



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Rescind Res. **91-189** and adopt a new resolution for Industrial Disability Determinations,

MEETING DATE: July 1, 1992

PREPARED BY: Personnel Director

RECOMMENDED ACTION: That the City Council approve **the** new Resolution for a Procedure on Industrial Disability Determinations.

BACKGROUND INFORMATION: The Public Employees Retirement System (PERS) has informed **all** contracting agencies of a recent amendment to Government Code Section 21025. This section **now** requires agencies to conduct a hearing in accordance with the Administrative Procedures **Act** when a local safety member appeals the agency's initial disability determination. The misting procedure has been amended **to** include an informal determination process and to comply with the Administrative **Procedures Act**.

FUNDING: None required.

Joanne M. Narloch
Personnel Director

JMN/lra

DC9212/TXTA.04P

APPROVED: _____

THOMAS A. PETERSON
City Manager



RESOLUTION NO. 92-115

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RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI DELEGATING AUTHORITY TO THE CITY MANAGER OR HIS DESIGNEE PURSUANT TO SECTION 21034 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA TO MAKE DETERMINATIONS REGARDING INDUSTRIAL DISABILITY RETIREMENTS THEREUNDER, TO ESTABLISH A PROCEDURE FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS, AND RESCINDING RESOLUTION NO. 91-189.

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WHEREAS, the City of Lodi (hereinafter referred to as "agency") is a contracting agency of the Public Employees' Retirement System (PERS) ;

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 purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law.

WHEREAS, the City Council has determined upon legal advice that it may delegate authority under Section 21034 of the Government Code to make such determinations to the incumbent of the office of City Manager.

NOW, THEREFORE, BE IT RESOLVED, that the City Council delegate and it does hereby delegate the City Manager, or his designee, authority to make determinations under Government Code Section 21034. on behalf of the agency, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement System; and,

BE IT FURTHER RESOLVED, that the City Manager is authorized to 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.

BE IT RESOLVED FURTHER, that the disability retirement certification procedure for local safety members be as follows:

1. 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 incapacitated from the performance of duty. Such determination shall be made no later than six months from the date of the application unless this time requirement is waived in writing by the applicant. Said determination shall be made by the Personnel Director, designated by the City Manager.

a. If it is determined by the city that the applicant is incapacitated, and the incapacity is industrial, the City Manager will so certify to PERS.

b. If it is determined by the city that the applicant is incapacitated but that the cause of incapacity is nonindustrial. the City Manager will so certify to PERS.

c. If it is determined by the city that the applicant is incapacitated, but the applicant contends that the cause of disability is industrial, the applicant may petition the Workers' Compensation Appeals Board (WCAB) for a Finding of Fact determining causation. when the WCAB determines the cause of incapacity is industrial or nonindustrial the city will so certify to PERS.

d. If the city determines that the applicant is not incapacitated from the performance of duty, it shall notify the applicant of this determination. The city shall notify the applicant by certified mail (return receipt requested) or by personal service of its intent to certify to PERS its findings that the applicant is not incapacitated. The applicant will be further advised that he or she has thirty calendar days within which to advise the city that the applicant requests a hearing.

2. If the applicant requests a hearing, said hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the city will notify the Office of Administrative Hearings and will request a hearing date and a pre-hearing conference with an Administrative Law Judge. The applicant will be informed that the hearing will be held at the time and place designated by the Office of Administrative Hearings which shall set a hearing date and pre-hearing conference. The applicant will be informed that the hearing will be held within six months of the application date based upon the evidence which is available as of that time. The applicant may waive the right to a hearing within six months.

The hearing shall be conducted before the Assistant City Manager with the 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.

Following the hearing a decision and findings of fact will be made by the Assistant City Manager. The decision and findings will be served on the applicant by certified mail.

If applicant is found to be incapacitated the city shall so certify to PERS. If applicant is found not to be incapacitated the applicant will be further advised that he or she has thirty calendar days within which to seek judicial review. Such review is by means of filing a Petition for Writ of Mandate in the Superior Court of San Joaquin County.

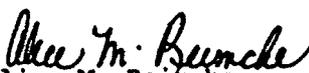
Dated: July 1, 1992

I hereby certify that Resolution No. 92-115 was passed and adapted by the Lodi City Council in a regular meeting held July 1, 1992 by the following vote:

Ayes : Council Members - Hinchman, Sieglock, Snider and
Pinkerton (Mayor)

Noes : Council Members - None

Absent: council Members - Pennino


Alice M. Reimche
City Clerk

92-115

RES92115/TXTA.02J

CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINGO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNDER

CITY OF LODI

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THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

July 7, 1992

Cheryl. Salvador
Public Employees' Retirement System
P.O. Box 942711
Sacramento, CA 94229-2711

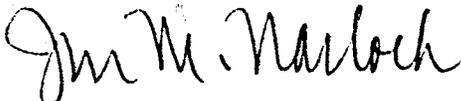
RE: Resolution No. 92-115
Rescinding Res. 91-189

Dear Ms. Salvador;

Enclosed is a certified copy of the City of Lodi's new resolution on determining safety officers' industrial disability retirements.

Should you have any questions regarding the attached resolution, please give me a call.

Sincerely,



Joanne M. Narloch
Personnel Director

Enc .

cc: City-Clerk

JMN/lra

LRJN9201/TXTA.04P/REC.DIR