



**CITY OF KIRKLAND**  
Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
www.ci.kirkland.wa.us

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## MEMORANDUM

**To:** David Ramsay, City Manager

**From:** Eric Shields, AICP Planning Director  
Nancy Cox, AICP Development Review Manager

**Date:** January 21, 2010

**Subject:** AUBRY LETTER REGARDING ANONYMOUS COMPLAINTS

### **RECOMMENDATION**

City Council approve the attached response letter to David and Anna Aubry regarding anonymous complaints.

### **BACKGROUND DISCUSSION**

The City Council received a letter from the Aubrys who are concerned about allowing anonymous complaints with regard to suspected code violations. They stated that this might lead to, "...setting up a culture of 'tattling' among neighbors about small infractions." In addition, they state that, "If neighbors with an axe to grind can complain anonymously, there will be no way to reign in their behavior."

There is a difference between "anonymous complaints" and "protecting confidentiality." It is difficult to file a truly anonymous complaint; one in which no name or address is attached. It cannot be submitted electronically, for example, because the possibility of an electronic trail to the person who wrote it always exists. If someone submitted a hardcopy and did not leave their name at the counter, then it might be anonymous. Kirkland's practice has been to not investigate anonymous complaints, except in emergency situations.\*

Protecting confidentiality, however, was the City's past practice in code enforcement. Until recently, complainants were able to indicate on the form that they would like their identity to remain confidential. Staff supports this approach for several reasons: 1) Code Enforcement Officers (CEO's) can confirm details and get more information and do a better job of investigating the complaint; 2) "frivolous" complaints are avoided because the CEO can determine the connection between the complainant and the potential violation; and 3) CEO's can provide the complainant with status reports.

Staff is not protecting confidentiality at this time (since early January 2010) but is still requiring complainant's names and contact information.\* The reason for the change is that the City Attorney's Office has advised that there is no clear exemption in the Public Records Act (PRA) that would authorize withholding a code enforcement complainant's name in response to a public records request. The City Attorney's Office recommended that the City's code enforcement complaint form be revised to indicate that a complainant's name may be released in response to a public records request.

The Aubrys mention Toby Nixon in their letter and his statement at a Council meeting on January 5<sup>th</sup>, 2010 where he expressed support for a bill on the City's legislative agenda that is currently in front of the Senate. Senate Bill 6428 would provide for an exemption for identifying information about complainants from the Public Records Act (RCW 42.56.230). Staff recommends that the Council support the legislation so that the City can return to its past practice of keeping the identity of a complainant confidential when the complainant requests confidentiality.

\* In limited circumstances, staff does investigate anonymous complaints or complaints instigated by staff members. Such complaints are investigated when there are potential life/safety issues or environmental violations such as tree cutting, or wetland/stream/lake degradation.

January 11, 2010

City Council  
City of Kirkland  
123 5<sup>th</sup> Ave  
Kirkland, WA 98033

**RECEIVED**

**JAN 13 2009**

CITY OF KIRKLAND  
CITY MANAGER'S OFFICE

We both attended the first part of the City Council meeting of January 5<sup>th</sup>, and enjoyed the 'changing of the guard' as the new members were sworn in. We look forward to a new day in Kirkland as the Council addresses the many issues before it.

While in attendance, former State Representative Toby Nixon addressed the Council, suggesting, as we understand it, that citizens who file zoning and land-use complaints with the City should be allowed anonymity. Mr. Nixon seemed to say that there were sufficient legal deterrents already in place to discourage false reports from being made. We have serious concerns about the suggestion of allowing complainants to remain anonymous both from a practical and philosophical viewpoint.

False reports are not our concern. Our concern is setting up a culture of 'tattling' among neighbors about small infractions. No one obeys the law strictly – the law provides behavioral boundaries for everyday life. Look at the traffic laws – do we ALL drive at or below the speed limit? In land use issues, the trees that our contractor planted in our parking strip were supposed to be 2" in diameter. They are not. If we allow anyone with an inclination to file a complaint about something like this anonymously, the City would be required to direct us to remove the trees and install trees that meet the requirements, rather than waiting for them to grow. Does any agency really want to be put into such a position?? The City would constantly have to evaluate and render judgment about any issue that any citizen wanted to anonymously raise.

Public knowledge about our civil behavior, otherwise known as peer pressure, is the real enforcer of good behavior in most matters. The law and the associated enforcement agencies exist to catch and punish wrongdoers, not to prevent the behavior in the first place. If neighbors with an axe to grind can complain anonymously, there will be no way to reign in their behavior. There are many behaviors that the law does not address but which, if indulged in, would quickly make society a difficult place to live in. Common courtesy and respectful behavior make all of our lives more pleasant. Allowing anonymous complaints to

government can lead not just to a breakdown of civility, but to an ominous trend in the relationship between citizens and between citizens and government.

We are prepared to listen to arguments for the opposite position and to discuss this further, but at this time we see this as an idea that is not typical of Mr. Nixon's usually well-reasoned approach to issues.

Respectfully,



David L. Aubry



Anna V. Aubry  
341 8<sup>th</sup> St S.  
Kirkland  
827-3811

cc: City Manager

February 2, 2010

**D R A F T**

David and Anna Aubry  
341 8<sup>th</sup> St. S.  
Kirkland, WA 98033

Re: Anonymous complaints

Dear Mr. and Ms. Aubry:

Thank you for your letter to the Kirkland City Council expressing concerns about allowing citizens to file anonymous complaints.

It has been the City's policy not to accept anonymous complaints unless a life/safety hazard or an environmental violation such as tree cutting or wetland/stream/lake degradation is occurring. Due to recent research of the State Public Records Act, the City has changed its practice of ensuring confidentiality to the extent possible when it is requested by someone who has filed a code enforcement complaint. We have determined that the identity of a code enforcement complainant may be subject to the disclosure under the Public Records Act. Compliant forms have been modified to reflect this change.

At the January 5, 2010 City Council meeting, Toby Nixon commented on Senate Bill 6428 which is pending before the state legislature. The Bill would create an exemption to the Public Records Act that would allow a complainant's identity to remain confidential if the complainant requests confidentiality. The City Council supports the proposed Bill as it has been the City's experience that allowing confidential complaints is a helpful tool in assuring that codes are fairly enforced.

Thank you for sharing your concerns with the City Council. Should you have further questions about code enforcement complaints, please contact Nancy Cox, Development Review Manager at (425) 587-3228 or [ncox@ci.kirkland.wa.us](mailto:ncox@ci.kirkland.wa.us)

Sincerely,  
KIRKLAND CITY COUNCIL

by Joan McBride  
Mayor