MOTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE OFFICE OF ADMINISTRATIVE HEARINGS TO CONDUCT DISABILITY RETIREMENT AND REINSTATEMENT HEARING PROCEEDINGS

RECOMMENDATION

It is recommended that the City Council authorize by motion the City Manager to execute a contract with the Office of Administrative Hearings (OAH) for a term of five (5) years to conduct any necessary administrative hearings concerning appeals of disability retirement and reinstatement decisions in accordance with the provisions of the Administrative Procedures Act (APA).

Summary

The California Public Employees’ Retirement Law (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 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. On October 8, 2013 your Council adopted a policy providing for the required appeals process, which incorporates the APA. The APA requires the use of an Administrative Law Judge (ALJ) from the OAH, which requires execution of a standard form contract (Attachment A) in order to access services. There is an existing agreement with the OAH that will expire on June 30, 2014. The recommended action will authorize the City to execute a new agreement. This will allow continued access to appeal hearing services through the OAH and comply with the provisions of the APA in providing such services as provided for in the City’s currently adopted policy effective July 1, 2014.

DISCUSSION

Background

The OAH is a quasi-judicial tribunal that hears administrative disputes. The services of the OAH are available to any county or local public entity (local agencies) throughout California. The OAH provides services that include administrative hearings, mediations, arbitrations, and other dispute resolution processes conducted by an experienced ALJ.

OAH hearing and mediation services are available by contract to any local agency. Prior to utilizing services from OAH, local agencies must have a current contract for services with OAH in place. Once the contract has been executed, local agencies can then access services and schedule hearing processes.

Government Code Section 11370.4 requires that all OAH costs be recovered from the agencies
served. Fees typically include a filing fee for each case filed, an hourly rate for ALJ services, and costs for requested interpreters, court reporters or electronic recordings. Fees for OAH services are pursuant to the current fiscal year's Price Book (Attachment B) of the Department of General Services. The City has a current contract with the OAH that was approved by Council on March 27, 2012 in relation to another matter requiring APA compliance. This contract is effective through June 30, 2014. The recommended action would provide uninterrupted access to OAH services

Present Situation

On October 8, 2013 the City Council approved a formal appeal process for appeals of disability retirement and reinstatement decisions. This procedure set for the parameters for allowing individuals to appeal local decisions in these matters in accordance with the PERL. One of the requirements of the adopted appeals process is that the provisions of the APA must be followed. The APA requires the use of an ALJ retained through the OAH be involved in the appeals hearing process. The OAH requires a contract be executed in order to access services for any administrative hearing process. The standard contract terms offered by the OAH are for a not to exceed amount of $48,000 for a term of five (5) years. The agreement would be effective upon execution.

As the use of the OAH, a State entity, is required by the APA, no other sources for services were contemplated. The OAH is uniquely qualified to perform the services pertaining to hearing processes for local agency disability and reinstatement appeals.

FINANCIAL SUMMARY

The City would be required to pay for the services of the ALJ for any disability retirement or reinstatement appeal hearing. While an estimate for hearing costs was requested from the OAH they would only provide their standard contract terms of a not to exceed amount of $48,000 for a five (5) year contract period. However, based on evaluating costs for similar procedures, Staff estimates that 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. There are no costs to the City associated with the execution of the agreement. Costs would only be incurred if an appeal were timely filed by an individual disputing the City’s decision in disability retirement or reinstatement case. Sufficient funds will be budgeted in the Workers Compensation Internal Service Fund Administration account 551-5610-572 in the FY 2014-15 annual budget process to fund any costs related to this procedural requirement.

Attachment A - Office of Administrative Hearings Services Agreement
Attachment B - Department of General Services Fee Schedule