ESTABLISHING A PROCEDURE FOR APPEALS OF DISABILITY RETIREMENT DETERMINATIONS AND REINSTATEMENT APPLICATIONS OF LOCAL SAFETY OFFICER EMPLOYEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RECOMMENDATION

It is recommended that the City Council adopt a resolution establishing a policy and procedure for processing appeals of disability retirement and reinstatement decisions for local safety members, as provided by the Public Employee Retirement Law (PERL) as set forth in the Government Code.

Summary

The PERL requires that a contracting local agency determine whether an employee classified as a local safety member is disabled for purposes of the PERL and whether such disability is industrial within the meaning of the law. The process for determining disability/incapacity is prescribed by the PERL and is based on medical reporting. If a medical report is provided that indicates there are permanent restrictions for a local safety member an interactive process is initiated to determine if the individual can return to work in their previous capacity. If the employee is unable to return to their safety occupation then the disability retirement process is initiated either by the local safety member or the City. The law also requires that a contracting local agency provide an appeal process for local safety members to follow in the event they disagree with the disability decision. Prior Council actions have delegated its decision process to the City Manager or his/her designee, but a formal appeals process has not been established. The recommended actions associated with this agenda item will provide the framework for establishing the required appeals protocols.

DISCUSSION

Background

The City Council adopted Resolution No. 31,463 on July 15, 1974. This resolution delegated to the City Manager the authority to make determinations of disability for local safety officers under the PERL, whether such disability is industrial, and to certify all other necessary information to the California Public Employees’ Retirement System (PERS) for disability retirement purposes. The delegation of authority related only to safety members. The determination of disability for miscellaneous members (non-safety) is a process that is managed by PERS.

While it is rare to deny disability applications or requests for reinstatement, the PERL requires the City to adopt a procedure for local safety members (sworn police officers, firefighters) to appeal a determination that the member is or is not "disabled," regardless of causation. It is also pertinent to note that requests for reinstatement from a disabled status are rarely received. These situations are rare because the evaluative process that precedes a disability decision is substantial and includes
Currently, the City does not have a formal procedure in place to appeal disability determinations. Without a formally adopted procedure, the City would be required to follow the Administrative Procedures Act as dictated by the PERL. However, without the benefit of predetermined and consistent procedural guidelines, the method of conducting a hearing, the issuance of a decision, and how that decision is treated would have all have to be addressed anew for each proceeding. Disputes concerning causation, i.e. whether industrial or not, are resolved by the Workers Compensation Appeals Board.

Present Situation

The PERL provides that any local safety member incapacitated for the performance of duty shall be retired for disability only upon the employer's determination that the member is incapacitated physically or mentally for the performance of job duties. An application for disability retirement may be made by the City or by the member or any person on his or her behalf. Upon receipt of the application of a local safety member, PERS shall request the City to make the determination of disability.

There are two categories of disability retirement: 1) Disability Retirement; and 2) Industrial Disability Retirement. The City also determines whether the disability is industrial or non-industrial. Any employee disputes regarding the determination of causation are resolved through a separate process with the Workers Compensation Appeals Board. The appeals process which is the subject of this report is strictly to resolve determination of disability or reinstatement from disability, and not the determination of causation of the disability.

Any denial of an application for disability retirement must be based upon a failure to meet the threshold for incapacity. A local safety member is considered disabled if incapacitated physically or mentally from the performance of his or her duties. A disability is considered industrial if the disability occurred as a result of injury or disease arising out of and in the course of his or her employment. The process for determining incapacity begins with a doctor’s recitation of permanent physical limitations in a medical report. Once a report is received the City initiates an interactive process that includes Human Resources staff, the employee, and representatives from the employee’s department. The interactive process is designed to determine whether or not the local safety member can perform the essential functions of their classification with or without accommodation. If, at the conclusion of the interactive process, it is determined that the local safety member can no longer perform the essential functions of their classification, the employee is considered to be incapacitated under the PERL.

A member may appeal a denial of their disability application or reinstatement within 30 days from the date of notification. Accordingly, Staff recommends adoption of the attached procedure as it is required by the PERL that the City develop a formalized process that adequately informs all parties of options in the event the City denies the application or if the employee disagrees with the City’s initiation of our application to retire the employee. The appeal procedure must comply with the provisions of the Administrative Procedures Act.

An entity can choose to have its designated officer (the City Manager or designee in this case) conduct an appeal hearing with an Administrative Law Judge (ALJ) acting as the presiding officer.
The ALJ would be engaged through the State Office of Administrative Hearings (OAH). The City would be required to issue a finding of fact and issue a decision on the appeal result. Alternatively, the City could have the hearing conducted by the ALJ alone, which calls for the ALJ to issue a Decision. Staff recommends the second alternative, which Exhibit 1 of the proposed resolution outlines.

The City has three options once the ALJ issues its decision:

- Reject the decision and make its own decision without taking new evidence;
- Reject the decision upon hearing additional evidence in front of the ALJ; or
- Accept the decision of the ALJ and adopt it as the City’s decision.

In order to ensure a streamlined process it is recommended that the City choose to adopt the ALJ decision as its decision in any appeal matter. The resolution attached for approval is consistent with this recommendation.

In summary, relative to the designation of an Appeal Hearing Officer and rendering of a decision in an appeal and consistent with the attached resolution and accompanying exhibit, Staff recommends the following:

1. The City designate the assigned ALJ as the Hearing Officer for any disability retirement decision appeal; and
2. The City accept the decision of the ALJ in any disability retirement appeal as final.

FINANCIAL SUMMARY

The City would be required to pay for the services of the ALJ for any Disability Retirement Appeal hearing. While an estimate for hearing costs was requested from the OAH they could not provide a specific amount for what a Disability Retirement Appeal hearing may cost. However, based on looking at costs of similar procedures, Staff estimates the costs for any one hearing would be in the range of $12,000 to $15,000 and it would be unlikely that more than one hearing would occur per year due to the infrequency of appeals. Sufficient funds are included in account 551-5610-572.20-65 Internal Service Fund Workers’ Compensation Administration Professional Services to fund any costs related to this procedural requirement.