

**CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM**

Agenda Report Reviewed by:
City Manager: 

Meeting Date: July 21, 2020
To: Honorable Mayor and City Councilmembers
From: Ana Kwong – Administrative Services Director
Subject: Disability Retirements for Safety Employees
Recommendation City Council Adopt a Resolution designating the authority and updating the process, and procedures in the determination of disability retirements for safety employees
Funding: Currently Budgeted: _____ Yes _____ No X N/A
Net General Fund Cost:
If Cost to Other Fund(s),
Fund:

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

INTRODUCTION:

This item is to request that the City Council Adopt a Resolution designating the authority and updating the process, and procedures in the determination of disability retirements for safety employees.

BACKGROUND:

The City of Sebastopol has a need to submit an application of disability retirement to CalPERS. Upon notice of acceptance of the application, CalPERS requires the governing body of an employer to make a determination of disability. The City Council may delegate responsibility and authority for disability determinations under section 21173 of the Government Code to a body or officer of the City. Staff requests consideration of a Resolution designating the authority and updating the process, and procedures in the determination of disability retirements for safety employees.

DISCUSSION:

From time to time the City of Sebastopol has employees with an industrial injuries or illnesses who have exhausted all paid leave entitlements and who by the nature of the injury or illness are not able to return to their position or another alternate position with or without accommodation.

When this occurs, if the employee has not yet applied for disability retirement with CalPERS, the City under Government Code 21153 must submit an application to CalPERS on the employee’s behalf for disability retirement.

The Public Employees' Retirement Law ("PERL") requires that a contracting local government agency determine (a) 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 (b) whether such disability is "industrial" within the meaning of the PERL. Upon review of the initial application, CalPERS will notify the City if the member is eligible to apply for disability retirement and if so, will request the City’s governing body make the determination of disability.

The City Council may delegate the responsibility and authority under section 21173 of the Government Code to a body or officer of the City. Staff requests consideration of a Resolution designating the authority and updating the process, and procedures in the determination of disability retirements for safety employees.

Staff recommends approval of the resolution and designation and delegation of authority to the City Manager or his/her designee to make applications on behalf of the City of Sebastopol for disability retirement on behalf of eligible employees and to initiate requests for reinstatement of such employees who have previously been retired for disability.

CalPERS requires prior to any such determination, that a certified copy of a resolution designating and delegating authority for industrial disability determinations and amendments to process be placed on file with the California Public Employees' Retirement System.

The Public Employees' Retirement Law requires the governing body make a determination within six months of notice from CalPERS that an application has been filed (§21175), sets contingencies for disability retirement effective dates (§§21163, 21164, 21165), and specific certifications that must be made as part of the determination resolution (§§21154, 21156, 21166, and 20254), and CA Labor Code sets eligibility, amount, and requirements on Advance Disability Pension Payments (ADPP) to employees (L.C. §4850.3 and 4850.4). The labor code includes an employee repayment of ADPP if the application is denied by CalPERS.

To meet the requirements of the PERL for such determination, staff further recommends the process and procedures for determinations be amended as follows:

(1) Verification of CalPERS determination of member eligibility

Upon receipt of verification from the California Public Employees Retirement System that the member is eligible to apply for disability retirement the City Manager will proceed with determination.

(2) Contingencies Completed

An initial determination will begin after determination that the following conditions have been met:

- 4850 payments have been exhausted
- Employee has exhausted all leave balances
- OR Employee has filed for disability retirement

(3) Promissory Note and Release

In the event applicant becomes eligible for Advanced Disability Pension Payments. Applicant must sign a promissory note agreeing to repay and Advance disability Pension Payments made by the City should the applicant later be deemed ineligible for retirement.

(4) Determination of Disability

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 substantially incapacitated from the performance of his or her duties. The determination shall be made within six months of the date of the City 's receipt of CalPERS request for such determination unless this time requirement is waived in writing by the applicant. The City Manager or his/her designee shall certify the City 's findings and direct them to CalPERS.

A resolution determination for disability retirement will include all the following information statements:

- A statement certifying under penalty of perjury that the determination was not used as a substitute for the disciplinary process
- A statement certifying under penalty of perjury that the determination was made based on competent medical opinion
- A finding indicating the member has been found substantial incapacitated from the performance of the usual duties of his/her position
- A statement that there is competent medical opinion certifying the disability is expected to a) be permanent; b) last at least twelve consecutive months from the date of an application for benefit; c) will result in death.
- A statement confirming whether or not the member had filed a workers compensation claim(s) for his or her disabling conditions(s) and if so, whether the claim was accepted.

- A finding by the employer as to whether the causation of the disability was industrial.
- A statement by the employer documenting the member's last day on payroll.
- A statement by the employer as to whether there is, or is not, a possibility of third party liability present.
- The monthly amount and beginning date of Advance Disability Pension Payments (ADPP) paid or to be paid to the member along with the address where the reimbursement check should be mailed.
- A certified copy of this signed resolution must accompany the determination resolution.

(5) Appeal Process

If the applicant requests a hearing pursuant to the PERL, the hearing shall be held in conformity with Government Code section 21156, as it may from time to time be amended.

Once the City issues its decision following a hearing, the decision and findings will be served on the applicant by certified mail and CalPERS will be notified.

If applicant is found to be substantially incapacitated the city shall so certify to CalPERS. If applicant is found not to be substantially incapacitated the applicant will be further advised that he or she has thirty calendar days to seek judicial review, not , not including prospective or prophylactic restrictions as defined by CalPERS guidance on disability retirement and in CA Government Code Section 21166 which excludes any determination of disability under Labor Code 4600, 5811 or any other provision of the Labor Code.

PUBLIC COMMENT:

No public comments have been received as of the writing of this staff report.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

FISCAL IMPACT:

There is no fiscal impact to approving this Resolution

RECOMMENDATION:

Staff recommends the City Council Adopt a Resolution designating the authority and updating the process, and procedures in the determination of disability retirements for safety employees.

Attachment(s):

Resolution

RESOLUTION NO. _____

A RESOLUTION DESIGNATING THE AUTHORITY AND UPDATING THE PROCESS AND PROCEDURES IN THE DETERMINATION OF DISABILITY RETIREMENTS FOR EMPLOYEES

WHEREAS, the City of Sebastopol is a contracting agency of the California Public Employees' Retirement System; and

WHEREAS, the Public Employees' Retirement Law ("PERL") requires that a contracting local government agency determine (a) 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 (b) whether such disability is "industrial" within the meaning of the PERL;

WHEREAS, the City Council of the City of Sebastopol may delegate responsibility and authority under section 21173 of the Government Code to a body or officer of the City.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sebastopol as set forth:

Section 1. The City Council hereby delegates to the City Manager or their designee the authority to file disability applications on behalf of all employees pursuant to Government Code section 211753;

Section 2. The City of Sebastopol does hereby delegate to the City Manager or his/her designee, the authority to make any and all determinations on behalf of the City of Sebastopol under section 21152(c) of the Government Code, as it may from time to time be amended, of the existence of a disability and whether such disability is industrial, and to certify such determinations and all other necessary information to the California Public Employees' Retirement System; and

Section 3. That the City Manager or his/her designee is authorized to make applications on behalf of the City of Sebastopol for disability retirement on behalf of eligible employees and to initiate requests for reinstatement of such employees who have previously been retired for disability; and

Section 4. A certified copy of this Resolution must be placed on file with the California Public Employees Retirement System or must accompany all such resolutions or letters of designation signed by the delegate named in this resolution and be included as part of the submission to the California Public Employees Retirement System;

Section 5. The City of Sebastopol hereby adopts the following procedures for processing applications of local safety members for disability retirement:

(1) Verification of CalPERS determination of member eligibility

Upon receipt of verification from the California Public Employees Retirement System that the member is eligible to apply for disability retirement the City Manager will proceed with determination.

(2) Contingencies Completed

An initial determination will begin after determination that the following conditions have been met:

- 4850 payments have been exhausted
- Employee has exhausted all leave balances
- OR Employee has filed for disability retirement

(3) Promissory Note

In the event applicant becomes eligible for Advanced Disability Pension Payments. Applicant must sign a promissory note agreeing to repay and Advance disability Pension Payments made by the City should the applicant later be deemed ineligible for retirement.

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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 substantially incapacitated from the performance of his or her duties. The determination shall be made within six months of the date of the City 's receipt of CalPERS request for such determination unless this time requirement is waived in writing by the applicant. The City Manager or his/her designee shall certify the City 's findings and direct them to CalPERS.

A resolution determination for disability retirement will include all the following information statements:

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- A statement confirming whether or not the member had filed a workers compensation claim(s) for his or her disabling conditions(s) and if so, whether the claim was accepted.
- A finding by the employer as to whether the causation of the disability was industrial.
- A statement by the employer documenting the member's last day on payroll.
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IN COUNCIL DULY PASSED this 21st day of July 2020.

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

APPROVED: _____

Patrick Slayter
Mayor, City of Sebastopol

VOTE:

AYES:

NOES:

ABSENT:

ABTAIN:

ATTEST: _____

Mary Gourley, MMC, Assistant City Manager/City Clerk

APPROVED AS TO FORM: _____

Larry McLaughlin, City Attorney