

ORDINANCE 3120

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE PERSONNEL ORDINANCE.

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. Subsection 3.80.020(c) of the Kirkland Municipal Code is hereby amended to read as follows:

(c) Sexual Harassment. The City will not ~~condone any~~ tolerate ~~form of~~ sexual harassment of any employee. ~~["Sexual harassment" is defined as deliberate or repeat-behavior of a sexual nature which is unwelcome by male or female. It can include verbal behavior such as unwanted sexual comments, suggestions, jokes or pressure for sex favors; nonverbal behavior such as suggestive looks or leering; and physical behavior such as pats, squeezes or repeatedly brushing against someone's body.]~~ Sexual harassment is illegal and is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of reasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Section 2. Subsection 3.80.040(a) of the Kirkland Municipal Code is hereby amended to read as follows:

3.80.040 Policies and Procedures. (a)
~~[Nepotism policy]~~ Hiring Immediate Family Members. ~~[Favoritism in any personnel action, hire, recruitment or promotion, shall not be shown to relatives of past or present employees.]~~
Hiring or maintaining employment status of immediate family members of present employees is prohibited if: (1) one member would have the authority or practical power to supervise, hire, remove or discipline the other; (2) one member would be responsible for financially auditing the work of the other; (3) one member would handle confidential material which may create the appearance of improper or inappropriate access to that material by the other; unless such action is in the best interest of the City as determined by the manager.

Section 3. Subsection 3.80.040(h) is hereby amended to read as follows:

(h) Resignation. An employee shall give at least two weeks written notice of his or her effective resignation date. The time limit of the resignation may be waived at the discretion of the department head concerned. Termination vacation pay shall be forfeited if written notice is not given nor waived. Unauthorized absence from work for a period of three consecutive days will be presumed as voluntary resignation not in good standing.

Section 4. Subsection 3.80.040 (i) of the Kirkland Municipal Code is hereby amended to read as follows:

(i) Retirement. All regular full-time and regular [~~permanent~~] part-time employees [~~working in excess of eighty hours per month~~] must belong to either the Public Employees Retirement System (PERS) or the Law Enforcement Officers and Firefighters (LEOFF) Retirement System or any other systems which may take their place so long as they qualify for membership under the applicable state statutes.

Section 5. There is hereby added to the Kirkland Municipal Code new subsections 3.80.040(k), 3.80.040(l), and 3.80.040(m) to read as follows:

(k) Sexual Harassment. It is the policy of the City to seek to eliminate and/or prevent sexual harassment in general, as well as to alleviate any effects sexual harassment may have had on the working conditions of an employee. In response to formal reports of sexual harassment, the City will seek to protect all parties involved from retaliation, false accusations, or future harassment, and where indicated, will take reasonably prompt and adequate remedial measures.

(l) Reporting Sexual Harassment. Any employee who feels he/she is being sexually harassed or is aware of sexual harassment of another employee is strongly encouraged to report this to his/her immediate supervisor, department head, Personnel Director, or to contact the Employee Assistance Program

counselor. The reporting may be informal or formal. Formal reporting includes submitting a written statement or using the grievance procedure.

(2) Response to Reports of Sexual Harassment. Written reports concerning sexual harassment will be forwarded to the Personnel Director unless there is an allegation against that person or the personnel assistant or the Director of Administration and Finance, and if so, then written reports will be forwarded to the City Manager; but if he or she is unavailable, then to the City Attorney. This procedure will apply to written statements received from reporting employees or written records made by higher managerial or supervisory employees, including department heads and division supervisors. Whenever higher managerial or supervisory City employees become aware of allegations of sexual harassment, they will make a written record of the allegations and will forward it as described above.

The Personnel Manager, the City Manager or the City Attorney will begin an investigation if necessary. No other investigation shall be started during the time in which the formal grievance procedure is being utilized. The first pre-investigation step shall be to inquire of all persons reporting as to whether the record now includes all allegations of sexual harassment. Should the allegations, if true, not describe sexual harassment as defined in KMC 3.80.020, then no investigation shall be conducted and all records shall be gathered together and sealed. All other reports of sexual harassment will be investigated within a reasonably prompt time after the report is received.

The investigation will be directed at ascertaining the facts concerning the allegations. It is appropriate to compare the treatment of others with that of the employee allegedly affected and to see whether others have also been treated the same way. If, in the course of investigation, evidence of sexual harassment involving other employees is found, the City shall initiate a separate investigation.

The investigator shall cause the person reported to have sexually harassed an employee to be advised of the allegations and to afford such person an opportunity to reply in writing. The employee shall also be advised that any retaliation will be subject to disciplinary action regardless of the outcome of the investigation of allegations of sexual harassment.

The results of the investigation shall be reduced to writing and a finding shall be made that there is or is not reasonable cause for disciplinary action. Nothing in this section shall limit the authority of the City to modify policies or practices to correct any appearance of sexual harassment without finding reasonable cause for disciplinary action or taking any disciplinary action. The report will also include any recommendations for promotion or other personnel actions for the employee alleged to have been affected by sexual harassment.

A report which finds reasonable cause for disciplinary action will be reflected in the personnel file of any employee subject to discipline. The employee may have placed in his/her personnel file a statement of rebuttal or correction. For the purpose of this section, a former employee may present such statement within two years after the last day of City employment.

(3) Sealing of Records Relating to Sexual Harassment. Records relating to sexual harassment include written reports regarding alleged sexual harassment, memos between City employees concerning investigation of such allegations and City recommendations in response to allegations. Records relating to sexual harassment will be retained by the City for a minimum of six (6) years. All such records will be retained in one sealed personnel file. There will be a cross reference to the sealed file, without details thereof, in the personnel file of the reporting employee, allegedly affected employee and the employee who was reported to have sexually harassed another. Once the material in the sealed file is determined to have no reasonable bearing on job performance or

on the efficient and effective management of the City, it may be destroyed, together with any cross references to the sealed file.

No information from the sealed file nor any indication of the cross reference to the sealed file will be disclosed to persons who do not have confidential access to the personnel affairs of the City, provided that there are two exceptions which permit some disclosure. First, an employee who reported sexual harassment and/or an employee who was allegedly affected by sexual harassment may request that the City provide information to another regarding the investigation of sexual harassment. On a case-by-case basis, the City, as a matter of its own discretion, may agree to release specified information. Secondly, whenever the City would provide general information to persons who are not officers or employees of the City regarding an employee or former employee from the City's personnel file and the employee's personnel file reflects a finding of reasonable cause for disciplinary action, then the City will also send information regarding the investigation of sexual harassment; except that no readily identifiable reference to other parties involved would be included, and any statement which the employee had requested be held in his/her file will accompany the disclosure. Information about the finding of reasonable cause for disciplinary action would not be given in response to a request for verification of dates employed.

(l) Drug Testing. Upon a finding by an employee's supervisor of reasonable suspicion that the employee's ability to properly perform the job has been lessened by the use of intoxicating liquor and/or drugs, the employee may be required to submit to alcohol or drug testing. In addition, an employee may be required to submit to alcohol or drug testing if the employee is injured or injures another employee during work hours or is involved in a work-related accident and the City reasonably suspects that the employee's actions or failure to act contributed to the injury or accident.

(m) Handicaps. If a handicap causes the employee to be incapable of properly performing

the work of his/her present position, the City will explore ways to accomodate the employee's handicap if it is possible to do so without jeopardizing the efficiency of the work unit or placing an unfair burden on other employees. Alternatively, the employee may apply for voluntary demotion or transfer.

Section 6. Subsection 3.80.050(b) of the Kirkland Municipal Code is hereby amended to read as follows:

(b) Just Cause. Continued employment with the City shall be contingent upon availability of funds, fitness of the employee to perform the duties required of the position and upon satisfactory performance of these duties. Employees of the City may be subject to disciplinary action or termination for the following reasons and/or any other just cause:

(1) Incompetency, inefficiency, inattention to or dereliction of duty;

(2) Mental or physical unfitness to perform the duties of the position held by the employee;

(3) Misuse or abuse of public property, any misuse of public funds or falsifying reports or records;

(4) Dishonest or prejudicial conduct, insubordination, or discourteous treatment of the public or fellow employees, personal conduct at work which is dangerous to others, interfering with or disrupting the work of other employees;

(5) Intoxication during work hours or being under the influence of intoxicating liquor and/or any drug during work hours or the use of intoxicating liquor, narcotics, controlled substances or any other drug when the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing his/her function and duties;

(6) Violation of a City Ordinance or the rules, regulations or orders issued by the employee's immediate supervisor, department head, personnel office or city manager, fighting or destructive acts during work hours, theft,

conviction of a felony or misdemeanor which could adversely impact the employee's ability to perform the duties of his/her position;

(7) Absence without the supervisor's approval, unsatisfactory attendance record, abuse of leave benefits;

(8) Use of the employee's position for his/her personal profit, gain or advancement other than the rightful compensation and benefits duly authorized;

(9) Sexual harassment.

(10) Refusal to cooperate with testing for intoxicating liquor or drugs as provided for in this chapter;

Section 7. Subsection 3.80.100(b) of the Kirkland Municipal Code is hereby amended to read as follows:

3.80:100-Sick-Leave. (b) Eligibility. Sick leave shall be available to regular employees, except LEOFF I employees, after they have worked for a minimum of thirty consecutive calendar days after the most recent date of hire. Sick leave shall be granted for the following reasons:

(1) Personal illness or physical incapacity resulting from causes beyond the employee's control;

(2) Serious illness or death in the immediate family or members of the employee's household. Leave shall not exceed three days. In cases where travel distance is excessive, two additional days may be granted by the respective department head or city manager;

(3) Medical or dental appointments;

(4) Sick leave may be granted for one day in order to attend the funeral of a family member of other persons with the approval of the department head [?];

(5) So long as the employee has accrued sick leave, to care for a child of the employee who is under the age of eighteen with a health condition that requires treatment or supervision.

Section 8. There is hereby added to the Kirkland Municipal Code a new subsection 3.80.100(g) to read as follows:

(g) In the event an employee shall be entitled to benefits or payments under any program of disability insurance furnished by the City, Worker's Compensation or similar legislation of the State of Washington or other governmental unit, the City shall pay to the employee only the difference between the benefits and payments received under such insurance or act by such employee and the regular rate of compensation that he/she would have received from the City if able to work. In such event, the number of hours deducted from the employee's total accrued sick leave shall be the hourly equivalent of the City's payment. The foregoing payment or contribution by the City shall be limited to the period of time that such employee has accumulated sick leave credits as herein above specified. Anytime the employee receives a disability award, such as from Worker's Compensation, the employee must notify the immediate supervisor or the personnel officer within five days of receipt.

Section 9. Subsection 3.80.120(b) of the Kirkland Municipal Code is hereby amended as follows:

(b) Jury or Court Duty. [Leave shall be granted to permit an employee to report for jury duty. While on jury duty the employee shall receive full pay from the City less the amount of compensation received by the employee for such jury duty.] A regular employee who is required to serve on a jury or as a result of official City duties is required to appear before a court, legislative committee or quasi-judicial body as a witness in response to a subpoena or other directive, shall be granted paid leave for the time that the employee needs to be released from regular duties, provided that the supervisor is promptly notified of the conflict or if the employee is excused from the appearance such as for an afternoon. The employee shall be entitled to his or her regular pay, provided that the employee shall pay to the City any fee or reimbursement received for such court or jury duty, up to the amount paid as paid leave.

Section 10. There is hereby added to the Kirkland Municipal Code a new subsection 3.80.120(g) to read as follows:

(g) Leave at Partial Pay. The City Manager may grant a regular employee, except a LEOFF I employee, who has successfully completed the probationary period, leave at partial pay not to exceed 45 days for treatment of the employee's alcohol, drug, or mental health problems, provided that the leave does not commence until the employee has exhausted vacation and sick leave. Such treatment program must be recommended by the Employee Assistance Program (EAP) counselor. The employee must agree to the treatment provider, the City, or the EAP Counselor conferring about the employee's progress. The City Manager has the authority to set the percentage of regular pay to be paid, which will normally be 60% and shall not exceed 80%, and to condition the leave on compliance with this chapter. The employee may also be required to follow recommendations of the treatment provider or the EAP counselor for up to one year after the leave begins. For example, the employee could be required to: abstain from alcohol and non-prescription drugs; use prescription drugs only as prescribed by a doctor familiar with the employee's problems and treatment program; and participate in after-care activities. If the employee fails to comply with the treatment program during the period of leave granted, the employee shall be immediately removed from partial pay leave status and must reimburse the City for partial pay unless the City Manager approves a different result based on reports from the treatment program or EAP counselor. If the employee does not meet requirements such as abstinence after returning to work, it is cause for disciplinary action. In addition, the City Manager may require that the employee reimburse the City for partial pay. No vacation or sick leave benefits or other fringe benefits shall accrue during the leave, except that medical insurance coverage will be handled as if the employee were working regularly.

Section 11. There is hereby added to the Kirkland Municipal Code a new section 3.80.150 to read as follows:

3.80.150 Communicable Disease Policy. As an employer, the City of Kirkland is committed to providing a safe workplace for its employees. It is the responsibility of every City of Kirkland employee to provide courteous and fair treatment

to the public and fellow employees without discrimination.

The City will continue to provide current information and further educate employees concerning the transmission of and precautions to prevent the transmission of communicable diseases. The City is committed to establish workplace protocols and procedures to protect against unreasonable risks of exposure to communicable diseases.

No employee, without reasonable cause, shall refuse to serve, to work with, or deny the use of City services to any individual solely because the individual is perceived as being at risk of having the HIV antibody virus (AIDS) or has tested positive for the HIV antibody virus or has a communicable disease.

Refusing to work with another employee perceived to be at risk of having the HIV antibody virus or who had tested positive for the HIV antibody virus will be considered insubordination.

An employee's refusal to deliver City services to an individual who has or is suspected to have a communicable disease will constitute neglect of duty unless the employee can demonstrate that his or her duty would subject him or her to an unreasonable risk of infection.

Employment selection will be in compliance with current policy and procedure. An applicant will not be denied employment due to health status unless it hampers his or her capabilities in performing the required job duties.

No change in the normal working activities of an employee with a life-threatening illness, including but not limited to the HIV antibody virus, will be made so long as he or she is able to meet acceptable performance standards, and medical evidence indicates the activities do not pose a threat to himself or herself, or to others.

Medical information in personnel and medical records and sensitive information provided to management personnel about an employee who is


diagnosed as having a life-threatening illness and/or communicable disease shall be held in strict confidence.

Section 12. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 13. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017 Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 6th day of September, 1988.


Signed in authentication thereof this 6th day of September, 1988.


MAYOR

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

SUMMARY OF ORDINANCE 3120

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE PERSONNEL ORDINANCE.

Section 1. Revises subsection 3.80.020(c) Kirkland Municipal Code, a policy statement about sexual harassment.

Sections 2-5. Revises KMC 3.80.040. Changes are made to policies about hiring family members, resignation and retirement system. New policy statements are incorporated concerning sexual harassment, drug testing and handicaps.

Section 6. Revises KMC 3.80.050(b), a listing of reasons for disciplinary action.

Section 7. Revises KMC 3.80.100(b), use of sick leave to care for child.

Section 8. Adds KMC 3.80.100(g) concerning sick leave.

Section 9. Revises KMC 3.80.120(b) concerning jury or court duty.

Section 10. Adds KMC 3.80.120(g) concerning leave at partial pay.

Section 11. Adds KMC 3.80.150 concerning communicable disease policy.

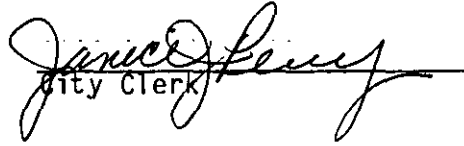
Section 12. Provides for the validity of other provisions of this ordinance should any one part be invalid.

Section 13. Authorizes publication of the Ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.17 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 regular meeting on the 6th day of September 1988.

I certify that the foregoing is a summary of

Ordinance 3120 approved by the Kirkland City Council for summary publication.


City Clerk