices?

An employee who only occasionally is contacted for business purposes is not eligible for an allowance; however, she/he may submit a record of these expenses for reimbursement.

**F. ELIGIBILITY AND APPROVAL BY JOB CLASSIFICATION OR INDIVIDUAL**

**1. Authorization for a Job Classification**

Authorization on a job classification basis shall be established as follows:

- a. An initial determination shall be made as to what job classifications require a cell phone, and whether the cell phone should be a "basic" phone or a "smart phone" by each department head for each job classification reporting to the department head.
- b. Any initial determination that a cell phone is required/recommended shall be reduced to writing and signed.
- c. The initial determination shall include a cost estimate and a reason shall be given for the business necessity for the cell phone and/or pagers.
- d. The *Cell Phone Authorization Form* shall be forwarded to the Village Administrator.
- e. The Village Administrator shall make a final determination.
- f. The final determination shall be forwarded to Human Resources so that the respective job description is documented as being authorized for a cell phone OR a cell phone allowance be paid.

**2. Authorization for an Individual Employee**

Authorization for individuals that differ from authorization established on a job classification basis shall be established as follows:

- a. In the event that a department head believes that a cell phone is required by an individual employee rather than each employee in that employee's job classification, or that an individual employee requires a different level of cell phone than each employee in that employee's job classification, the department head shall make an initial determination, which shall be reduced to writing and signed.
- b. The initial determination shall include a cost estimate and a reason shall be given for the business necessity for the cell phone and/or pagers.
- c. The *Cell Phone Authorization Form* shall be forwarded to the Village Administrator.
- d. The Village Administrator shall make a final determination.

**SECTION 2:**

The Village shall adopt Section 7.05A - Employee Cell Phone Allowance Policy and shall add said policy to the Village Employee Handbook as follows:

**7.05A Cell Phone Allowance Policy**

**A. PURPOSE**

1. The Village of Brewster recognizes that the performance of certain job responsibilities may be enhanced by or may require the use of a cellular (cell) phone or a Smartphone
2. The Village will begin issuing a cell phone allowance for those employees who hold positions where the duties of that position require the use of a cell phone. The benefits of such an approach include:
  - a) A single phone may be used for both personal and business purposes.
  - b) The allowance is not to be considered taxable income to the employee.

**B. SCOPE**

This policy applies to all Village of Brewster employees who will be receiving an allowance for their personal cell phone.

**C. POLICY**

Employees, who are either authorized individually to be issued a cell phone or receive an allowance, (see eligibility criteria below) may, at the Village's sole determination, receive a cell phone allowance in lieu of a Village issued cell phone to compensate for business-related costs incurred when using their personally-owned cell phones.

**D. ELIGIBILITY**

Eligibility shall be determined based upon the Village of Brewster's Cell Phone Authorization Policy.

An employee who only occasionally is contacted for business purposes is not eligible for an allowance; however, s/he may submit a record of these expenses for reimbursement.

**E. CELL PHONE ALLOWANCE**

1. Once approved, the allowance amount will be paid on a monthly basis.
2. The allowance will be paid as a flat rate per month, based on the selected service and outlined below.
3. The Village will pay only the amount established herein. Any amount in excess of the established rates, including but not limited to charges for exceeding monthly minutes or data, are the responsibility of the employee.
4. The allowance is neither permanent nor guaranteed. The Village reserves the right to remove a participant from this plan and/or cancel the allowance for business reasons.
5. The amount of the allowance will be determined based on the type of plan required of the employee's position to perform his or her job responsibilities. A tiered model based on the current market rates includes the following options:
  - a) Voice only - \$30 per month
  - b) Voice & Data - \$50 per month
  - c) Voice, Data, and Hotspot - \$60 per month
6. As the allowance is for the business use of the cell phone, the Village treats the allowance as nontaxable to the employee.

**F. EQUIPMENT PURCHASE**

The Village will not pay for the purchase of personal cell phones, activation fees, related accessories, or insurance.

**G. EMPLOYEES RIGHTS & RESPONSIBILITIES**

1. The employee is responsible for purchasing a cell phone and establishing a service contract with the cell phone service provider of his/her choice.
2. The cell phone contract is in the name of the employee, who is solely responsible for all payments to the service provider.
3. Because the cell phone is owned personally by the employee, and the allowance provided is not considered taxable income, the employee may use the phone for both business and personal purposes, as needed.
4. The employee may, at his or her own expense, add extra services or equipment features, as desired.
5. If there are problems with service, the employee is expected to work directly with the carrier for resolution.
6. There will be no support from the Village for cell phones for which an allowance is provided.
7. An employee receiving a cell phone allowance must be able to show, if requested by his/her supervisor, a copy of the monthly access plan charges and business related activity confirming they continue to have a contract for the cell phone (accountability).
8. If the employee terminates the wireless contract at any point, s/he must notify his/her supervisor within 5 business days to terminate the allowance.
9. The Village does not accept any liability for claims, charges or disputes between the service provider and the employee.
10. Use of the phone in any manner contrary to local, state, or federal laws will constitute misuse, and will result in immediate termination.
11. Any cell phone that has data capabilities must be secured based on current security standards including password protection and encryption. If a cell phone with data capabilities is stolen or missing, it must be reported to the employee's supervisor and the wireless device service provider as soon as possible.

**H. CANCELLATION**

Any allowance agreement will be immediately cancelled if:

1. An employee receiving a cell phone allowance terminates employment with the Village.
2. The employee changes position within the Village which no longer requires the use of a cell phone for business reasons.
3. There is misuse/misconduct with the phone.
4. A decision by management (unrelated to employee misconduct) results in the need to end the program or there is a change in the employee's duties.
5. The employee does not want to retain the current cell phone contract for personal purposes.

**I. REMOVAL OR DELETION OF VILLAGE INFORMATION**

1. Employees are expected to delete all Village data from the cell phone when their allowance is severed or their employment with the Village is severed, in accordance with Ohio public records laws and Village policy, except when required to maintain that data in compliance with litigation hold notice. Removal shall be in cooperation and verified by the Village.
2. In the event the employee (or former employee) does not cooperate with the Village in deleting all Village data from the cell phone when their allowance is severed or their

employment with the Village is severed, the Village reserves the right to remotely remove Village Information, which may result in the loss of personal data and information.

### **SECTION 3:**

The Village shall adopt Section 7.05VI – Village Issued Cell Phones and Pagers and shall add said policy to the Village Employee Handbook as follows:

#### **A. Purpose and Scope**

The Village of Brewster recognizes the need for Village-owned cell phones and/or pagers and has established procedures for their authorization.

#### **B. Authorization**

Cell phones and/or pagers shall not be issued to any employee without prior authorization in accordance with Village policy.

#### **C. Provision of Cell Phones and/or Pagers**

The Village may purchase, or otherwise provide under a lease rental contract, cell phones and/or pagers for Village employees. Those employees who are issued a Village cell phone and/or pager shall follow the guidelines and procedures set forth in this policy for the purchase and use of cell phones and/or pagers. For purposes of this policy, Village employees may include part-time, seasonal, and temporary staff.

#### **D. Cell Phone and/or Pager Acquisition**

Once an employee is authorized to be issued a Village cell phone and/or pager, the department head shall monitor its use.

#### **E. Business Use and Long Distance Calling**

To keep cell phone expenses to a minimum, users are requested to access regular (land line) phones as much as possible when calling local numbers. However, since long distance calling is included with the cell phone at no additional charge, long distance business calls should be made with a cell phone whenever possible.

#### **F. Restrictions on Use of Village Issued Cell Phones and Pagers**

##### **1. Personal Calls Prohibited**

Should an employee need to make or receive an emergency call on a rare basis of a personal nature on the Village's cell phone, or should the employee accidentally make or receive a personal call on the Village's cell phone, such use shall not be in violation of this policy unless such personal use may constitute abuse and is extreme or becomes repetitive in nature, in which case such use shall result in discipline up to and including discharge. Emergency or rare accidental calls shall be reported to their Department Head within thirty (30) days of their occurrence to be.

However, as a general rule Village-issued cell phones are not intended nor should they be used for personal use. Employees are generally not permitted to make or receive personal calls or text messages. Doing so constitutes an unauthorized use and/or misuse of Village property. Unapproved personal use and/or abuse of the Village cell phone and/or pager is a violation of this policy and may result in discipline action up to and including discharge.

**Note: Employees shall reimburse the Village for any personal calls. Additionally, if requested, employees must highlight personal calls on the monthly bill.**

##### **2. Unauthorized Charges**

Costs for calling directory assistance, web usage and download fees, and any other charges above and beyond the regular monthly service charge are prohibited, must be reimbursed by the employee, and may result in discipline action up to and including discharge.

### **3. Illegal Use Prohibited**

Use of the cell phone for any illegal purposes may result in criminal prosecution, and in addition may result in discipline action up to and including discharge.

#### **G. Audit of Cell Phone and/or Pager Use**

Employees have no right of privacy nor expectation of privacy on Village-owned cell phones and/or pagers.

The Village reserves the right to audit/review cell phone and/or pager bills to ensure their proper use (i.e., costs were incurred during the course of conducting government business, not for personal use). Any detected abuse or misuse will result in corrective disciplinary action up to and including discharge.

#### **H. Traveling**

When traveling on Village business, employees should use their Village issued cell phone for business related calls.

#### **I. Care of Cell Phones**

1. Employees must safeguard any cell phone and/or pager equipment in their possession.
2. As with all Village property and equipment, employees are expected to take reasonable care of the cell phones and/or pager equipment.
3. Any necessary repairs or malfunctions should be reported to the Village Administrator in a timely manner.
4. The loss of any cell phone and/or pager equipment shall be reported to the employee's supervisor immediately. If theft is suspected, the police should also be notified immediately.
5. All employees assigned a cell phone and/or pager equipment will be responsible for their cell phone and/or pager equipment. If it is lost or stolen, the employee shall notify their immediate supervisor and the Village Administrator.

#### **J. Return of Cell Phone**

When an employee no longer has a demonstrated need for a cell phone or pager, or when the employee terminates employment with any Village Department, that employee shall return any Village issued cell phone and pager equipment.

### **SECTION 4:**

The Village shall adopt Section 7.06 – Village Cell Phone and Pager Use Policy and shall add said policy to the Village Employee Handbook as follows:

#### **A. Use of Cell Phone While Driving**

Employees shall exercise extreme caution when driving and talking on or using cell phones.

Unless utilizing a “hands-free” speakerphone option, employees should stop their vehicle as soon as safely possible to answer and use a cell phone. Violation may result in disciplinary action up to and including discharge. Exception may be made during emergency response.

Sending or receiving text messages or e-mail while driving is prohibited at all times.

#### **B. Traveling**

When traveling on Village business, employees should use their Village issued cell phone or cell phone for which they are receiving a cell phone allowance for business related calls.

#### **C. Cell Phone and/or Pager Must be Kept in Possession**

Authorized employees are expected to have their Village issued cell phone or cell phone for

which they are receiving a cell phone allowance in their possession at all times during their work shift. The cell phone or pager may be turned off or silenced at appropriate times during meetings and conferences, or for safety related issues.

Employees may also be required to have their Village issued cell phone or cell phone for which they are receiving a cell phone allowance in their possession at times other than work time, so that they can be contacted by the Village.

**D. Voice Mail and E-Mail**

Employees that are on vacation or other extended leave should leave an automated “out of office” response for both voicemail and email with alternative contacts to assure customer concerns are met.

**E. Texting and E-Mail via Cell Phone or Pager**

Use of a Village issued cell phone, a cell phone for which an employee is receiving a cell phone allowance, or even a personal cell phone which serves to document the Village, its functions, its policies, its decisions, its procedures, its operations, or other activities of the Village shall be conducted via voice or e-mail.

Texting any information which serves to document the Village, its functions, its policies, its decisions, its procedures, its operations, or other activities of the Village is prohibited, because the “public record” cannot be preserved.

**F. Prohibited Communications**

Personal cell phones (during Village business hours) and Village issued cell phones and/or pagers (at any time) cannot be used for knowingly transmitting, retrieving, accessing, attempting to access, or storing any material, data, site, or communication that is:

1. Discriminatory or harassing, or
2. Derogatory to any individual or group, or
3. Obscene, sexually explicit, or pornographic, or
4. Defamatory, or
5. Threatening, or
6. In violation of any license governing the use of software, or
7. For any illegal purpose, or
8. Online gambling or gambling sites, or
9. For any other purpose that is contrary to Village policy or business interests.

This list of prohibited uses is not exhaustive and is not to be construed to restrict the Village, in any way, from taking appropriate disciplinary action should an unacceptable or inappropriate use occur, as determined in the sole discretion of the Village, which does not fall into one of the above listed categories.

Use of personal cell phones during non-business hours for the forgoing purposes **may** also be a violation of Village policy (i.e. harassment of another employee), which also may subject an employee to disciplinary action.

**G. Access to Employee Communications**

The Village of Brewster reserves the right, at its discretion, to review an employee’s cell phone usage to the extent necessary to ensure that usage is in compliance with the law, this policy, and other Village policies. As such, employees should not assume that use of a Village issued cell phone and/or pager, or a cell phone for which an employee is receiving a cell phone allowance, are completely private. Accordingly, if an employee has sensitive information to transmit, they should use other means.

**SECTION 5:** The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

**SECTION 6:** This ordinance shall be in full force and effect at the earliest date provided by law.

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Mayor Michael E. Schwab

ATTEST:

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Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on December 5, 2016

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Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

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Clerk K. Kris King