

RESOLUTION NO. 97-149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI DELEGATING AUTHORITY TO THE CITY MANAGER OR HIS DESIGNEE PURSUANT TO §21173 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA TO MAKE DETERMINATIONS REGARDING INDUSTRIAL AND NONINDUSTRIAL DISABILITY RETIREMENTS THEREUNDER, TO ESTABLISH A PROCEDURE FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS AND THE SUBMITTAL OF DISABILITY RETIREMENT APPLICATIONS FOR MISCELLANEOUS MEMBERS, AND RESCINDING RESOLUTION NO. 92-179

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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); and

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; and

WHEREAS, the City Council has determined upon legal advice that it may delegate authority under Section 21173 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 person designated by the City Manager, authority to make determinations under Government Code §21173 on behalf of the agency, of disability and whether such disability is industrial and to certify such determination and all other necessary information to the Public Employees' Retirement System; and

BE IT FURTHER RESOLVED, that the City Manager or his/her designee are authorized to make applications on behalf of the agency for Disability Retirement of employees with the City of Lodi, and to initiate requests for reinstatement of such employees who are retired for disability and are local safety members; and

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 City Manager, or his designee.
  - a. If it is determined that the applicant is incapacitated, and the incapacity is industrial, the City Manager will so certify to PERS.
  - b. If it is determined 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 that the applicant is incapacitated, but such incapacity is nonindustrial, 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 Manager will so certify to PERS.
  - d. If it is determined that the applicant is not incapacitated from the performance of duty, the City Manager shall notify the applicant of this determination. The notification shall be by certified mail (return receipt requested) or by personal service of the intent to certify to PERS the 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 local safety member applicant requests a hearing regarding the determination of the City, 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 City Manager or person designated by the 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 stenographer reporter.

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

If the applicant is found to be incapacitated the City Manager 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; and

BE IT FURTHER RESOLVED, Resolution No. 92-179 is rescinded upon the adoption of this Resolution.

Dated: September 17, 1997

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I hereby certify that Resolution No. 97-149 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 17, 1997, by the following vote:

AYES: COUNCIL MEMBERS – Land, Mann, Sieglock, Warner and Pennino  
(Mayor)

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

  
ALICE M. REIMCHE  
City Clerk