

City of Kirkland Municipal Code

Chapter 3.80 PERSONNEL

3.80.045 Sexual harassment.

(a) The city will not tolerate sexual harassment of any employee. Sexual harassment is illegal and is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct or communication is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct or communication by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

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.

(b) 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 director, human resources manager, 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 when applicable.

(c) Response to Reports of Sexual Harassment. Written reports concerning sexual harassment will be forwarded to the human resources manager unless there is an allegation against that person or against the finance and administration department, and if so, then written reports will be forwarded to the city manager, but if he or she is unavailable, then to the assistant city manager; provided, however, written reports alleging sexual harassment on the part of the city manager or any elected or appointed city official shall be forwarded 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 directors 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 regardless of whether those involved report the incident.

The human resources manager, the city manager, assistant city manager or the city attorney will begin an investigation if appropriate. The city manager, city attorney, or human resources manager, with the concurrence of the city manager, may engage the services of an independent third party to assist in the investigation. 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 subsection (a) of this section, then no investigation shall be conducted and all records shall be gathered together and sealed to the extent

allowed by law. All other reports of sexual harassment will be investigated within a reasonably prompt time after the report is received and the following procedures will be followed.

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 or include these instances in the ongoing investigation, whichever is appropriate.

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.

The report shall be forwarded to the city manager who shall, if warranted, take appropriate disciplinary or other action pursuant to pertinent city procedures; provided, however, if the report concerns allegations of sexual harassment on the part of the city manager or any elected or appointed city official, then the city attorney shall forward the report to the city council for appropriate disposition.

(d) **Sealing of Records Relating to Sexual Harassment.** Records relating to sexual harassment include, but are not limited to, 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 as long as required by law. 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. Except to the extent required or allowed by law, 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. (Ord. 4491 § 10 (part), 2015; Ord. 3905 § 4, 2003)

3.80.050 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 directors 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. (Ord. 3905 § 5, 2003; Ord. 3442 § 2, 1994; Ord. 3399 § 3, 1993; Ord. 3350 § 4, 1993; Ord. 3120 § 6, 1988; Ord. 2844 § 5, 1984)

3.80.055 Disciplinary actions.

(a) 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, neglect of duty, malfeasance, acts of moral turpitude;
- (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;
- (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, policies, regulations or orders issued by the employee's immediate supervisor, department director, human resources 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;
- (12) Falsifying reports or records.

(c) Disciplinary Actions.

(1) In addition to the city manager's authority described in subsection (a) of this section and Section [3.80.050](#), whenever an employee's performance, attitude, work habits or personal conduct falls below satisfactory levels, the following individuals are authorized to take disciplinary action as indicated below:

(A) The employee's supervisor may impose: counseling for which there is a written record; an oral or written warning; or a written reprimand;

(B) The employee's department director may impose: counseling for which there is a written record; an oral or written warning; a written reprimand; suspension with or without pay, demotion, or termination. Before imposing a suspension without pay for more than two days or terminating an employee, the department director shall consult with the city manager.

(2) The individual taking disciplinary action has the discretion to select the appropriate type of initial or progressive discipline. Factors to be considered in selecting the severity of discipline include the seriousness of the employee's conduct and whether less severe discipline would impact the efficiency of the work unit or place an unfair burden on other employees. 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.

(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.

3.80.140 Limitations on gifts.

(1) No city officer or city employee may accept gifts, other than those specified in subsection (2) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars in accordance with RCW [42.52.150\(1\)](#); provided, that if the fifty dollar limit in RCW [42.52.150\(1\)](#) is amended, this section shall be deemed to reflect the amended amount. For purposes of this section, "single source" means any person, corporation, or entity, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under Section [3.80.030\(16\)](#). The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) The following items are presumed not to influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a city officer or city employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the city officer's or city employee's official duties;

(g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;

(h) Unsolicited gifts from dignitaries from another state or a foreign country which are intended to be personal in nature; and

(i) Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item. (Ord. 4108 § 2, 2007)

3.80.150 Communicable disease policy.

As an employer, the city is committed to providing a safe workplace for its employees. It is the responsibility of every city 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 to the extent allowed by law. (Ord. 3905 § 17, 2003; Ord. 3120 § 11, 1988)