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

Public Employees' Retirement Law requires that a contracting local agency determine whether an employee 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 the law; and

The City Council adopted Resolution No. 31,463 on July 15, 1974, delegating to the incumbent of the position of the City Manager the authority to make determinations under Section 21025 (now Section 21173) of the Government Code of disability and whether such disability is industrial and to certify all other necessary information to the California Public Employees' Retirement System (CalPERS); make applications on behalf of the Agency for disability retirement of employees in employments in which they are local safety members; and to initiate requests for reinstatement of such employees who are retired for disability; and

The City Council adopted Resolution No. 41,003 on September 17, 1984, which delegated the aforementioned authority to the City Manager or his or her designee; and

Section 21156 of the Government Code requires the City of Stockton to have a procedure in place that sets forth the means for local safety members to appeal the disability determination of the City; now, therefore,

BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:

1. The City Manager or his or her designee shall have the authority to execute, in accordance with the applicable laws, policies and procedures to establish the disability retirement and reinstatement applications of local safety officer employees of CalPERS, as set forth in the attached Exhibit 1.
2. The City Manager is hereby authorized and directed to take such other actions as are necessary and appropriate to carry out the intent of this Resolution.

PASSED, APPROVED, and ADOPTED October 8, 2013

ANTHONY SILVA, Mayor
of the City of Stockton

ATTEST:

BONNIE PAIGE, City Clerk
of the City of Stockton
PROCEDURES FOR LOCAL SAFETY MEMBERS FOR THE INITIATION OF A DISABILITY RETIREMENT APPLICATION, DISPUTE RESOLUTION OF DISABILITY RETIREMENTS, AND REINSTATEMENT FROM RETIREMENT

I. INTRODUCTION.

Under California Government Code §21150, et seq., it is the City’s responsibility to make determinations relating to disability retirement applications for its employees who are local safety members of the California Public Employees’ Retirement System (“CalPERS”), as well as to reinstatement of such retirees. The procedures set forth herein describe the process to be followed when there is: (1) a City safety member initiated disability retirement, (2) disputes regarding disability retirement determinations, (3) a safety member or City initiated reinstatement application. The following paragraphs set forth the procedures to be followed in such cases.

II. SAFETY MEMBER INITIATED APPLICATION FOR DISABILITY RETIREMENT.

A. An application for disability retirement may be secured from the City’s Human Resources Department or CalPERS. At the time the employee is provided with an application for disability retirement, the employee shall also be provided with a copy of these Procedures.

B. The employee must fully complete and sign the application and submit it, along with any supporting documentation to the Human Resources Department or CALPERS.

C. If the application is returned to the Human Resources Department (HR), the HR department shall copy and distribute the form as follows: One copy will be retained in the employee’s personnel file; one copy will be returned to the employee; and the original will be mailed to CalPERS.

D. Investigation and Proposed Disposition. Upon application for disability retirement, the Human Resources Director, in conjunction with Risk Services, shall investigate all facts and circumstances pertaining to the application for disability retirement. The assessment of incapacity may include securing medical and other records, taking
statements of the employee and/or others, and ordering the employee to submit to medical and/or psychiatric examination(s) including testing.

E. Medical Examinations. All medical information transmitted by the physicians shall be in conformity with all laws and regulations (e.g. “Confidentiality of Medical Information Act,” Civil Code §56, et seq. and the “Health Insurance Portability and Accountability Act of 1996” PL 104-191 (“HIPAA”)). Medical examinations shall address the functional limitations of the employee with respect to performing the job requirements and essential functions of the employee’s position, but shall not include any diagnosis or treatment plan except insofar as they may pertain to the employee’s ability to perform the essential functions of the position. Medical reports generated in connection with any workers’ compensation proceedings, including any diagnostic and treatment information contained in such reports relating to the question of incapacity, may also be considered.

It is the employee’s responsibility to fully cooperate and to provide all relevant facts and to attend medical evaluations. Failure to cooperate may constitute grounds for denial of the application.

F. Initial Determination. Upon completion of this investigation the Human Resources Director shall submit a recommendation to the City Manager or his/her designee for determination. Based upon the recommendation and any other information garnered from the investigation, the City Manager or his/her designee shall render a determination, as to whether to approve or deny the application for disability retirement. This determination will be certified to CalPERS. Whether the disability retirement application is approved or denied the employee shall be advised of his/her rights to appeal the determination as described in Section IX below.

III. CITY-INITIATED APPLICATION FOR DISABILITY RETIREMENT OF A SAFETY MEMBER.

A. If the City determines that a safety employee is incapacitated from performing the substantial range of essential job duties based upon medical and other available evidence, and if the disability is of permanent or uncertain duration, and an application for disability retirement has not been filed with CalPERS by the employee, the City Manager or his/her designee may elect to make application on behalf of the City for disability retirement
of the safety member. The employee shall be notified of the following: (1) An initial determination of incapacity from the performance of duty has been made; (2) that an application for disability retirement has been submitted to CalPERS by the City; (3) whether the condition is determined to be industrial or non-industrial; (4) and will be provided information regarding his/her right to appeal the determination, as described in Section IX herein.

IV. CITY-INITIATED REINSTATEMENT OF PREVIOUSLY RETIRED SAFETY MEMBER.

A. Government Code § 21192 permits periodic medical evaluations of previously retired safety employees for the purpose of determining whether incapacity from performance of the substantial range of essential job duties from which the employee was retired is still present. Should the City initiate such medical evaluation, it is the responsibility of the retired employee to fully cooperate in the investigation. Failure to cooperate may constitute grounds for cancellation of all or part of the retirement under Government Code § 21175. The City shall provide notice to the retired employee of the date, time and place of the medical evaluation, the name and address of the medical evaluator, and the cost of transportation in connection with the medical evaluation.

B. Pursuant to Government Code sections 21190 et seq., if the City determines from a medical evaluation(s) and other available evidence that the previously retired employee is no longer incapacitated from his/her employment, and that there is a current open position within the Department and classification from which the person was retired, the person shall be reinstated to the previous classification and the retirement cancelled. Such reinstatement may be conditional upon completion of such additional training as may be necessary to reestablish skills or other requirements of the position. It is the responsibility of the retiree to fully cooperate in any training that may be necessary to meet the requirements of the position. Failure to cooperate may constitute grounds for cancellation of the retirement.

C. Should the retiree object to reinstatement, the retiree shall be advised of his/her rights to appeal the determination as described in Section IX herein.
V. PREVIOUSLY RETIRED SAFETY MEMBER-INITIATED APPLICATION FOR REINSTATEMENT.

A. Government Code §21190 et seq. permit a sworn safety member receiving a disability retirement to seek reinstatement on the grounds that the incapacity no longer exists, and set forth the process and requirements.

B. As part of the application for reinstatement, the retiree shall provide a written statement of all the facts and circumstances upon which the request for reinstatement is based and include all medical, psychiatric and other documentation supporting the request. If evaluations result in a determination of fitness for reinstatement, when an opening occurs in the department from which the employee was previously retired, the employee shall be reinstated to his/her former classification. Such reinstatement may be conditional upon completion of such additional training as may be necessary to reestablish skills or other requirements of the position. Failure to cooperate may constitute grounds for cancellation of the retirement.

C. If the City determines the reinstatement application should be denied, the retiree shall be advised of his/her rights to appeal the determination as described in Section IX herein.

VI. DISPUTED INDUSTRIAL CAUSATION WITH RESPECT TO DISABILITY RETIREMENT APPLICATIONS.

A. If, following the evaluation and consideration of medical reports and other evidence, the City determines that the cause of the claimed incapacity is not industrial, the employee shall be given written notice of the City’s determination.

B. If the employee wishes to contest the determination regarding industrial causation, the issue of industrial causation shall be resolved by the Workers’ Compensation Appeals Board pursuant to Government Code §21166, and shall be initiated by the employee by filing a timely petition for finding of industrial causation pursuant to Government Code §21166.

C. Following the decision of the Workers’ Compensation Administrative Law Judge (“WCALJ”), the party aggrieved by the WCALJ’s decision may seek appellate review pursuant to Government Code §§21167 and 21168.
VII: TIME LIMITS FOR ACTION BY CITY AND BY EMPLOYEE

A. Pursuant to Government Code §21157, all determinations with respect to applications for disability retirement or for reinstatement shall be acted upon by the City within six months of notice from CalPERS, unless such time is waived by the employee. A waiver of the six-month time limitation does not prevent the City from making its determination before six months has elapsed from the notice of the application from CalPERS. Pursuant to Section II(F) above, the City Manager will give notice of the City’s initial determination to CalPERS and the employee.

B. In the event that the employee/retiree objects to the City’s initial determination, the person may make a written request to the City Manager for a hearing before an ALJ. Such written request shall be made no later than 30 calendar days from the date of notification by the City Manager or designee of the City’s initial determination. If no objection to the City’s initial determination is made within 30 calendar days of notice by the City Manager, the City Manager or designee shall certify the disposition of the matter to CalPERS.

VIII. OPTIONAL INFORMAL CONFERENCE IF OBJECTION TIMELY FILED AND PREHEARING CONFERENCE WITH ADMINISTRATIVE LAW JUDGE.

A. If timely objection is made by the employee to the City’s determination regarding retirement or reinstatement, the City Manager or designee shall schedule an informal conference within 30 calendar days after receipt of the objection. Written notice of the conference shall be given to the employee/retiree and/or designated representative, if any, and to such other personnel or agents as the employee or retiree deems appropriate. The informal conference shall be scheduled at the mutual convenience of the parties and notice of the time and place of the informal conference shall be given by U.S. Mail, postage prepaid, at least ten calendar days prior to the conference. The City Manager or his/her designee shall preside at the conference.

B. The purpose of the informal conference shall be to afford the parties the opportunity to reach agreement as to final disposition of the matter; and if no agreement is
reached, to enter into stipulations and ascertain the issues to be determined at the appeal hearing. The informal conference provisions of this section may be waived by the parties.

C. The parties shall endeavor to schedule a hearing with the Office of Administrative Hearings no later than 90 calendar days after the date of the informal conference.

D. Whether or not an informal conference takes place, any party may request a Pre-hearing Conference before an ALJ to be assigned by the Office of Administrative Hearings.

If a Pre-hearing Conference is scheduled, the subjects to be addressed at the Pre-hearing Conference may include the following:

1. Clarification and narrowing of issues.
2. Stipulations.
3. Settlement of any or all issues in dispute.
4. Discovery schedule.
5. Trial date.
7. Issuance of subpoenas to ensure witness attendance at hearing.
8. Order of proof.
10. Scope of evidence including such matters as receipt of medical reports in lieu of live testimony.
11. Recording of proceedings by certified shorthand reporter.
12. Other procedural matters.
13. Other matters that bear upon the issues in dispute.

IX. HEARING PROCEDURES.

A. Following the initial determination by the City and the timely filing of a request for hearing by the employee/retiree, the appeal hearing shall be conducted by the ALJ in conformity with the Administrative Procedures Act (“APA”).

B. The City shall inform the employee/retiree of the date, time and place of the hearing.
C. The ALJ shall conduct the hearing, and shall render a decision on all contested issues, with the exception of industrial causation. Review of the ALJ’s decision shall be by Writ of Mandate in the San Joaquin County Superior Court, with no interim review by the City.

D. Costs. The parties shall each bear all costs incurred by that party, including the costs of witnesses and representatives, and the costs of any transcript of the hearing ordered by the party. The per diem costs of the court reporter and the hearing officer, and the cost of the ALJ’s transcript, if requested by the ALJ, shall be the responsibility of the City.

E. Findings and Conclusions. Consistent with time requirements of the APA, the ALJ shall render a decision in the matter containing the findings of fact and conclusions of law reached by said ALJ. The decision rendered by the ALJ shall be adopted by the City and the City Manager or designee shall certify the ALJ’s decision to CalPERS in the event of an application for disability retirement, or shall order or deny reinstatement of a retiree based thereon. Pursuant to Code of Civil Procedure §1094.6, the ALJ shall state the limitation period for seeking judicial review in the decision rendered. An Affidavit of Mailing shall accompany the decision when sent to the employee/retiree.

X. ADVANCE DISABILITY PENSION PAYMENTS (ADPP)

For those employees receiving advance industrial disability retirement benefits pursuant to Labor Code §4850.4, said benefits shall continue until such time as the ALJ renders a decision and serves it on the parties.

XI. JUDICIAL REVIEW.

A. Any judicial review of the decision of the Administrative Law Judge shall be taken by the aggrieved party pursuant to Code of Civil Procedure §§1094.5 and 1094.6 within the time limits provided by law. The decision of the ALJ will be considered final for purposes of any appeal or writ upon service of the decision on the parties.

B. If a Petition for Writ of Mandate or Review is filed in the Superior Court, the City Manager or his/her designee shall inform CalPERS.
C. Upon completion of all appellate review and the decision having become final, the City Manager or designee shall inform CalPERS.