

SIDE LETTER AGREEMENT No. 2

TO MEMORANDUM OF UNDERSTANDING EFF. JULY 1, 2017 - JUNE 30, 2021 BETWEEN

THE SAN PABLO POLICE EMPLOYEES ASSOCIATION (SPPEA)

AND

CITY OF SAN PABLO

Updated Policy on Personal Communication Devices

Whereas, the current MOU's (SPPEA and SPPEA Management Unit) between the City of San Pablo and the San Pablo Police Employees' Association are effective for the period July 1, 2017 through June 30, 2021;

Whereas, the Department has determined that it will purchase Department-owned Personal Communication Devices (PCDs) to improve operations and interoperability among various technologies;

Whereas, per the adopted Employer-Employee Relations Ordinance (Ordinance 2011-004), the Meyers-Millas-Brown Act (MMBA), Government Code section 3500 et seq. requires that the City and SPPEA Meet and Confer and bargain in good faith whenever modifications to working conditions are proposed (in this case Department-provided PCDs); and

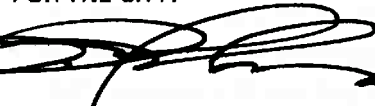
Whereas, the parties have reviewed and evaluated the use of Department-owned PCDs consistent with the Policy attached to this side letter.

The parties now hereby agree to the Personal Communications Devices Policy as attached.

EXCEPT AS EXPRESSLY ADDED ABOVE, THE EXISTING PROVISIONS OF BOTH THE SAN PABLO POLICE EMPLOYEES' ASSOCIATION MOU AND THE SAN PABLO POLICE EMPLOYEES' - MANAGEMENT UNIT MOU REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

FOR THE CITY:

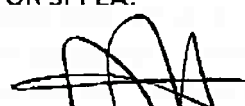
FOR SPPEA:



Matt Rodriguez, City Manager

4/22/19

Date



Josh Hearn, Representative

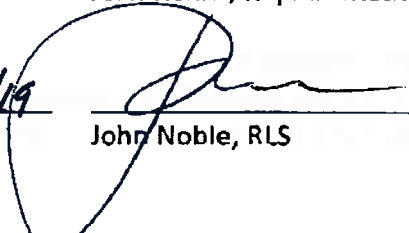
3/25/19

Date


Reina Schwartz
Assistant City Manager

4/17/19

Date



John Noble, RLS

3/24/19

Date

Personal Communication Devices

701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued 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 microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

701.2 POLICY

The San Pablo Police Department allows members to utilize department-issued PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any department-issued 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, Department 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.

701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see Information Technology Use Policy or additional guidance).

701.3.1 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. Member use of a department-issued PCD and use of a personal PCD for work-related business constitutes specific consent for access for department purposes.

701.4 DEPARTMENT-ISSUED PCD

Department-issued PCDs are provided as a convenience to facilitate on-duty performance only. The Department's general expectation under this policy is that members use Department-issued

PCDs during duty hours only, to perform Department business. Except in exigent circumstances, members generally must receive prior approval to work outside of their scheduled duty time. Although the PCD may remain in the employee's possession while he/she is off duty, Department-issued PCDs 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. The Department has the discretion to restrict or rescind a member's access to a Department-issued PCD at any time.

Members are authorized for personal use and carry of Department-owned PCDs, subject to the conditions outlined in this policy manual (see Information Technology Use and Department Owned and Personal Property policies). Department-owned PCDs shall be secured at all times, whether on or off-duty.

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 Department-issued PCD while off-duty.

A member issued a PCD by the Department shall report immediately if the device is lost, stolen, damaged or otherwise malfunctioning.

701.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- (a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- (b) The Department accepts no responsibility for loss of or damage to a personally owned PCD.
- (c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense. Members who are provided a Department-issued PCD are not entitled to any reimbursement for use of a personally-owned PCD pursuant to the City's Cellphone Stipend Policy.
- (d) 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 for any department business-related communication.
- (e) 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.
- (f) If Department related business is conducted on a personally owned PCD, the Department may request a member to search his or her personal PCD and provide Department-related data to the Department. When obligated, the Department may access the PCD to inspect and copy department-related data in order to meet the needs of the Department for litigation, public records retention and release obligations, and/or internal investigations.

- (g) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD shall be transferred to the San Pablo Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

701.6 USE OF DEPARTMENT-ISSUED PCDs

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) All PCD's shall be carried in a manner approved by the Department and in an approved outer carrier.
- (b) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
- (c) 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.
- (d) Members are prohibited from accessing social networking, dating, shopping, or gaming sites of any type for any purpose that is not official business and shall not install or download unauthorized software.
- (e) 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.
- (f) All PCD use must comply with CJIS Security Rules and Regulations.

701.7 INTENTIONAL MISUSE

Intentional photographing and/or recording of CJIS/CLETS data is prohibited and violates this policy and the CJIS Security Policy and will result in discipline including up to termination.

701.8 UNINTENTIONAL USE

If CJIS/CLETS data is accidentally photographed and/or recorded the incident shall be reported to your immediate supervisor. A memorandum will be prepared and forwarded to the Administration with a recommendation of redacting and or destruction of the image or recording.

701.9 SUPERVISOR RESPONSIBILITIES

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

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) 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.

1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee. Prior to conducting such a search, the member must be provided prior notice which includes a specific reason why the search is necessary. Except in exigent circumstances, the member shall be provided time to consult with a representative prior to the search.
3. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

701.10 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 restrict 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.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

701.11 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.