

RESOLUTION NO. 2015-015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REEDLEY
DELEGATING AUTHORITY TO THE CITY MANAGER TO MAKE INITIAL
INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS PURSUANT
TO GOVERNMENT CODE § 21173**

WHEREAS, the City of Reedley (hereinafter referred to as Agency) is a contracting agency of the Public Employees' Retirement System; and

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

WHEREAS, the City Council may delegate authority under Section 21173 of the Government Code to make such determinations to the City Manager.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Reedley as follows:

Section 1. That the City Council may delegate to the City Manager authority to make initial determinations under Government Code §21173, on behalf of the City, of disability and whether such disability is incapacitating and /or industrially caused, and to certify such determinations and all other necessary information to the Public Employees' Retirement System; and

Section 2. That such incumbent is authorized to make applications on behalf of the agency for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability.

Section 3. Authority consistent with Section 1 is delegated to the City Manager under this Resolution No. 2015-015.

Section 4. This resolution shall become effective immediately upon its passage and adoption.

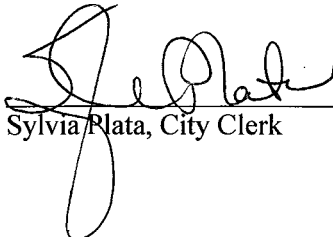
The foregoing Resolution was duly passed, approved, and adopted on February 24, 2015, by the following vote:

AYES:	Betancourt, Rodriguez, Beck, Fast, Soleno
NOES:	None.
ABSTAIN:	None.
ABSENT:	None.

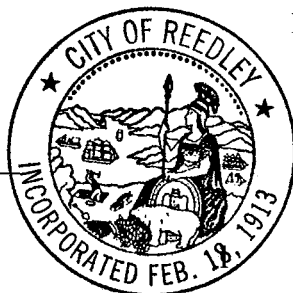


Ray Soleno, Mayor

ATTEST:



Sylvia Plata, City Clerk



RESOLUTION NO. 2015-016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
REEDLEY ESTABLISHING PROCEDURES FOR INDUSTRIAL DISABILITY
RETIREMENT DETERMINATIONS OF LOCAL SAFETY OFFICER
EMPLOYEES OF THE CITY OF REEDLEY**

WHEREAS, this resolution establishes a procedure for industrial disability retirement determinations of City of Reedley local safety officer employees under the California Public Employees' Retirement System; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REEDLEY DOES
RESOLVE AS FOLLOWS:**

Section 1. Following the filing of an application for Industrial Disability Retirement by a local safety officer employee under the California Public Employees' Retirement System ("CalPERS"), the following procedures shall be employed:

1. An initial determination shall be made by the City of Reedley upon receipt of written argument, medical reports, medical records and further available evidence offered by either the Applicant or the City of Reedley to determine whether the Applicant is incapacitated from the performance of his or her job duties and whether said incapacity is the direct result of an industrial injury arising out of and occurring in the course and scope of his or her employment. The determination shall be made within six months of the date of the receipt by the City of Reedley from CalPERS, unless this time requirement is waived in writing by the Applicant. The determination shall be made by the incumbent City Manager, or the City representative otherwise designated by the City Council of the City of Reedley.

A. If it is determined by the City that the Applicant is incapacitated, and the incapacity is the direct result of industrial injury occurring in the course and scope of his or her employment, the City Manager will so certify to CalPERS.

B. If it is determined that the Applicant is incapacitated, but that the cause of the incapacity is non-industrial, the City Manager will so certify to CalPERS.

C. If it is determined that the Applicant is incapacitated, and the Applicant contends

that the cause of the incapacity is the direct result of an industrial injury occurring in the course and scope of his or her employment, in the absence of a prior determination by the Workers' Compensation Appeals Board or stipulation between the parties that the incapacity is the result of industrial injury or disease, either the Applicant or the City may petition the Workers' Compensation Appeals Board (WCAB) for a Finding of Fact to determine causation. If the Workers' Compensation Appeals Board (WCAB) determines that the cause of the incapacity is the direct result of an industrial injury occurring during the course and scope of his or her employment, or non-industrial, the City will so certify to CalPERS.

D. If the City determines that the Applicant is not incapacitated from the performance of his or her job duties, the City shall notify the Applicant and CalPERS of this determination. The City shall notify the Applicant by certified mail (return receipt requested) or by personal service, of his or her right to appeal their decision and request a Hearing within thirty days of receipt of the notice.

Section 2. If the Applicant requests a Hearing, the Hearing shall be held in conformity with the Administrative Procedure Act. When the Applicant requests a Hearing, the City shall notify CalPERS. The City will also notify the Office of Administrative Hearings and request a Pre-Hearing Conference with an Administrative Law Judge and a hearing date. The Applicant will be informed that the hearing date will be held at the time and place designated by the Office of Administrative Hearings which shall set a Pre-Hearing Conference Date and a Hearing Date.

The Hearing shall be conducted before the Reedley City Council with an Administrative Law Judge acting as the presiding officer.

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.

Section 3. Following the Hearing a Decision and Findings of Fact shall be made by the City Council. The Decision and Findings of Fact shall be served on the Applicant by Certified Mail (return receipt requested) or by personal service. The Applicant shall also be advised of his or her appeal rights as follows:

RESOLUTION NO. 2015-016 – Establishing IDR Determination Procedures

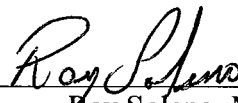
1. If the Applicant is found to be incapacitated, the City will so certify to CalPERS. If Applicant is found not to be incapacitated, the City will so certify to CalPERS and shall further serve a copy of the determination on the Applicant by certified mail (return receipt requested) or personal service along with notice to the Applicant of his or her right to appeal the determination by means of filing a Petition for Writ of Mandate (CCP 1094.5) in the Superior Court, within 30 calendar days. Upon receipt of notice that the Applicant has filed a Petition for Writ of Mandate in the Superior Court or upon expiration of 30 calendar days where the Applicant has not filed a Petition for Writ of Mandate, CalPERS will be notified.

2. On the issue of industrial causation, where there has been no prior final determination by the Workers' Compensation Appeals Board, the Applicant may file a Petition for Findings of Fact pursuant to the provisions of Government Code §21166 with the Workers' Compensation Appeals Board within the time limits prescribed in CCP Code §1094.6.

Section 4. This resolution shall become effective immediately upon its passage and adoption.

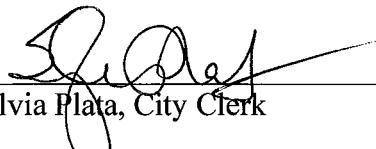
The foregoing Resolution was duly passed, approved, and adopted on February 24, 2015, by the following vote:

AYES:	Beck, Rodriguez, Betancourt, Fast, Soleno
NOES:	None.
ABSTAIN:	None.
ABSENT:	None.

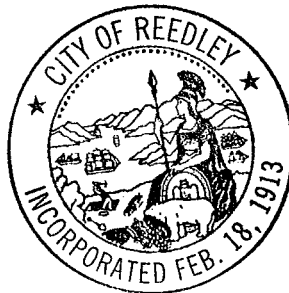


Ray Soleno, Mayor

ATTEST:



Sylvia Plata, City Clerk





REEDLEY CITY COUNCIL

- Consent
- Regular Item
- Workshop
- Closed Session
- Public Hearing

ITEM NO: 3

DATE: February 24, 2015

TITLE: CONSIDERATION OF DOCUMENTS PERTAINING TO INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS OF LOCAL SAFETY OFFICERS OF THE CITY OF REEDLEY

- A) ADOPT RESOLUTION NO. 2015-015 OF THE CITY COUNCIL OF THE CITY OF REEDLEY DELEGATING AUTHORITY TO THE CITY MANAGER TO MAKE INITIAL INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS PURSUANT TO GOVERNMENT CODE § 21173
- B) ADOPT RESOLUTION NO. 2015-016 OF THE CITY COUNCIL OF THE CITY OF REEDLEY ESTABLISHING PROCEDURES FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS OF LOCAL SAFETY OFFICER EMPLOYEES OF THE CITY OF REEDLEY

SUBMITTED: Paul A. Melikian, Director of Finance & Administrative Services

APPROVED: Nicole R. Zieba, City Manager

RECOMMENDATION

A) Adopt Resolution 2015-015 delegating authority to the City Manager to make initial determinations for Industrial Disability Retirement under the California Public Employees' Retirement System.

B) Adopt Resolution 2015-016 establishing a procedure for Industrial Disability Retirement determinations of Local Safety Officers for the City of Reedley under the California Public Employees' Retirement System in which, where initial determinations on causation/industrial connection are appealed, the City Council serves as the final decision maker, with an Administrative Law Judge presiding.

EXECUTIVE SUMMARY

The purpose of this report is to seek Council approval on Resolution Nos. 2015-015 and 2015-016, revising the procedure for determining whether a Public Safety/Police Officer is entitled to an Industrial Disability Retirement, and establishing new amended procedures as allowed by current applicable law. The City of Reedley contracts with CalPERS ("PERS") with respect to the administration of retirement benefits for both sworn public safety officers (police officers) and non-sworn employees. When a public safety officer asserts that he/she is entitled to an Industrial Disability Retirement ("IDR") as the result of an incapacitating work-related injury, the City can delegate the initial determination to the City Manager, giving the affected employee

the right to appeal that decision through an administrative hearing conducted consistent with the California Administrative Procedures Act (APA).

The City has not had written policies or procedures for IDR determinations. This is problematic, as in the past, the City Council has made the determination, which limits opportunities for appeal, potentially forcing the City and the affected employee into a court case.

Resolution 2015-016 delineates the steps to be taken by the City when a police officer seeks an Industrial Disability Retirement. It should be noted that only Public Safety employees are eligible for Industrial Disability Retirement; accordingly, the proposed resolutions do not apply to non-safety City employees.

The California Administrative Procedure Act (Government Code Sections 11340 through 11528) sets forth the procedural requirements for conducting administrative hearings in matters involving government agencies. PERS is an agency subject to the APA, and recent court decisions have held that local agencies—such as the City of Reedley—which are members of PERS on matters dealing with safety officer disability retirement are also subject to the APA.

The Public Employees' Retirement Law (PERL) requires local agencies to make determinations regarding industrial disability retirements on behalf of their safety members, and allows cities to delegate authority to make such determinations to the incumbent in a designated position, usually the City Manager position. The City of Reedley proposes to adopt Resolution 2015-015 to delegate authority to the City Manager, or his/her designee(s) to make an industrial disability determination as respects a public safety officer, and Resolution No. 2015-016 to establish the procedure by which that determination is made.

BACKGROUND

Current California law limits the City Manager's determination of disability to an initial determination; and requires the establishment of an appeals process in those cases where there is a dispute as to whether the involved police officer is entitled to an Industrial Disability Retirement. On receiving an application for an Industrial Disability Retirement (IDR) by a local safety officer employee, Government Code §21154 and §21156 require that the employing agency make two determinations. First, the contract agency must determine whether the IDR applicant is incapacitated from the performance of his or her job duties. Second, the employing agency must make a determination as to whether or not the physical or mental disability for which the applicant claims to be incapacitated is the direct result of an industrial injury arising out of and occurring in the scope of his/her job duties.

Current law addresses the four potential IDR application scenarios as follows:

1. Admitted Incapacity; Admitted Industrial Causation

If the employing agency finds the member to be physically or mentally incapacitated from the performance of his or her job duties and in addition makes a determination that the incapacity was directly the result of an industrial injury, the employing agency will so certify to PERS, which will process the industrial disability retirement. Certification is the formal transmittal to PERS of the agency's decision.

2. Admitted Incapacity; Agreed Non-Industrial Causation

If the employing agency finds the member to be incapacitated from the performance of his or her job duties and all parties agree that the cause of the incapacity is non-industrial, the agency will so certify to PERS which will process an ordinary disability retirement according to the applicable length of service requirements. (Government Code §21025.)

3. Admitted Incapacity; Disputed Industrial Causation

If the employing agency admits that the member is incapacitated, but there is a dispute as to whether the cause of the incapacity is industrial, and where no petition for a finding of fact has been filed with the Workers Compensation Appeals Board, the City shall proceed to file a petition for findings of fact with the WCAB. Only subsequent to a determination by the Workers' Compensation Appeals Board would the City be in a position to make a determination on causation; however, the City would be bound by the WCAB's factual findings, providing little latitude to issue a contrary finding.

4. Disputed Incapacity; Disputed Causation

If a dispute exists as to whether the safety member is in fact incapacitated from the performance of his or her job duties, and in addition, there is a dispute over whether or not the incapacity arises out of an industrial injury, Government Code §21154 authorizes the City to make the determination of incapacity through a dispute resolution system which is in compliance with the Administrative Procedure Act. The initial determination is made by the City Manager or other City Council designee. If the applicant seeks to appeal the City Manager's decision, the governing body (i.e. the City Council) has the option of: (1) Hearing and deciding the case itself with an Administrative Law Judge presiding, or; (2) having the Administrative Law Judge decide the case alone. The Applicant would also be entitled to appeal the decision of the City Council to the Superior Court, by way of a Petition for Writ of Mandate. With respect to the issue of causation, initial findings of fact would have to be made by the WCAB, subject to limited review by the City, as described above.

Staff recommends that the City Council adopt a resolution delegating the authority to the City Manager to make an initial determination of incapacity and whether such incapacity is industrial. Staff further recommends that in the event that the City Manager's determination is rejected by the applicant and a hearing is requested, the City utilize the authorized procedure whereby the City Council makes the ultimate determination, with an appointed Administrative Law Judge presiding.

The alternative hearing procedure would be for the Administrative Law Judge to make the determination in the absence of City Council input. Staff does not recommend this alternative, for it eliminates the Council from having a role in the decision making process.

FISCAL IMPACT

The fiscal impact is unknown. Associated costs would be dependent upon whether or not an IDR applicant appeals an initial determination of disability. If such an appeal were made, the City may incur costs for an Administrative Law Judge to act as a hearing officer and a certified stenographer required by the Administrative Procedures Act, and would also incur City Attorney staff time advocating the City's position. If an applicant appeals the final determination through a Petition for Writ of Mandate to the Superior Court of Fresno County, the City may incur additional City Attorney staff time representing the City. However, these fiscal impacts are unavoidable because the City must comply with State law.

ATTACHMENTS

Resolution #2015-015

Resolution #2015-016