Memorandum of Understanding

To the Agreement by and between
City of Kirkland and
Kirkland Police Guild Non-Commissioned Staff

May 1st, 2022

This Memorandum of Understanding (MOU) is entered into to document the mutual agreement between the City of Kirkland, Washington, hereinafter referred to as the "Employer," and the Kirkland Police Guild –Non-Commissioned Staff, hereinafter referred to as the "Guild." This MOU is supplemental to the 2022 Collective Bargaining Agreement (CBA).

This MOU specifically deals with changing the language surrounding CBA section 7.5 due to a change in the laws surrounding personnel records retention. The revised law, RCW 40.14.070(4), requires employers to retain an officer's personnel records for the duration of an officer's employment and for a minimum of ten (10) years thereafter. This RCW covers Correctional Officers. The current language of CBA section 7.5 conflicts with RCW 43.101.135(7) as it relates to Correctional Officers.

For Correctional Officers, the following modifications for Article 7.5 apply:

7.5 PERSONNEL FILES

Personnel Files – The City Human Resources Division will retain the permanent personnel file. The Police Department shall maintain only one working personnel file for each employee.

Supervisory notes - This does not preclude a supervisor from maintaining notes regarding an employee's performance for purposes of formulating evaluation and performance appraisal or the department from maintaining separate computerized records relating to training, promotion, assignment, or similar data.

Information related to medical, psychological, background check information and grievance records shall be maintained in separate files.

Employees shall have access to their personnel file with reasonable frequency. Upon request, access shall be provided within a maximum of four (4) working days. Conditions of hiring, termination, change in status, shift, evaluations, commendations and disciplinary actions shall be in writing with a copy to the Employee prior to placement in their personnel file.

Upon receiving a request for all or part of a personnel file from any third party, the affected employee shall be notified of the request, and the information shall not be released for a period of three (3) business days from the time of said notification, except as part of an investigation being conducted by another law enforcement agency, the disclosure of which is necessary for effective law enforcement. Upon service of a court order or subpoena properly recorded and signed by a judge or magistrate demanding immediate release or as otherwise required by law, the employee shall be notified of the request and release will be made as required by law or as above. The City Attorney will advise the department in all matters pertaining to the release of information contained in a personnel file.

Employees shall have the right to provide a written response to any written evaluations or disciplinary actions to be included in the personnel file, which, together with the action, will be retained with the action in the personnel file.

Personnel Records Retention:

By law, personnel records for any peace officer must be retained for the duration of the officer's employment and a minimum of ten (10) years thereafter. Such records include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, other disciplinary appeals and litigation records, and any other records needed to comply with the requirements set forth in RCW 43.101.135.

Unless required by State law or CJTC disciplinary process, records older than five (5) years that are retained in an employee's department personnel file may not be admissible in any proceedings between the Employer and the Guild concerning disciplinary action unless such records indicate a pattern of similar types of behavior, complaints, and/or discipline. If an employee has a pattern of similar types of behavior, complaints, and/or discipline, the records may be available to be used against the employee for an additional two (2) year period. The parties retain the right to introduce evidence regarding prior discipline of other employees for the purpose of establishing the consistency or non-consistency of discipline imposed in a case subject to a disciplinary appeal.

A legislative draft version of CBA section 7.5, showing the changes in strikethrough for deletions and red for additions, is included as Attachment A.

Any dispute and/or conflict as to the meaning, application, and/or interpretation of any portion of this MOU shall be resolved through the grievance – arbitration provisions of the CBA.

Signature in Counterpart and Facsimile Procedures: This MOU may be executed in counterparts and, when signed by all parties, shall be binding upon the parties. Transmission of this MOU by facsimile machine or email showing the original signature of a party shall be considered an original signature and shall be binding upon the signatory party.

This MOU is effective immediately upon signature by all representatives, and the parties acknowledge and agree to the terms and conditions set forth in this MOU as evidenced by the signatures of the applicable parties below:

City of Kirkland	Kirkland Police Guild Non-Commissioned Staff
By: Kurt Triplett Kurt Triplett, City Manager	By: Brian Frankeberger Brian Frankeberger (May 17, 2022 15:18 PDT) Brian Frankeberger, President
Date 5/23/22	Date May 17, 2022

Kevin Raymond
Kevin Raymond (May 9, 2022 15:14 PDT)
APPROVED AS TO FORM
City Attorney

Truc Dever (May 9, 2022 15:27 PDT)
LABOR RELATIONS REVIEW
Human Resources Director

ATTACHMENT A

Legislative Draft of Changes to CBA Section 7.5

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~~Records of disciplinary action may be retained in an employee's personnel file for a period of not more than five (5) years. After five years has elapsed, the employee may request in writing the removal of such records which shall be granted unless the employee's personnel record indicates a pattern of similar types of discipline, in which case, all such records may be retained until an additional period of two (2) years has elapsed, during which there has been no further disciplinary action for the same or similar behavior. After two years has elapsed, the employee may request in writing removal of the record of disciplinary action.~~

Unless mandated by State law or CJTC disciplinary process, records older than five (5) years that are retained in an employee's department personnel file ~~longer than provided in this section shall~~ may not be admissible in any proceedings between the Employer and the Guild concerning disciplinary action unless such records indicate a pattern of similar types of behavior, complaints, and/or discipline. If an employee has a pattern of similar types of behavior, complaints, and/or discipline, the records may be available to be used against the employee for an additional two (2)year period. If at the end of the additional two (2) year period, there has been no further behavior, complaints and/or discipline of the same or similar behavior, the records will no longer be admissible. The parties retain the right ~~to as well as~~ to introduce evidence regarding prior discipline of other employees for the purpose of establishing the consistency or non-consistency of discipline imposed in a case subject to a disciplinary appeal.