



DEPARTMENTAL REGULATIONS  
CONCORD POLICE DEPARTMENT

GENERAL ORDER 96  
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Captain John Nunes for Guy A. Swanger, Chief of Police

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## Personal Communication Devices

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### A. PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs), but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and micro blogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

### B. POLICY

The Concord Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy. The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws. Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

### C. PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department/Office and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities.

#### **D. CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)**

No member is authorized to be the sole possessor of a department-issued PCD. Department issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Employees who use a personally owned PCD while at work or for work-related business shall understand work related content on the device may be subject to disclosure through the Public Records Act (PRA) request process, civil or criminal discovery or other legal process consistent with CalECPA (Penal Code 1546 & 1546.1) which may include inspection and/or the City retaining a copy of the data for litigation, public records retention and release obligations and internal investigations. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with (Penal Code § 1546; Penal Code § 1546.1).

#### **E. DEPARTMENT-ISSUED PCD**

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only – they are for official use only. Such devices and the associated telephone number shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

#### **F. PERSONALLY OWNED PCD**

1. Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:
  - .1 Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy;
  - .2 The Department accepts no responsibility for loss of or damage to a personally owned PCD;
  - .3 The PCD and any associated services shall be purchased, used and maintained solely at the member's expense;
  - .4 The device should not be used for work-related purposes except in exigent circumstances (e.g., unavailability of radio communications). Members will have a reduced expectation of privacy when using a personally owned PCD in the workplace and have no expectation of privacy with regard to any department business-related communication;
  - .5 The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of

employment with the Department, without the express authorization of the Chief of Police or the authorized designee; and

- .6 Employees who use a personally owned PCD while at work or for work-related business shall understand work related content on the device may be subject to disclosure through the PRA request process, civil or criminal discovery or other legal process consistent with CalECPA (Penal Code 1546 & 1546.1) which may include inspection and/or retaining a copy of the data for litigation, public records retention and release obligations and internal investigations. If the PCD is carried on-duty, members will provide the Department with the telephone number of the device upon request.
2. Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

## **G. USE OF PCD**

1. The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:
  - .1 A PCD shall not be carried in a manner that allows it to be visible while in uniform, unless it is in a department approved carrier;
  - .2 All PCDs in the workplace shall be set to silent or vibrate mode;
  - .3 Members should limit their use of PCDs for non-business use to authorized break times and at no time shall personal on-duty use interfere with the performance of duty;
  - .4 Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable, not feasible, or when the PCD would provide a more secure or safe means of communication. Otherwise, regular radio communications remains standard;
  - .5 Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to

any third party through any means, without the express authorization of the Chief of Police or the authorized designee, may result in discipline; and

- .6 Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

## **H. SUPERVISOR RESPONSIBILITIES**

1. The responsibilities of supervisors include, but are not limited to:

- .1 Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy;
- .2 Monitoring, to the extent practicable, PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a PCD;
- .3 An investigation into improper conduct should be promptly initiated when circumstances warrant; and
- .4 Before conducting any administrative search of a member's personally owned device, supervisors should consult with the City Attorney's Office and the, Chief of Police or the authorized designee.

## **I. USE WHILE DRIVING**

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should follow CVC23123.5 (3) and may use a PCD while operating an emergency vehicle, as defined in CVC 165, in the course and scope of their duties. Employees should understand the public perception of use on duty and should try to limit the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

## **J. OFFICIAL USE**

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted. As soon as reasonably possible, members shall conduct sensitive or private communications on a land-based or other department communications network.