

ORDINANCE 3399

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE PERSONNEL ORDINANCE, AMENDING SECTIONS 3.80.020, 3.80.040, 3.80.050, 3.80.060, 3.80.090, 3.80.100, 3.80.110, 3.80.120 AND 3.80.140 OF THE KIRKLAND MUNICIPAL CODE AND ADDING A NEW SECTION THERETO.

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

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

(d) Exclusion. Except as to Sections 3.80.020(c) and 3.80.040 ~~(k)~~ (j) pertaining to sexual harassment and Section 3.80.140 pertaining to gifts and favors, this chapter shall not apply to the following personnel: Mayor, members of the City Council, members of commissions or boards, reserve firefighters, and the City Attorney.

Section 2. Subsections 3.80.040(a), (d), and (g) of the Kirkland Municipal Code are hereby amended to read as follows:

(a) Hiring Immediate Family Members or Members of Employee's Household. Hiring or maintaining employment status of immediate family members of present employees or members of a present employee's household 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; or

(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)~~ handling of confidential material is in the best interest of the city as determined by the City Manager.

(d) Promotion. Vacancies (shall) may be filled, insofar as is consistent with the best interests of the City, from qualified employees holding regular positions within the city. Employees who are promoted shall again hold probationary status as provided in subsection (c) of this section. Those who fail the probationary period may reassume any regular appointment held prior to the promotion if the position is vacant.

~~(g) -- Suspension -- An employee may be suspended without pay by the city manager as specified in Section 3.80.050. -- Authority to suspend may be delegated to the department head as specified in Section 3.80.050(e). -- An employee must be provided with written notice, within a reasonable period of time, as to the reasons for and the duration of the suspension. -- If an investigation proves that the decision for suspension was made in error or misunderstanding, the employee shall be reinstated and shall be reimbursed for salary loss due to suspension.~~

Subsections (h), (i), (j), (k), (l) and (m) of KMC Section 3.80.040 shall be renumbered to be subsections (g), (h), (i), (j), (k) and (l) respectively of Section 3.80.040.

Section 3. Section 3.80.050 of the Kirkland Municipal Code is hereby amended to read as follows:

3.80.050 Disciplinary actions.

(a) Authority of the City Manager. Nothing in this chapter shall be construed in any way as limiting the authority of the City Manager under RCW 35A.13.080 to appoint and remove at any time, with or without cause, all department heads and employees of the city, except members of the city council and its advisory boards, commissions, and those employees covered by the civil service commission. Whenever a disciplinary action or termination becomes necessary, the City Manager

has the power to discipline or terminate, and he/she will normally do so for just cause. Disciplinary action may consist of counseling for which there is a written record, verbal or written warning, written reprimand, suspension with or without pay, demotion, or termination.

(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 any of the following reasons and/or any other reasons constituting or providing 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 a fellow employee, personal conduct at work which is dangerous to others, interfering with or disrupting the work of another employee;

(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 functions and duties;

(6) Violation of a city ordinance or the rules, regulations or orders issued by the employee's immediate supervisor, department head, personnel manager 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, or 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.

(11) Using abusive language, including but not limited to racial slurs, during the performance of City duties or when such abusive language adversely impacts another employee's ability to perform the duties of his/her position.

(c) Disciplinary Actions.

(1) Whenever an employee's performance, attitude, work habits or personal conduct falls below satisfactory levels, action will generally be taken in the following order:

(a) The supervisor will counsel the employee concerning the problem and discuss possible solutions.

(b) If the problem continues after a formal counseling session, the supervisor will issue to the employee discipline which may be as significant as a written reprimand, a copy of which shall be placed in the employee's personnel file.

(c) The employee's department head is authorized to impose discipline up to and including a suspension of two (2) days without pay. The department head shall notify the City Manager if a suspension is imposed.

~~(e)~~ (d) If the employee still does not show improvement, the department head shall bring the matter to the attention of the City Manager with a recommendation concerning disciplinary action.

(2) The severity of the discipline to be imposed in a given situation depends upon the seriousness of the affected employee's conduct. For example, an act of dishonesty, moral turpitude, consumption of alcohol during work hours, or conduct of a parallel magnitude, may result in termination being the initial form of discipline to be imposed against an employee.

~~(d)~~(3) Notification to the Employee. Employees who are subject to disciplinary action shall, within a reasonable period of time, be provided with a full statement, in writing, of the reasons for such action, the nature of the action and the effective date.

~~(e)~~(4) Name-Clearing Hearing. Any terminated employee believing he/she may be entitled to a name-clearing hearing may initiate such a hearing using the procedures set forth in Sections 3.80.060(c)(1) and (2) of this chapter. A nameclearing hearing does not involve a review ~~(of)~~ or appeal of the decision to terminate the employee.

Section 4. Section 3.80.060 of the Kirkland Municipal Code is hereby amended to read as follows:

3.80.060 Grievance procedure.

(a) Definition. A "grievance" means a claim or dispute by an employee with respect to the interpretation, meaning or application of the provisions of this chapter.

(b) Purpose. An employee may resort to grievance procedures hereinafter set forth for any decision or action in violation of the provisions of this chapter which he/she feels may affect his/her employment adversely. To be timely, the grievance must be filed in writing by the employee ~~(to the employer)~~ with the employee's immediate supervisor and the personnel manager within five working days of the occurrence of the incident producing the dispute or grievance. The grievance must be signed by the

employee and must state the issue, the provision(s) of this Chapter violated, the facts giving rise to the grievance and the remedy sought. Employees who are represented by collective bargaining units having written grievance procedures as part of an agreed upon contract are not entitled to file a grievance under this procedure. Unrepresented employees eligible to, and who elect to appeal a decision or action through the civil service appeal process, are not entitled to file a grievance under this procedure.

(c) Procedure. Subsequent to the timely filing of a grievance under subsection (b) hereinabove, the following grievance procedures apply unless other procedures are provided by state law, as in the case of the uniformed services, union contract, or any other which offers a grievance procedure:

(1) ~~(If-an)~~ The employee (feels he-or-she-has-a-justified-complaint-or problem,-he-or-she) must first discuss ~~(this-problem)~~ the grievance with his or her immediate supervisor.

(2) ~~If (within-three-working days-after-receiving-an-answer-from such-supervisor,-)~~ the employee believes the supervisor's response fails to (that-his-or-her-problem-has not-been) resolve(d) the grievance to his or her satisfaction, then within five working days after receiving the supervisor's response the employee ~~(and-the-immediate-supervisor)~~ shall submit the grievance to ~~(their)~~ his/her department head ~~(a-written report-outlining-the-complaint-and-the circumstances-surrounding-it-)~~ The department head shall reply in writing to the parties regarding the ~~(complaint)~~ grievance within five working days. ~~(Copies-of-all-written statements-shall-at-this-point-be forwarded-to-the-City-Manager-)~~

(3) If the employee feels that his or her complaint is not fairly resolved by the department head, he or she may submit, within five working days after receipt of the department head's reply, a written ~~(complaint)~~

grievance to the City Manager.

(4) The City Manager shall review the grievance materials and issue a final determination; provided however, if the City Manager determines the grievance materials are insufficient to enable him/her to make a final determination or that further investigation and review is warranted, he may first confer with the parties or any one of them, direct the parties to provide additional information, authorize further investigation, and/or conduct a grievance meeting. Alternatively, (~~If the grievance continues to exist,~~) the City Manager may, in his or her discretion, agree to arbitration by an outside third party or any other available method for resolving the employee's grievance. No punitive action shall be carried out against the employee for utilizing the grievance procedures contained herein.

Section 5. Subsections 3.80.090 (a), (b) and (d) of the Kirkland Municipal Code are hereby amended to read as follows:

(a) Approval. Upon satisfactory completion of six month's continuance service, an employee shall be eligible for paid vacation. All requests for vacation leave must be scheduled and approved at least five days prior to the requested vacation time, unless an exception is granted by the department head. Vacation leave shall be granted by the department head only in the best interests of the city. Department heads (~~must receive prior approval~~) requesting vacation leave must receive approval from the City Manager prior to using such leave.

(c) Accumulation. (~~Vacation leave shall not be accumulated from year to year.~~) Failure by an employee to make use of earned vacation leave within the calendar year following the year of its accrual shall constitute a waiver and loss of such leave and shall not form the basis of any severance pay or additional compensation. Vacation leave shall not accrue

for service time during a fraction of a month. The City Manager may authorize additional accrual on a case-by-case basis, but in no case shall an employee's accumulated leave balance exceed two hundred forty hours.

(d) Payment in Lieu of Vacation Leave. There shall be no pay in lieu of unused vacation leave, except in cases of separation from city employment. An employee with more than one year of employment who terminates for any reasons other than discharge for cause or resignation without two weeks' notice shall receive pay for any vacation time earned but not taken, up to the date of separation but not to exceed a maximum of two hundred forty hours accumulated vacation leave.

Section 6. Subsection 3.80.100(b) of the Kirkland Municipal Code is hereby amended to read as follows:

(b) Eligibility. Sick leave shall be available to regular employees, except LEOFF (1) 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 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) Death in the immediate family or members of employee's household. Leave shall not exceed three days. In cases where travel distance is extensive, up to two additional days may be granted by the employee's department head.

(+3+) (4) Medical or dental appointments;

(+4+) (5) Sick leave may be

granted for one day in order to attend the funeral of a family member or other person(s) not a member of the employee's immediate family, with the approval of the department head;

(+5+) (6) 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 7. Subsections 3.80.110(a) and (b) of the Kirkland Municipal Code are hereby amended to read as follows:

3.80.110 Holidays.

(a) Holiday Schedule. Regular full-time employees are granted the following holidays, and other such days as the city council may fix, without reduction in pay:

| Holiday | Date to be Observed |
|--|--|
| (1) New Year's Day | January 1 |
| (2) M.L. King Jr. birthday | 3rd Monday in January |
| (3) President's Day | 3rd Monday in February |
| (4) Memorial Day | Last Monday in May |
| (5) Independence Day | July 4 |
| (6) Labor Day | 1st Monday in September |
| (7) Veteran's Day | November 11 |
| (8) Thanksgiving Day | 4th Thursday in November |
| (9) Day after Thanksgiving | 4th Friday in November |
| (10) Half day Christmas Eve & half day New Year's Eve | (December-24) <u>Last regular work day before Christmas Day</u> <u>(December-31) Last regular work day before New Year's Day</u> |
| (11) Christmas Day | December 25 |
| (12) One floating holiday | Employee's choice |

In selecting the floating holiday the employee's choice will be granted provided that prior approval is given by the immediate supervisor and provided the number of employees selecting a particular day off does not prevent a department or office from providing efficient public service. The floating holiday must be taken during the calendar year or entitlement to the day will be forfeited. New employees must be employed a minimum of six consecutive months to

be eligible to take a floating holiday(s).

(b) Holidays Occurring on Weekends. Any regular holiday which falls on a Saturday shall be observed on the preceding Friday and any regular holiday which falls on a Sunday shall be observed on the following Monday. ~~(Half-day-holidays-shall-be-granted-only-on-the-calendar-day-designated-in-Section-3.80.110(a).)~~

Section 8. Subsections 3.80.120(a), (f) and (h) of the Kirkland Municipal Code are hereby amended to read as follows:

(a) Military Leave. In accordance with RCW 38.40.060, any employee who is a member of the Washington National Guard or a federal reserve unit shall be entitled to time off with pay for up to fifteen ~~(calendar)~~ days during each calendar year while participating in officially ordered military duty. A copy of the employee's orders shall be placed in the employee's personnel file.

(f) Federal and State Family and Medical Leave Acts.

Employees shall be granted family and medical leave in accordance with the provisions of the State Family Leave Act, Chapter 49.78 RCW, and the Federal Family and Medical Leave Act of 1993. Family and medical leave granted ~~(under this subsection)~~ under either of said Acts shall be unpaid unless otherwise provided therein.

(h) Bereavement Leave.

Bereavement leave shall be granted to an employee in an amount not to exceed three days per year for death in the employee's immediate family. This paid leave is not cumulative from year to year.

Section 9. Subsection 3.80.140(a) of the Kirkland Municipal Code is hereby amended to read as follows:

3.80.140 Gifts and Favors.

(a) It is the policy of the city

that no officer, official or employee of the City may give or accept gifts or favors of value in his business relationships with firms or persons with whom the city does business, except that the following shall be permitted:

(1) ~~(Certain-business courtesies,--such-as-payment-for-a modest-lunch-or-dinner-to-others-under essentially-the-same-business relationship-with-the-donor-)~~

(~~2~~) Advertising novelties of no appreciable value which are widely distributed to others under essentially the same business relationship with the donor.

Section 10. There is hereby added to the Kirkland Municipal Code a new Section 3.80.115 entitled "Management Leave for Eligible Employees," to read as follows:

3.80.115 Management Leave for Eligible Employees.

(a) The City of Kirkland recognizes that employees who are exempt for purposes of overtime pay often put in hours that extend beyond the standard work week, without additional compensation or compensatory time off, to meet the demands of their position. While incidental extra work time is an expected component of these positions, the City acknowledges that frequently the demands are extraordinary. As an equitable measure, management leave is established to provide paid leave to overtime exempt employees.

(b) "Management leave" shall be defined as time off with pay granted to eligible employees and shall be in addition to earned vacation benefits. Management leave is granted in recognition of extraordinary work time required in overtime exempt positions. Management leave is not intended to be balanced hour for hour with extra time worked.

(c) "Eligible employee" is any regular, salaried professional, administrative or executive employee who is exempt from the Fair Labor Standards Act and for whom the City

has not agreed to pay overtime or provide compensatory time off. Such eligible employees include, and are limited to, Department Heads, Division Managers, Assistant City Manager, Assistant to the City Manager, Parks Department Administrative Assistant and employees in other management positions designated as eligible by the City Manager in writing.

(d) Eligible employees shall be granted annually beginning January 1, 1994 forty (40) hours of management leave at the beginning of each calendar year. Management leave must be used in the year for which it is given. Any employee with management leave hours remaining unused as of November 30th, and who has not by that date received supervisory approval to use such remaining leave during the month of December, shall receive monetary payment in lieu thereof at the employee's regular rate of pay; provided, however, such payment in lieu shall not be included in any calculation of the employee's average final compensation used to determine the employee's pension benefits or payments.

(e) Eligible employees must notify supervisors in advance of the time management leave is to be used and are expected to schedule such absence in a manner which will cause the least impact upon work within their department.

(f) Management leave shall be prorated for eligible employees who work part-time and for eligible employees who start mid-year.

(g) Upon termination or resignation, unused management leave will be paid to an eligible employee on a pro rated basis.

Section 11. 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 12. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Kirkland Municipal Code Section 1.08.017, 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 14th day of December, 1993.

Signed in authentication thereof this 14th day of December, 1993.



MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

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PUBLICATION SUMMARY OF ORDINANCE NO. 3399

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE PERSONNEL ORDINANCE, AND AMENDING SECTIONS 3.80.020, 3.80.040, 3.80.050, 3.80.060, 3.80.090, 3.80.100, 3.80.110, 3.80.120 AND 3.80.140 OF THE KIRKLAND MUNICIPAL CODE AND ADDING A NEW SECTION THERETO.

SECTION 1. Revise KMC subsection 3.80.020(d) relating to exclusions from personnel ordinance.

SECTION 2. Revise KMC subsection 3.80.040(a), (d), and (g) relating to promotions and to restrictions on the hiring of immediately family members of present employees.

SECTION 3. Revise KMC section 3.80.050 relating to disciplinary actions.

SECTION 4. Revise KMC section 3.80.060 relating to the grievance procedure for unrepresented employees.

SECTION 5. Revise KMC subsections 3.80.090(a), (b) and (d) relating to vacation leave.

SECTION 6. Revise KMC subsection 3.80.100(b) relating to use of sick leave.

SECTION 7. Revise KMC subsections 3.80.110(a) and (b) relating to holidays.

SECTION 8. Revise KMC subsections 3.80.120(a), (f), and (h) relating to military leave, family and medical leave, and bereavement leave.

SECTION 9. Revise KMC subsection 3.80.140(a) relating to restrictions on acceptance of gifts or favors.

SECTION 10. Create new KMC section 3.80.115 relating to management leave.


SECTION 11. Provides a severability clause for the ordinance.

SECTION 12. 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 regular meeting on the 14th
day of December _____, 1993.

I certify that the foregoing is a summary of Ordinance
3399 approved by the Kirkland City Council for summary
publication.



City Clerk

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