

CITY OF ALAMEDA RESOLUTION NO. \_\_\_\_

ADOPTION OF A RESOLUTION FOR THE MAYOR'S SIGNATURE REAFFIRMING THE AUTHORITY PREVIOUSLY DELEGATED TO THE CITY MANAGER, IN RESOLUTION NO. 13135 APPROVED ON SEPTEMBER 7, 1999, TO MAKE APPLICATION FOR INDUSTRIAL DISABILITY RETIREMENT FOR LOCAL SAFETY MEMBERS WITH THE CALIFORNIA PUBLIC EMPLOYMENT RETIREMENT SYSTEM

WHEREAS, the City of Alameda is a contracting agency of the Public Employees' Retirement System ("PERS"); and

WHEREAS, the Public Employees' Retirement Law requires that the contracting agency determine whether an employee of such agency in which he/she is classified as a local safety member, is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law; and

WHEREAS, PERS mandates specific procedures within the Administrative Procedures Act ("APA") as pertaining to local safety officers; and

WHEREAS, pursuant to City Council Resolution No. 12063, in January, 1991, the Council adopted a procedure for determination of industrial disability retirement claims for public safety officers; and

WHEREAS, the City Council of Alameda approved Resolution No. 13135 on September 7, 1999 updating the procedure for Industrial Disability requirements to comply with current law for local Safety Officers including appeals of PERS disability ruling pursuant to California Government Code section 21156 and provided for the delegation to the City Manager or designee the authority to make the determination of disability pursuant to Government Codes § 21173; and

WHEREAS, the City was recently notified by PERS that they would no longer approve Industrial Disability retirements submitted by the City because Resolution No. 13135 which delegated authority to the City Manager or designee to make the determination of disability was signed by the City Clerk and not the Mayor. PERS policy requires the resolution be signed by the Mayor since the Mayor was listed as one of the Councilmembers in the City's resolution. As a result of this notification a new resolution signed by the Mayor must be submitted approving the delegation of Authority to the City Manager or designee.

NOW, THEREFORE, BE IT RESOLVED that the following procedure shall apply in making determinations for disability retirement of a local safety employee under the Public Employees Retirement System ("PERS").

## I. CITY MAKES DETERMINATIONS

An initial determination will be made by the City upon medical and other available evidence offered by either the applicant or the City to determine whether the applicant is incapacitated from the performance of duty and whether the cause of the claimed condition is industrial or nonindustrial. Those determinations shall be made no later than six (6) months from the date of the application unless this time requirement is waived in writing by the applicant. Said determination shall be made by the Human Resources Director, as the designee of the City Manager.

### (1) Employee Files Application for Disability Retirement

- A. If it is determined by the City that the applicant is incapacitated, and the incapacity is industrial, the City Manager or his/her designee will so certify to PERS.
- B. If the City determines that the applicant is incapacitated but the cause of the incapacity is determined to be nonindustrial, the City Manager, or his/her designee, will notify the applicant of this decision. If the applicant does not give the City Manager, or his/her designee, written notice of disagreement with these determinations within 30 calendar days, the City will certify these determinations to PERS.
- C. If the applicant gives the City Manager, or his/her designee, written notice within 30 calendar days of disagreement with the City's determination that the cause of the incapacity is nonindustrial and wishes to appeal this decision to the Workers' Compensation Appeals Board ("WCAB"), the City will certify to PERS the determination of incapacity and will inform PERS that the applicant intends to appeal to the WCAB for a determination whether the incapacity is industrial or nonindustrial pursuant to Government Code Section 21126.
- D. Following the decision by the WCAB, either party may seek rehearing or review of the WCAB finding in accordance with Government Code sections 21168 by filing a Petition for Reconsideration and Petition for Writ of Review.

If, in its initial determination, the City determines that the applicant is not incapacitated from the performance of duty, it shall notify the applicant by certified mail (return receipt requested), or personal service, of its intent to so certify to PERS. The applicant will be advised that he or she has thirty (30) calendar days to advise in writing the City Manager, or his/her designee, that he or she requests a hearing of this determination. The applicant may concurrently appeal to the WCAB any determination on the nonindustrial causation of the claimed condition, as outlined in (1)C and (1)D, if he or she

contests the determination. If the applicant requests a hearing, the City will certify its initial determination to PERS and will inform PERS that applicant has requested a hearing.

(1) City Files Application for Disability Retirement

- A. If the City makes a determination of incapacity from the performance of duty based upon medical and other available evidence and an application has not been filed with PERS, the City Manager, or his/her designee, will make application on behalf of the City for disability retirement of a local safety employee. The employee shall be notified that an initial determination of incapacity from the performance of duty has been made, that an application for disability retirement has been submitted to PERS by the City, and whether the condition is determined industrial or nonindustrial.
- B. If the employee disputes the City's determination with respect to incapacity, the employee shall be advised that he or she has thirty (30) calendar days to advise in writing the City Manager, or his/her designee, that he or she requests a hearing before the City.
- C. If the employee disputes the City's determination with respect to industrial causation, the employee shall be advised that he or she has thirty (30) calendar days to file Petition for Finding of Fact pursuant to Government Code Section 21166.
- D. If an employee requests a hearing on incapacity or applies to the WCAB for a determination on industrial causation, the City will certify to PERS the initial determinations and will inform PERS that employee has requested a hearing on incapacity or has applied to the WCAB for a determination on industrial causation.

II. ADMINISTRATIVE JUDGE HEARS APPEALS

If the applicant requests a hearing, said hearing shall be held in conformity with Government Code Section 21156 and the Administrative Procedures Act (Government Code section 11500 et seq.). When an applicant requests an appeal hearing, the City will notify the Office of Administrative Hearings and will request a hearing date and a pre-hearing conference with an Administrative Law Judge. The applicant will be informed that the hearing will be held at the time and place designated by the Office of Administrative Hearings which shall set a hearing date and pre-hearing conference. The hearing will be held within six (6) months of the request for a hearing and will be based upon the evidence which is available at the time of the hearing unless this time limit is waived by the City and the applicant.

- A. The pre-hearing conference may address the following points:
1. Settlement prospects
  2. Stipulations
  3. Clarification and narrowing of issues
  4. Trial date
  5. Discovery schedule
  6. Briefing schedule
  7. Scope of evidence
  8. Procedural matters
  9. Other matters that bear upon the issues presented
- B. The hearing shall be presided over by an Administrative Law Judge. The Administrative Law Judge alone shall exercise all powers relating to the conduct of the hearing. The Administrative Law Judge also shall rule on all factual and evidentiary issues and make a determination accordingly.
- C. An administrative record shall be generated at the hearing pursuant to the Administrative Procedures Act. All testimony shall be recorded by a Certified Shorthand Reporter.
- D. Within 30 days following the hearing, the Administrative Law Judge shall issue the findings and proposed decision to the Pension Board. The Pension Board may adopt the decision in its entirety, reject it and decide the matter itself on the basis of the administrative record, or refer the matter back to the Administrative Law Judge to take additional evidence.
- E. The proposed decision of the Administrative Law Judge shall be deemed adopted by the Pension Board 100 days after issuance of the proposed decision, unless within the time, the Pension Board notifies the parties that it will decide the case itself upon the administrative record or submit the matter back to the Administrative Law Judge for additional evidence. If the Pension Board elects to decide the matter itself upon the administrative record, the 100 days begins upon delivery of the transcript of the administrative record.
- F. The decision of the Pension Board is final. The decision and findings will be served on the applicant by Certified Mail, return receipt requested. Such letter will further provide that each party has 30 calendar days within which to seek judicial review and to notify the opposing party of its intention to seek review. Such review is by means of filing a Petition for Writ of Mandate in the Superior Court of Alameda County.
- G. The final determination of the Pension Board will be certified to the PERS. If the applicant has appealed to the WCAB the determination on causation of the claimed condition or either party has sought review in the Superior Court, PERS will be so informed.

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I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 6th day of September, 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

INWITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 7<sup>th</sup> day of September, 2016.

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Trish Spencer, Mayor of Alameda

Approved as to Form:

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Janet C. Kern, City Attorney  
City of Alameda