

ORDINANCE O-4635

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SICK LEAVE AND AMENDING KIRKLAND MUNICIPAL CODE SECTION 3.80.100.

WHEREAS, the Minimum Wage and Paid Sick Leave Initiative 1433 (codified as RCW 9.46.210) passed on November 8, 2016, which requires that paid sick leave be provided to all employees in Washington State at the rate of one hour for every 40 worked starting on January 1, 2018; and

1 WHEREAS, under KMC Section 3.80.100, the City of Kirkland
2 currently provides sick leave to full time, part time and temporary
3 employees ("Benefitted employees") at a rate of two hours for every 40
4 worked, which greater benefit is allowed under RCW 9.46.210; and
5

6 WHEREAS, KMC 3.80.100 will still need to be amended to include
7 seasonal, intern and variable hour City employees ("Contingent") but
8 only at the lower rate of accrual required by RCW 9.46.210; and
9

10 WHEREAS, any greater benefits that any of these employees
11 receive under specific bargaining agreements can also continue to be
12 provided so long as there is not conflict with the requirements of RCW
13 9.46.210.
14

15 NOW, THEREFORE, the City Council of the City of Kirkland do
16 ordain as follows:
17

18 Section 1. Kirkland Municipal Code Section 3.80.100 is amended
19 to read as follows:
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21 3.80.100 Sick leave.

22 (a) Accumulation. Regular full-time employees may be granted sick
23 leave with pay for illness or injury. Sick leave shall be accrued at a rate
24 of eight hours for each calendar month of the employee's service, ~~but~~
25 ~~not to exceed a maximum~~ with an annual carry over of up to nine
26 hundred sixty hours. Regular part time employees and temporary
27 employees that will or have exceeded one thousand and forty hours
28 within six months of hire shall accrue sick leave at a rate proportionate
29 to the number of hours worked per month. ~~This section does not apply~~
30 to employees hired under LEOFF (1). 1) Regular part time employees
31 that do not exceed one thousand forty hours within 6 months of hire,
32 2) regular part time employees that do exceed one thousand forty hours
33 within 6 months of hire but their rate of rate of sick leave accrual is less
34 than one hour for every 40 hours worked, 3) seasonal employees, 4)
35 temporary employees and 5) on-call employees shall accrue at least one
36 hour of sick leave for every 40 hours worked.

37 (b) Eligibility. Sick leave shall be available to regular employees;
 38 ~~except LEOFF (1) employees,~~ after they have worked for a minimum of
 39 thirty consecutive calendar days after the most recent date of hire
 40 unless there was a separation from employment and the employee was
 41 rehired within twelve months of separation, whether at the same or a
 42 different business location, in which event, previously accrued and
 43 unused paid sick leave shall be reinstated and the previous period of
 44 employment shall be counted for purposes of determining the
 45 employee's eligibility to use paid sick. Sick leave shall be available to all
 46 other employees on the ninetieth calendar day after the commencement
 47 of his or her employment unless there was a separation from
 48 employment and the employee was rehired within twelve months of
 49 separation, whether at the same or a different business location, in
 50 which event, previously accrued and unused paid sick leave shall be
 51 reinstated and the previous period of employment shall be counted for
 52 purposes of determining the employee's eligibility to use paid sick. Sick
 53 leave shall be granted for the following reasons:

54 ~~(1) — Personal illness or physical incapacity.~~

55 ~~(2) — Serious illness in the immediate family or members of~~
 56 ~~employee's household, the care of a child with a health condition that~~
 57 ~~requires treatment or a spouse, parent, parent-in-law, or grandparent~~
 58 ~~with a serious health condition or an emergency condition.~~

59 (1) The employee's mental or physical illness, injury, or health
 60 condition; to accommodate the employee's need for medical diagnosis,
 61 care, or treatment of a mental or physical illness, injury, or health
 62 condition; or an employee's need for preventive medical care;

63 (2) To allow the employee to provide care for a family member with
 64 a mental or physical illness, injury, or health condition; care of a family
 65 member who needs medical diagnosis, care, or treatment of a mental
 66 or physical illness, injury, or health condition; or care for a family
 67 member who needs preventive medical care. In addition to immediate
 68 family and members of the employee's household as defined in this
 69 Chapter, for purposes of this Section, family member also includes:

70 (a) an adopted or foster child, stepchild, or a child to whom the
 71 employee stands in loco parentis, is a

72 legal guardian, or is a de facto parent, regardless of age or dependency
 73 status,

74 (b) an adoptive, de facto, or foster parent, stepparent, or legal
 75 guardian of an employee or the employee's spouse or registered
 76 domestic partner, or a person who stood in loco parentis when the
 77 employee was a minor child,

78 (c) a grandchild, and

79 (d) a sibling.

80 ~~(3) Medical or dental appointments.~~

81 (3) If the employee's place of business has been closed by order of
82 a public official for any health-related reason, or when an employee's
83 child's school or place of care has been closed for such a reason; and

84 (4) For absences that qualify for leave under the domestic violence
85 leave act, chapter 49.76 RCW.

86 The employee must notify his or her supervisor if he or she intends to
87 use vacation leave instead for ~~this purpose~~ any of the foregoing reasons.

88 ~~(4-5)~~ Sick leave may be granted for one day in order to attend the
89 funeral of a family member or other person not a member of the
90 employee's immediate family, with the approval of the department
91 director.

92 ~~(c) Notification. An employee on sick leave shall notify his or her~~
93 ~~immediate supervisor of the fact. Failure to do so within one hour after~~
94 ~~the commencement of the normal work shift may be cause for denial of~~
95 ~~sick leave with pay for the period of such absence.~~

96 (1) If the need for sick leave is foreseeable, including an absence
97 qualified for leave under the domestic violence leave act, the employee
98 must provide notice at least ten days, or as early as practicable, in
99 advance of the use of sick leave.

100 (2) Unless the absence is qualified for leave under the domestic
101 violence leave act, if the need for paid sick leave is unforeseeable, the
102 employee must provide notice to the employer as soon as possible
103 before the required start of their shift, unless it is not practicable to do
104 so. In the event it is impracticable for an employee to provide notice to
105 their employer, a person on the employee's behalf may provide notice
106 to the employer.

107 (3) If the absence is qualified for leave under the domestic violence
108 leave act and it is unforeseeable and the employee is unable to give
109 advance notice to the employer because of an emergency or unforeseen
110 circumstances due to domestic violence, sexual assault, or stalking, the
111 employee or his or her designee must give oral or written notice to the
112 employer no later than the end of the first day that the employee takes
113 such leave.

114 ~~(d) Doctor's Certificate, Health Care Provider Verification.~~ After three
115 days and/or at the discretion of the department director, ~~certification of~~
116 ~~illness by a doctor~~ verification the leave was taken for the allowed

117 purposes under this section may be required for approval of sick leave
118 with pay. Certification-Verification establishing the date on which an
119 employee was able to return to work, may also be required. Except for
120 absences that qualify for leave under the domestic violence leave act,
121 the verification must be provided no later than ten calendar days
122 following the first day upon which the employee uses paid sick leave.
123 For absences that qualify for leave under the domestic violence leave
124 act, verification must be provided in conformity with WAC 296-135-070.

125 If the employee believes this verification requirement results in an
126 unreasonable burden or expense, the employee may provide an oral or
127 written explanation which must assert the employee's use of paid sick
128 leave was for an authorized purpose under this section and how the
129 employer's verification requirement creates an unreasonable burden or
130 expense.

131 If after the employer considers the employee's explanation, the
132 employer and employee disagree that the employer's verification
133 requirement results in an unreasonable burden or expense on the
134 employee the employer and employee may consult with the Department
135 of Labor and Industries regarding the verification requirement and The
136 employee may file a complaint with the department.

137 If after consideration the employer agrees the verification requirement
138 creates an unreasonable burden or expense, within ten calendar days
139 the employer will provide alternatives to the employee to meet the
140 verification requirement without creating an unreasonable burden or
141 expense on the employee which could include, but is not limited to,
142 accepting the explanation as meeting the verification requirement or
143 mitigating the employee's out-of-pocket expenses associated with
144 obtaining the verification.

145 (e) Measurement and Deduction. Accumulated sick leave will be
146 measured from the effective date of Ordinance 2470. Sick leave taken
147 will be first deducted from the most recently accumulated sick leave.

148 (f) Unused Sick Leave Policy. ~~Unused sick leave may be~~
149 ~~accumulated from year to year to a maximum of nine hundred sixty~~
150 ~~hours but may not be taken or used for any reason other than illness,~~
151 ~~injury or maternity leave.~~The city shall not compensate any employee
152 upon termination or at any other time for unused accrued sick leave by
153 payment of money or compensating time off, except as provided in this
154 section for employees who are members of PERS 1

155 (1) Upon retirement, any city of Kirkland employee who is then an active
156 member of PERS 1 and whose employment qualifying for membership
157 in PERS 1 commenced prior to October 1, 1977, and whose annual

158 average of the greatest compensation earnable during any consecutive
159 two-year period of service for which PERS 1 service credit is allowed
160 occurred while an employee of Kirkland may have included, as
161 compensation earnable in said calculation, pay for unused sick leave
162 accumulated during said two years on the basis of one day's pay for
163 each two days of accrued unused sick leave a maximum of twelve days,
164 but only if such retiring employee has given two weeks' notice of
165 retirement. Notwithstanding other provisions of this code and for
166 purposes of this subparagraph only, an employee who maintains a
167 balance of at least twenty-four days of sick leave throughout the said
168 two years shall be treated as having accrued twelve days sick leave per
169 each of the said two years.

170
171 (g) Disability. In the event an employee shall be entitled to benefits
172 or payments under any program of disability insurance furnished by the
173 city, workers' compensation or similar legislation of the state or other
174 governmental unit, the city shall pay to the employee only the difference
175 between the benefits and payments received under such insurance or
176 act by such employee and the regular rate of compensation that he/she
177 would have received from the city if able to work. In such event, the
178 number of hours deducted from the employee's total accrued sick leave
179 shall be the hourly equivalent of the city's payment. The foregoing
180 payment or contribution by the city shall be limited to the period of time
181 that such employee has accumulated sick leave credits as specified in
182 this chapter. Any time the employee receives a disability award, such as
183 from workers' compensation, the employee must notify the immediate
184 supervisor or the personnel officer within five days of receipt.

185 (h) Payment. Sick leave will be paid on the pay day following the
186 pay period in which the sick leave was used unless verification under
187 this section is required. If verification is required, the sick leave will be
188 paid on the pay day following the pay period during which verification
189 is provided to the employer.

190 (i) Policies regarding the use of paid sick leave in regards to
191 discipline of an employee must be compliant with RCW 49.46.210.


192 (j) The City may not discriminate or retaliate against an employee
193 for his or her exercise of any rights under RCW 49.46.210 including the
194 use of paid sick leave.

195 Section 2. If any provision of this ordinance or its application to
196 any person or circumstance is held invalid, the remainder of the
197 ordinance or the application of the provision to other persons or
198 circumstances is not affected.

199 Section 3. This ordinance shall be in force and effect five days
200 from and after its passage by the Kirkland City Council and publication,
201 as required by law.

202
203 Passed by majority vote of the Kirkland City Council in open
204 meeting this 2nd day of January, 2018.

205
206 Signed in authentication thereof this 2nd day of January, 2018.


Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:

Publication Date: January 8, 2018


Kevin Raymond, City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4635

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SICK LEAVE
AND AMENDING KIRKLAND MUNICIPAL CODE SECTION 3.80.100.

SECTION 1. Amends Kirkland Municipal Code Section
3.80.100 related to sick leave.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by
summary, which summary is approved by the City Council pursuant to
Section 1.08.017 Kirkland Municipal Code and establishes the effective
date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to
any person upon request made to the City Clerk for the City of Kirkland.
The Ordinance was passed by the Kirkland City Council at its meeting
on the 2nd day of January, 2018.

I certify that the foregoing is a summary of Ordinance O-4635
approved by the Kirkland City Council for summary publication.


Kathi Anderson, City Clerk