



## San Mateo County Harbor District Board of Harbor Commissioners

“To assure that the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas.”

### **SPECIAL MEETING AGENDA**

**June 7, 2017  
6:30 PM**

Municipal Services Building  
Betty Webber Room  
33 Arroyo Drive  
South San Francisco, CA 94080

Persons requiring special accommodation with respect to physical disability are directed to make such requests per the Americans With Disabilities Act to the Deputy Secretary to the Board at 650-583-4400, 72 hours in advance.

- A.) Roll Call**
- B.) California Public Records Act (PRA) Workshop; Adopt PRA Policy**
- C.) Reimbursement of Commissioner Legal Costs Related to PRA Compliance**
- D.) District Provided Commissioner Devices (Phones/Tablets/Other): Provide Direction to Staff**
- E.) Adjournment**

The next Regular Meeting will be held at 6:30 PM on June 21 at the San Mateo County Harbor District Conference Room, 504 Avenue Alhambra, 2<sup>nd</sup> Floor, El Granada, CA 94018.

Agenda posted as required:  
June 2, 2017 at 5:30 PM

Debbie Gehret  
Deputy Secretary



## Staff Report

**TO:** Board of Harbor Commissioners

**FROM:** Steve McGrath, General Manager  
Glenn Lazof, Administrative Services Consultant

**DATE:** June 7, 2017

**SUBJECT:** Adoption of Public Records Act Policy

**Recommendation/Motion:**

Motion: Approve Public Records Act Policy 5.4.0; Adopt Resolution No. 17-08.

**Policy Implications:**

The California Public Records Act and the California Constitution provide that every member of the public has a right to inspect any public record, except for those specifically exempted from disclosure by the Public Records Act.

**Fiscal Implications/Budget Status:**

None, the District is already required to comply with the act.

**Alternatives Considered:**

No action, the District will continue to adhere to the law, but will not meet the criteria for receipt of the Special District Leadership Foundations (SDLF) Transparency Certificate. The General Manager would still establish necessary procedures governing staff's response to records requests.

**Background/Discussion:**

This Commission, at the February 17, 2016 meeting, rescinded the District's Public Records Act policy. Absent a policy, staff has continued to comply with the Public Records Act. The Policy attached to this Staff Report will meet the criteria for receipt of the SDLF Transparency Certificate and is consistent with the District's ongoing obligations under the Public Records Act. In particular, the Policy includes guidelines suggesting limitations on the use of personal accounts for the conduct of public business.

The General Manager is already planning for the implementation of a web based Public Records Act (PRA) software, "Next Request," that provides tracking and adds self - service transparency to PRA requests.

**Summary/Recommendation:**

Staff recommends this Commission approve Public Records Act policy 5.4.0, and adopt Resolution No. 17-08

**Attachments:**

Resolution No.17-08

Draft Policy 5.4.0 Public Records Act

**Resolution No. 17-08**  
**of the**  
**San Mateo County Harbor District**

**Adoption of Public Records Act Policy**

**WHEREAS**, the California Constitution and the California Public Records Act (Act) (California Government Code section 6250 et seq.) requires the San Mateo County Harbor District (District) to provide, upon request, a copy of public records held by the District subject to certain exceptions; and

**WHEREAS**, the Board of Harbor Commissioners wishes to adopt a Public Records Act Policy (Policy) to establish the District's compliance with the Act in order to respond efficiently to records requests while maintaining transparency in the conduct of District Business.

**NOW, THEREFORE BE IT RESOLVED** that the San Mateo County Harbor District hereby adopts Policy 5.4.0, Public Records Act, attached to this Resolution.

**PASSED, APPROVED AND ADOPTED** by the Board of Harbor Commissioners of the San Mateo County Harbor District at a regular meeting held on the 7th day of June 2017 by the following vote:

For:

Against:

Absent:

Abstention:

**Attest**

**BOARD OF HARBOR COMMISSIONERS**

\_\_\_\_\_  
Debbie Gehret  
Deputy Secretary

\_\_\_\_\_  
Tom Mattusch  
President

San Mateo County Harbor District

<b>Policies and Procedures</b>	<b>Number:</b> 5.4.0	<b>Date:</b> 1/7/2015	<b>Revision:</b> 6/7/2017
<b>Title:</b> Public Records Act Policy	<b>Prepared By:</b> G. Lazof	<b>Approved By:</b> Board of Harbor Commissioners	<b>Page:</b> Page 1 of 2
<b>Purpose:</b> To Ensure Compliance with California Public Records Act			

**STATEMENT OF PURPOSE:**

To ensure that the San Mateo County Harbor District complies with the California Public Records Act

**POLICY:**

The public has a right to access records of the San Mateo County Harbor District in accordance with the California Constitution and the California Public Records Act (California Government Code 6250 et seq.) and any amendments thereto.

Consistent with the California Public Records Act (Act), public records are available upon request and are open for inspection at all times during office hours. Every member of the public has a right to inspect any public record, except those records exempted from disclosure under the Act. The District is not required to create a record in response to a public records request. In addition, the District is not required to respond to prospective requests by providing records not yet in the District's possession or records that will be created in the future.

Determination as to whether a requested record is a public record and available for inspection or copying, as well as decisions to withhold a record, will be made by the General Manager, in consultation with District Counsel as necessary.

The District will respond to every public records request in accordance with the Act. If a request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the District will respond and inform the requester. In order to assist a member of the public to make a focused and effective request, the District will make a reasonable effort to elicit additional clarifying information from the requester that will help identify the record(s).

To facilitate the District's compliance with the Act, all District employees and officials should adhere to the following requirements:

<b>Policies and Procedures</b>	<b>Number:</b> 5.4.0	<b>Date:</b> 1/7/2015	<b>Revision:</b> 6/7/2017
<b>Title:</b> Public Records Act Policy	<b>Prepared By:</b> G. Lazof	<b>Approved By:</b> Board of Harbor Commissioners	<b>Page:</b> Page 2 of 2

- To the greatest extent possible, emails that relate to District business should be sent to and from employees' and officials' "@smharbor.com" email accounts. Ordinarily, no public business should be conducted on personal email accounts. If personal email accounts must be used for District business, employees and officials should (a) copy such an email sent from their personal account to their District email account and (b) forward any such email sent to their personal account to their District email account promptly upon receipt.
- Conducting District business via text messaging is discouraged. For those District employees or officials who are provided with a District telephone, text messages that relate to District business should be sent to and from the phone number associated with that phone and not from a personal phone number or other personal text messaging service (for example, WhatsApp).

Under the California Supreme Court's interpretation of the Act, communications that relate to District business may be public records even if such records are located on an employee's or official's private device or personal account. If a member of the public requests public records sent to or from an employee or official's personal account or private device, the District will forward the request to the employee or official. The employee or official will make reasonable efforts to locate responsive records and will provide such records to the General Manager, or designee, in a timely fashion. Determining what efforts are reasonable and what records are responsive will depend on specific facts and circumstances, but always in light of the public's rights under the Act. Employees and officials will seek guidance from the General Manager or District counsel when it is difficult to determine whether a particular record is a public record. Ultimately, the District will rely on its employees and officials in complying with the Act and so the District's compliance will in part depend on the cooperation of its employees and officials.

The General Manager is authorized to develop procedures, and to amend those procedures from time to time as may be necessary, consistent with this Policy and to ensure compliance with the Act.





## Staff Report

**TO:** Board of Harbor Commissioners  
**FROM:** Steve McGrath, General Manager  
**DATE:** June 7, 2017  
**SUBJECT:** Commissioner reimbursement for personal legal fees related to compliance with the California Public Records Act (PRA)

### **Recommendation/Motion:**

This Commission may:

1. Revise the District's Policy on the Public Records Act to allow for reimbursement of personal legal fees incurred by Commissioners in compliance with the California Public Records Act (PRA)
2. Revise District Policy 4.2.4 (attached) to allow for reimbursement of personal legal fees incurred by Commissioners in compliance with the California Public Records Act (PRA)
3. Abide by District Policy 4.2.4 which states in part:  
**C. Other Expenses**  
All other expenses must be approved by the Board, in a public meeting, before the expense is incurred.

If this Commission elects Item 3, above, this Commission may also consider at this time a request from Commissioner Brennan, and other Commissioners as may request the same, for reimbursement for legal fees associated with compliance with recent PRA requests. This Commission may also consider whether such an approval, if given, applies to a specific PRA request, or any such request concerning personal accounts or devices going forward.

### **Policy Implications:**

Under the Harbors and Navigation Code, the District is allowed to reimburse Commissioners for actual and necessary expenses incurred as part of their official duties. Current law is unclear whether reimbursing Commissioners for personal attorney costs incurred in complying with a Public Records Act request is a necessary expense and/or whether such an expense is already included within the

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salary provided Commissioners as compensation for their public service pursuant to the Harbors and Navigation Code.

**Fiscal Implications/Budget Status:**

Unknown at this time.

**Alternatives Considered:**

See above.

**Background/Discussion:**

State law permits the District to reimburse Commissioners for expenditures in the conduct of District business; there is no clarity on the matter of personal attorney reimbursement.

The Commissioner Expense Reimbursement Policy (Policy 4.2.4) is largely geared toward travel, training, and conference expenditures. Beyond those activities, District policy only allows for reimbursement with prior approval at a public meeting, before the expense is incurred. This limitation may delay the process of responding to PRA requests that impact personal accounts.

When a request for records under the PRA is made to the District, the District is responsible for responding to the request; thus, staff believes that professional services used in support of fulfillment of the request should be under the direction of the District. To allow for an attorney who may not be versed in the PRA to determine for the District which records may be responsive to a request could be problematic, and is not advised.

If this Commission adopts or amends the necessary policy, or approves a Commissioner's request for legal fee reimbursement under existing policy, the invoice from the attorney must accompany the request and will be public record.

If this Commission wishes to allow the reimbursement for personal legal fees associated with PRA requests:

Option 1: Revise the District's Policy on the Public Records Act to allow for reimbursement of personal legal fees incurred by Commissioners in compliance with the California Public Records Act (PRA)

While this Option clearly associates the expense and reimbursement with the PRA, staff believes that reimbursements are more properly identified in the Reimbursement Policy (4.2.4).

Option 2: Revise District Policy 4.2.4 (attached) to allow for reimbursement of personal legal fees incurred by Commissioners in compliance with the California Public Records Act (PRA).

A revision to policy 4.2.4 would allow for the incurring of the expense on receipt of the PRA request or shortly thereafter, without waiting for Commission approval. The revision could include a dollar limit to each PRA request.

Future case law may invalidate any District policy allowing such reimbursement.

Option 3: Abide by District Policy 4.2.4.

This Option allows for this Commission to review each request on an individual basis, as with any other expense reimbursement not covered under the balance of Policy 4.2.4.

If this Commission does not wish to allow the reimbursement for personal legal fees associated with PRA requests, any Commissioner may request assistance of District counsel.

As the impacts of the recent California Supreme Court case are clarified, the issue may become moot, as case law may dictate how such requests for reimbursement are addressed.

**Summary/Recommendation:**

Staff recommends that this Commission make no change to adopted policy, and consider Commissioner Brennan's request for reimbursement of legal fees for responding to specific PRA request already received, understanding that this may set unwanted precedent, and the authority to do so may be limited by future court decisions.

**Attachments:**

Commissioner Reimbursement Policy 4.2.4

# San Mateo County Harbor District

<b>Policy</b>	<b>Number:</b> 4.2.4	<b>Date of Approval:</b> 06/21/2006	<b>Adopted By:</b> Resolution No. 25-16
<b>Title:</b> Expense Accounting and Expenditure Reimbursement for Commissioners	<b>Prepared By:</b> G. Lazof	<b>Revised By:</b> Board of Harbor Commissioners September 1, 2010, September 7, 2016	<b>Page:</b> Page 1 of 8
<b>Purpose:</b> To establish policy guidelines on District reimbursement for expenses for Commissioners while on District business.			

## 1. STATEMENT OF POLICY

The San Mateo County Harbor District (District) is obligated to ensure that expenditures made by the District are solely for public purposes as well as prudent. This policy governs and provides for a process by which a member of the District's Board of Harbor Commissioners (Board) may seek reimbursement for expenses that he or she has incurred in the conduct of District business.

This policy complies with Government Code Section 53232.2, which provides that if a local agency reimburses members of its legislative body for actual and necessary expenses incurred in the performance of official duties, then the agency's governing board must adopt a written policy, in a public meeting, specifying the types of activities that qualify for reimbursement of expenses such as those related to travel, meals and lodging. To the extent practical, Commissioners are encouraged to work with District staff to make travel arrangements paid for in advance directly by the District, not subject to reimbursement under this Policy.

This policy applies to all members of the Board of Harbor Commissioners, and its provisions regarding expense reimbursement are intended to result in no personal gain or loss to a commissioner.

District Commissioners are eligible to receive reimbursements for travel, meals, lodging, and other reasonable and necessary expenses. Commissioners are limited to reimbursement only as authorized in this policy.

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## 2. AUTHORIZED EXPENSES

### A. Expenses

Expenses incurred in connection with the following types of activities generally constitute authorized and reimbursable expenses, and do not need pre-expense approval of the Board, as long as the other requirements of this Policy are met:

- a. Communicating with representatives of regional, state and national governments on Board-adopted policy positions;
- b. Attending conferences or educational seminars designed to improve the skills and knowledge of Commissioners, so long as the skills and knowledge relate to their position with the District; and
- c. Participating in regional, state and national organizations whose activities or agenda directly affects the District's interests.

### B. Prior Approvals

Out-of-State travel and expenses require prior approval by the Board of Harbor Commissioners, in writing, which shall verify that budgeted funds are available prior to approving the travel and expenses.

### C. Other Expenses

All other expenses must be approved by the Board, in a public meeting, before the expense is incurred.

## 3. EXPENSES NOT ELIGIBLE FOR REIMBURSEMENT

Expenses that are not eligible for reimbursement include:

- a. The personal portion of any trip;
- b. Political or charitable contributions;

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- c. Family expenses, including a partner's expenses when accompanying a Commissioner on District-related business, as well as child- or pet-related expenses;
- d. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf-related expenses), or other cultural events;
- e. Alcoholic beverages, including personal hotel honor bar expenses;
- f. Tips greater than 20 percent (unless automatically included in the bill);
- g. Regular commuting costs and personal automobile expenses, including for vehicle maintenance and repairs, traffic citations, insurance and gasoline;
- h. Personal losses incurred while on District business;
- i. Laundry, cleaning, or valet service including luggage transportation (except of trips of over one week duration);
- j. Personal telephone calls;
- k. Meals and lodging in lieu of other meals and/or lodging the expense of which is included in the Registration fee;
- l. Fines, forfeitures, traffic citations or other penalties;
- m. Loss or damage to personal property;
- n. Barber, beauty parlor, shoe shine or toiletries;
- o. Personal postage; and
- p. Credit card late fees or interest as a result of untimely submission of expense accounting forms.

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Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

#### 4. TRANSPORTATION

Commissioners are encouraged to use public transit and carpool to the maximum extent possible when travelling on District business. When transportation is needed for Commissioners to travel for District business other than in District vehicles, costs are eligible for reimbursement as follows:

- a. **Airfare**. Airfares that are reasonable and economical (coach fare) are eligible for reimbursement. Ticket purchases should be made well in advance to take advantage of low fares when possible.
- b. **Automobile**. Personal automobile mileage is reimbursed at Internal Revenue Service (IRS) rates in effect at the time of travel. Tolls are eligible for reimbursement.

Reimbursement for auto mileage will be capped at the cost of corresponding coach airfare for the same trip when it would be less expensive to fly than drive.

- c. **Car Rental**. Rental car costs and fees are authorized for reimbursement only when absolutely necessary and when other transportation is not feasible or car rental is more economical. Cars are to be reserved at a rate that does not exceed the standard-size car rate.
- d. **Parking and Shuttles**. Reasonable parking costs will be reimbursed. Long-term parking or shuttle service to and from the airport may be claimed as a miscellaneous expense for reimbursement.
- e. **Public Transit**. Actual fares for public transit will be reimbursed.

#### 5. LODGING

Lodging costs are only reimbursable when Commissioners travel for authorized purposes.

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Lodging expenses at the single-room rate will be reimbursed or paid for when travel on District business reasonably requires an overnight stay. If such lodging is in connection with a conference, training or other educational activity, lodging expenses must not exceed the group rate published by the conference sponsor or training provider for the event in question.

## 6. MEALS & INCIDENTAL EXPENSES

Meals and incidental expenses are reimbursable whenever Commissioners travel for authorized purposes, and as otherwise set forth below:

- a. **Business Meetings.** Actual and reasonable costs of business meals and gratuities are allowed when representing the District, regardless of geographic location. These are capped at GSA per diem rates.
- b. **Conference, Seminar or Training.** When Commissioners attend conferences, seminars and trainings for the District, reimbursements will be provided, upon submission of receipts, for the actual cost of meals, capped by the maximum established GSA for all meals, based on the locations of the events.
- c. **Alcohol.** The District will not pay for alcohol or hotel-room personal bar/honor bar expenses.

## 7. REGISTRATION FEES

Registration fees for conferences or meetings will be reimbursed at actual cost.

## 8. TELEPHONE/FAX/INTERNET

Commissioners will be reimbursed for actual telephone, fax, or Internet connection expenses incurred for District business.

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## 9. REPORTS TO THE COMMISSION

When a Commissioner attends a conference, training, seminar or other event for which he or she seeks reimbursement from the District, the Commissioner must submit a brief oral or written report at the next regular Commission meeting. If multiple members attended, a joint report may be made.

## 10. COMPLIANCE WITH LAWS

Commissioners should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All District expense reports and accompanying documentation are public records subject to disclosure under the Public Records Act and other applicable laws.

## 11. VIOLATION OF POLICY

Misuse of public resources or falsifying expense reports in violation of District Policy may result in any or all of the following:

- a. Loss of reimbursement privileges;
- b. Restitution to the District;
- c. The District reporting the expenses as income to State and Federal tax authorities;
- d. Civil Penalties of up to \$1,000 per day and three-times the value of the resources used;
- e. Prosecution for misuse of public resources; and
- f. Censure by the Board or such other measure as may be determined by the Board.



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## 12. IMPLEMENTING PROCEDURES

The District and its Commissioners must follow the procedures adopted to implement this Policy. These procedures may be revised by the General Manager in compliance with all laws and in furtherance of this Policy.

## 13. EXPENSE REPORT FORM SUBMISSIONS

- a. All expense reimbursement requests must be submitted on an Expense Report Form approved by the General Manager. Completed Expense Report Forms must document that the expense in question met the requirements of the Policy.
- b. Expense Report Forms must be submitted within thirty (30) calendar days of an expense being incurred, and must include the following attachments:
  1. Original receipts showing the claimed expenses (e.g., restaurant receipts as opposed to credit card receipts or statements);
  2. Name of the Commissioner, as well as a description of the purpose of the meeting;
  3. A copy of the Program or Agenda of the event(s) attended, when relevant;
  4. When original receipts are required under these procedures, but have been lost, a duplicate receipt if available;
  5. If neither an original nor duplicate receipt is available, or if a receipt is not available for a small expenditure (e.g., parking meters), a detailed explanation of the expenditure and explanation of which receipts are not available;
  6. Telephone bills identifying calls made on District business, when relevant; and

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7. Actual Odometer readings or Google (or similar) map displaying mileage by most direct route.
  - c. Expense Report Forms will be reviewed by the Treasurer and will be approved by the Harbor Commission pursuant to the normal process for approving bills and claims.

#### **14. AUDITS OF EXPENSE REPORTS**

All evidence of expenses and related documentation are subject to verification that they comply with this Policy.





## Staff Report

**TO:** Board of Harbor Commissioners

**FROM:** Steve McGrath, General Manager  
Glen Lazof, Administrative Services Consultant

**DATE:** June 7, 2017

**SUBJECT:** District Provided Commissioner Devices (Phones/Tablets/Other)

**Recommendation:**

Staff recommends that this Commission consider providing Commissioners with cell phones and tablets after the development and adoption of policies related to use of such devices.

**Policy Implications:**

Government Code Section 8314 prohibits a public official from using public resources, including computers, telephones, or other equipment, for personal purposes. District Ordinance 2.15.040 states that "officers or employees of the District shall not use District property for their own personal benefit or for any purpose but a public one or for District business. In addition to other sanctions that may be imposed, whether civil or criminal in nature, the District may demand for, and such officer or employee shall make, full restitution of the fair rental value of District property so used in any matter other than as provided for herein together, with all damages that may have arisen from any misuse."

**Fiscal Implications/Budget Status:**

Will be provided along with any recommended Policy, including in the unlikely event that a budget revision is required. Provision of electronic devices is unlikely to have significant budget impact, but if needed adjustments can be recommended during the fiscal year.

**Alternatives:**

The following were considered and are not recommended:

Not issuing any electronic devices to Commissioners.

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Providing Commissioners with an allowance or reimbursement to purchase devices. This would be considered compensation and not allowed under the Harbors and Navigation Code. Additionally, ownership of the device needs to be clearly with the District, and the device used only for District purposes.

**Background/Overview:**

Currently, the District provides District-owned cell phones to the following employees: General Manager, Director of Operations, Assistant Harbormasters, another half dozen Deputy Harbormasters, and also a phone will soon be issued to the Director of Administrative Services. The District also provides laptop computers to the General Manager, Director of Operations, and others on as needed basis, including one to be requested shortly by the Director of Administrative Services. Of course, all District employees use District computers and telephones while at work.

In 2005, the District adopted Policy 6.2.4, setting the rules for use of District-owned electronic devices by staff. Staff is planning to update this Policy to reflect technological changes over the last decade. Commissioners have expressed interest in the efficiency, environmental impacts, and convenience of District tablets, as well as other District-provided devices. Additional updates may be necessary if the District decides to provide Commissioners with electronic devices. Many agencies provide elected officials with a variety of electronic devices, all subject to usage restrictions to ensure that public resources are properly used. The District's updated Policy will include provisions including:

- i. Equipment will be District supplied and owned.
- ii. District purchases device insurance, if available.
- iii. Recipients responsible for uninsured loss or damage, other than normal wear and tear.
- iv. Applications will be installed as available to enable regular back up of data, including texts, to District server.
- v. Device to be supported by District IT only.
- vii. Use is limited to the conduct of District business.
- viii. Limited expectation of privacy over contents of public-owned device.

Staff suggest that this Commission determine the goal it wishes to accomplish in providing District devices to Commissioners.

Staff seeks Commission direction on the following alternatives to be included (or not) in the proposed updated Policy. Staff suggests votes on the following three issues:

**1) Issuance of District Cell Phones**

The Commission should determine if District Cell Phones should be issued to Commissioners. Providing cell phones to Commissioners simplifies the separation of District and personal business in voice or text communications. However, carrying two cell phones can be awkward. Should a Commissioner be issued a District cell phone, staff will use only that phone for phone communications with the Commissioner.

Commission to consider and direct staff on:

- a) Whether limits should be placed on the cost or type of cell phone;
- b) Frequency of replacement or upgrade.

## **2) Issuance of District Tablets**

The Commission should determine if District tablets should be issued to Commissioners. Providing tablets to Commissioners will simplify the eventual move towards electronic board packages, and facilitate transmission of information to and from Commissioners.

Commission to consider and direct staff on:

- a) Whether limits should be placed on the cost or type of tablet;
- b) Whether tablets are to be enabled with data plan or wifi-only;
- c) What additional equipment is to be supplied with the tablet: case, mouse, keyboard;
- d) Whether issuance of tablets is a precursor to implementation of electronic only distribution of Board packets;
- e) Frequency of replacement or upgrade.

## **3) Issuance of District Laptops or Personal Computers**

The Commission should determine if Personal Computers (Desktops) or Laptops should be issued to Commissioners. If the District provides tablets to Commissioners, providing a personal computer as well may be redundant.

Commission to consider and direct staff on:

- a) Whether limits should be placed on the cost or type of laptop or personal computer;
- b) Whether laptop or desktop computer is instead of or in addition to a tablet.

This Commission could also decide to address only one or more of the above now, and defer action on any one or more of the above until a later date.

### **Summary/Recommendation:**

Staff recommends that this Commission direct staff to develop policies appropriate to the issuance of District owned tablets to Commissioners, as a precursor to implementing paperless Board packages. Additionally, this policy could easily extend to cell phones. Should this Commission consider issuing personal computers as well, the policy will take extra work to appropriately define the type of computer provided, as there is a far greater range in computers than in, for example, cell phones.

