



CITY OF OAKLAND

## MEMORANDUM

**TO:** HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Anil Comelo,  
Director of Human Resources  
Management Dept. (HRM)

**SUBJECT:** Industrial Disability Retirements

**DATE:** March 26, 2015

City Administrator

Date:

Approval

**Donna Hom**

**3/26/15**

### INFORMATION

The purpose of this memorandum is to provide background information on Industrial Disability Retirements (IDRs) and to make recommendations for the monitoring of the IDRs. Last spring, media reports surfaced about a current Federal Bureau of Investigations (FBI) employee who continues to receive IDR payments totaling \$52,000 annually as a result of a work related injury he suffered during his tenure as a City of Oakland Police Officer. The investigation regarding that specific case has been inconclusive because of a lack of specific information to indicate fraud.

If the City is able to obtain information that fraud occurred in this particular case or with other industrial disability retirements, the City will take all appropriate actions including seeking the stoppage of the disability payments from CalPERS (the City's pension provider).

### Background

Since reports regarding the former police officer appeared in the media, staff has been asked to provide a detailed description of when and how employees qualify for Industrial Disability Retirement (IDR). Other areas of interest include cost of the City's IDRs and other comparative IDR data.

Industrial Disability Retirements (IDRs) and Workers' Compensation (Industrial Injuries) are highly regulated by State law. They are governed by the State Labor Code and the Public Employees Retirement Law, both promulgated through the State of California. An IDR can only occur if the employee has sustained an on-the-job injury and has an active Workers' Compensation claim. If, while on Workers' Compensation, an employee is medically determined to be "permanently disabled" from a work-related injury/illness and is unable to work his/her regular duties, the employee can seek an Industrial Disability Retirement. Thus, it stands to reason the larger the number of Workers' Compensation claims, the higher the potential number of IDRs.

Annually, City employees report an average of 570 work-related injuries. During the last four years, the Workers' Compensation program expenditures have been approximately \$22 million per year. The following chart provides a snap-shot of the number of new workers' compensation claims for Fiscal Year 2010-11 through Fiscal Year 2013-14:

**Number of New Workers' Compensation Claims by Department  
Fiscal Years 2010/11 through 2013/14**

	Police			Fire			Public Works			All Others		
Fiscal Year	Total Number of Emp (Sworn)	Workers Comp. Cases	Percent	Total Number of Emp (Sworn)	Workers Comp. Cases	Percent	Total Number of Emp	Workers Comp. Cases	Percent	Total Number of Emp	Workers Comp. Cases	Percent
2010-11	658	214	32.52%	423	143	33.81%	683	115	16.84%	3,598	104	2.89%
2011-12	645	236	36.59%	411	115	27.98%	677	84	12.41%	3,629	85	2.34%
2012-13	643	216	33.59%	410	127	30.98%	703	98	13.94%	3,606	112	3.11%
2013-14	650	262	40.31%	392	150	38.27%	727	121	16.64%	3,593	95	2.64%
<b>Average</b>	<b>649</b>	<b>232</b>	<b>35.75%</b>	<b>409</b>	<b>134</b>	<b>32.70%</b>	<b>698</b>	<b>105</b>	<b>14.98%</b>	<b>3,607</b>	<b>99</b>	<b>2.75%</b>

As the above data shows, on average each year, 35.75% of Sworn Police (232 cases) and 32.70% of Fire personnel (134 cases) sustained work related injuries.

Understandably, certain job classifications are more prone to injuries than others due to the nature of their work. Similar to the experience of most cities, in the City of Oakland, departments with the largest frequency of industrial injuries are Police, Fire or Public Works departments. Sworn Police and Fire job classifications have essential functions that require a very high degree of physical performance such as the ability to lift heavy items, climb fences/stairs and run. In many other professions, the inability to lift and/or run due to a disability may not end one's career, but these are critical abilities (i.e. essential functions) for Sworn Police and Fire personnel. Given the stringent physical requirements for Sworn classifications, the threshold which qualifies Sworn Police and Fire personnel employees for IDR is low relative to non-sworn professions.

Since injuries sustained during the course of employment can eventually result in an IDR, providing a safe work environment is vital. It is important to train employees to adhere to health and safety procedures as well as help employees recover from an injury. The City strives to provide a safe work environment and has implemented a robust Return-to-Work program to help employees recover from injury and limit their time away from work. Minimizing work-related injuries is also important since employee injuries cost the City approximately \$22 million per year in medical and legal expenditures, disability payments, and operational/administrative expenses.

**IDR Data**

Over the last ten years, an average of 31 employees – mostly Sworn Police and Fire personnel – received IDRs on an annual basis. Compared to similar cities, the City of Oakland has a higher rate of IDRs.

The chart below provides the number of Sworn Industrial Disability Retirements granted from Fiscal Year 2004-05 to Fiscal Year 2013-14.

### Industrial Disability Retirements (IDR)

	Police			Fire			Miscellaneous (Non-Sworn)			
Fiscal Year	Total Number of Retirees	IDRs	Percent	Total Number of Retirees	IDRs	Percent	Total Number of Retirees <sup>1</sup>	IDRs	Percent	Total IDRs
2013-14	61	34	55.7%	12	5	41.7%	115	0	0.0%	39
2012-13	49	28	57.1%	21	14	66.7%	133	0	0.0%	42
2011-12	51	25	49.0%	15	7	46.7%	159	0	0.0%	32
2010-11	42	26	61.9%	21	11	52.4%	155	1	0.6%	38
2009-10	30	4	13.3%	19	9	47.4%	272	0	0.0%	13
2008-09	26	11	42.3%	14	10	71.4%	175	0	0.0%	21
2007-08	40	21	52.5%	8	4	50.0%	185	1	0.5%	26
2006-07	51	28	54.9%	11	6	54.5%	187	0	0.0%	34
2005-06	49	21	42.9%	24	13	54.2%	153	2	1.3%	36
2004-05	37	18	48.6%	32	15	46.9%	327	0	0.0%	33
<b>Total/ Average</b>	<b>436/ 43.6</b>	<b>216/ 21.6</b>	<b>49.5%</b>	<b>177/ 17.7</b>	<b>94/ 9.4</b>	<b>53.1%</b>	<b>1,861/ 186.1</b>	<b>4/ 0.04</b>	<b>0.2%</b>	<b>314/ 31.4</b>

<sup>1</sup> CalPERS does not track data separately for Sworn Police and Sworn Fire and instead combines the two together as Safety. For the purpose of above calculations, all non-work related disability retirements were included in “total retirement” number and not in the IDR numbers.

According to the data, approximately 49.5% of all Sworn Police retirees retire on an Industrial Disability Retirement (IDR), as do 53.1% of all Sworn Fire retirees and 0.2% of all non-Sworn retirees. An analysis was performed comparing the City of Oakland data to that of several relatively large urban cities that are members of CalPERS including the cities of Anaheim, Bakersfield, Hayward, Long Beach, Sacramento, Santa Ana, Stockton, and Vallejo. It was presumed that the IDR statistics for the City of Oakland would mirror the composite nine year statistics of these eight cities. The results were closer for Safety personnel using this cohort of cities, but it did not eliminate the deviation. The eight city composite statistics for Safety IDRs was 41.1%, compared to 50.6% for the City of Oakland – a difference of 9.5%. For non-Sworn IDRs, the City fared more favorably at 0.2% vs. 1.2% for the composite statistics – a difference of 1%.

With the greater number of IDRs, the City spends an estimated \$4.2 million more in IDR pensions than other cities. It should be noted, however, that the higher cost is not only due to a higher

incidence of IDRs, but can also be attributed to higher salaries (some comparable agencies are in areas with lower cost of living and lower salary scales). On average, the annual cost of an IDR for a Sworn Police employee is \$66,000. For a Sworn Fire employee, it is \$101,000; and for Miscellaneous employees, it is \$36,000.

### **City's Pre-Industrial Disability Retirement (Pre-IDR) Process**

Employees with an industrial injury are eligible for the same interactive accommodation process as employees with serious health or disabling condition. Sworn employees are entitled to one year of full pay (as required by Labor Code 4850) prior to activating their 12 additional weeks Family Medical Leave Act/California Family Rights Act (FMLA/CFRA) protections. Non-sworn employees may have their FMLA/CFRA 12-week period of job protection run immediately upon injury.

If an employee is still unable to perform his/her essential job functions after FMLA/CFRA protection is exhausted, the employee is referred to the Human Resources Management (HRM) Disability Benefits Coordinator to determine eligibility for Fair Employment and Housing Act (FEHA) accommodation. Via an Interactive Accommodation Process (IAP), the City seeks to engage the injured employee with subject matter experts from the department and a Disability Benefits Coordinator from HRM's Risk and Benefits Division around the physician's reasonable accommodation questionnaire to identify whether the employee will be able to perform the essential job functions of their position with, or without accommodation.

If an employee is medically precluded from performing their essential job functions due to a disability, the City will then assist the employee in an alternate job search for a vacant, non-promotional position within the City. The City will afford an employee a period of up to 6 months for an alternate job search after an employee has been found via the IAP process to be unable to perform their essential job functions. At any time, an employee who is medically precluded from performing their essential job functions due to a disability may pursue an IDR.

If no accommodation is feasible, the employee is referred to the Retirement Division to determine eligibility for disability retirement. If the employee chooses to file an IDR with the Retirement Division, the IDR process begins. Miscellaneous (Non-Sworn) employees are required to file the disability retirement application directly with CalPERS. For Sworn personnel, the IDR process is handled by the City's Retirement office of the Treasury Division in the Finance Department as described in the Administrative Instruction 563 (*Attachment A*).

### **Industrial Disability Retirement (IDR) Process for Sworn Employees**

Sworn employees typically seek an IDR after (1) they have completed a full year of workers' compensation leave, (2) they are not able to perform the essential functions as indicated in the Essential Functions Job Analysis (EFJA) of their position, and (3) the "appropriate, authorized physician" has determined they have reached "maximum medical improvement" ("MMI")/"permanent and stationary" ("P&S") status.

In the case of Sworn personnel, the determination that a permanent work restriction(s) precludes a return to full pre-injury job duties is made by the City through the City's PERS Safety Disability

Committee in accordance with the City’s Administrative Instruction 563, and as outlined in the PERS Safety Disability Committee’s IDR process flowchart (*Attachment B*). To make this return-to-work assessment, the City’s Workers’ Compensation Third Party Administrator (TPA) consults with the employee’s department regarding the permanent work restrictions to establish whether the department can permanently accommodate the employee in their original position or an alternate position.

The City’s Third Party Administrator for Workers’ Compensation evaluates the application and seeks medical opinion(s) prior to making a recommendation to the PERS Safety Disability Committee. A physician must provide a diagnosis on the employee’s condition and information about how it precludes him/her from performing the job duties. Applicants that do not have the necessary medical reports supporting the IDR application are so informed. Such applications are not reviewed by the Committee.

While Sworn employees are also informed of the Fair Employment and Housing Act (FEHA) process through which they may be able to secure an alternate position, Sworn employee commonly opt for an Industrial Disability Retirement, which has certain advantages. For example, an Industrial Disability Retirement for Police and Fire personnel provides that 50% of the pension payment is “tax free” (both State and Federal.)

If the IDR is granted, the employee will receive monthly retirement payments for the rest of their life or until the employee recovers from the disabling injury or illness. Safety members receive a disability retirement benefit of at least 50% of their highest consecutive 12-month or 36-month average monthly salary (other criteria/options apply). IDRs do not have a minimum service requirement.

For example, a Sworn Oakland employee who has worked for 10 years starting age 30 and has the highest “compensation-earnable” amount of \$80,000, and an applicable formula of [3% @ 50](#) will have the pension\* calculated as follows for an Industrial Disability Retirement at age 40:

<b>Disability Retirement</b>		<b>Final</b>
<b>Service Credit</b>	<b>Formula</b>	<b>Compensation</b>
10	<a href="#">3%@50</a>	\$80,000
10	X .05 X	80,000
=	<b>\$40,000</b>	

\*for a brief explanation on pension calculation for Oakland employees, please see Appendix titled “Calculation of Service Pension”

IDR recipients are not automatically entitled to receive medical benefits unless they qualify for the benefits as a result of their qualifying tenure and regular benefits package or if medical benefits for treatment of their disabling condition are granted as a result of a Workers' Compensation settlement agreement in the form of "Future Medical Benefits."

### **CalPERS Post-IDR Review of Eligibility for State of California Employees**

Similar to the City, CalPERS manages the Industrial Disability Retirement process for the State's sworn employees. At the time of this report, CalPERS administers the program for the State prison systems, California Highway Patrol, California Department of Fire and other Sworn employee groups. Under their program, CalPERS periodically (every 2-3 years depending upon conditions established at the time the IDR was approved) re-evaluates the medical condition of IDR recipients to determine if they have recovered from disability — until age 50.

CalPERS has a process in place by which individuals granted IDRs are required to re-certify or verify their continued inability to perform the essential functions of the job from which they retired. The following are some of their process components:

- Post-Retirement: CalPERS has a process to re-evaluate members before they attain retirement age to determine if they are still substantially incapacitated from the performance of the position from which they disability retired. Section code 21155 and 21156 allows CalPERS to request a person to submit to a medical examination.
- Suspected fraud is referred to the CalPERS Legal Office which determines whether there is sufficient grounds to move the case forward to the district attorney for potential prosecution.
- CalPERS will stop disability retirement payments if during the re-evaluation process it is determined the member is no longer substantially incapacitated from performing the duties of the position from which they were disability retired. In the case of a state employee, the member and employer are notified that they must reinstate the member as they have mandatory reinstatement rights. Once the employer provides CalPERS with a start date, the member is removed from the retirement roll and reinstated to active employment.

### **CalPERS Fraud Tip Line**

Similar to the City's Fraud Hot-Line, CalPERS also has a special "Disability Fraud Tip Line" aimed at curbing abuse in the disability retirement program. The tip line is a voice mailbox for self-identified or anonymous callers to report CalPERS members suspected of misrepresenting their disabilities to collect retirement benefits.

Callers to the Customer Contact Center (888-330-5770) can leave their name and phone number. Anonymous callers are asked to leave as much information as possible, including:

- The name of the suspected member
- Spelling of their name
- Reason for their suspicion

All information will remain confidential. Callers will not be contacted unless they specifically ask to be called for further details.

**City of Oakland Post-IDR Review of Eligibility**

A survey of 117 Northern California cities found that no city has a systematic process to monitor post-retirement employment of IDR recipients. This is primarily due to the difficulty in monitoring post-retirement employment or addressing possible instances of fraud.

IDR recipients can and do accept post-IDR employment. Further, IDR recipients are not required to inform their employer or CalPERS when they accept post-IDR employment. The only significant limitation to employment for IDR recipients resulted from the Nolan vs. the City of Anaheim - 2004 case. In Nolan case, the State Supreme Court ruled that to qualify for a disability retirement, a member must show substantial incapacity to perform the usual duties of their current position and also show a substantial incapacity to perform the usual duties of the position for other California public agencies in CalPERS. A member who is incapacitated from their current position but is able to perform the usual duties of their position for other California public agencies in CalPERS will be denied disability retirement if there is a similar position available. As a practical matter, however, the Nolan decision has limited impact since most IDR recipients take post-IDR jobs that are at least somewhat distinct from the jobs they held when employed by a CalPERS member agency.

While the City of Oakland's PERS Safety Disability Committee procedures (noted in the above referenced attached flow chart) allow for the periodic review of IDR recipients, the City of Oakland, like most other cities, has not undertaken a concerted effort to monitor/determine if a past IDR recipient is employed elsewhere or if the retiree has become ineligible for disability retirement benefits. However, upon learning that a City IDR recipient is now working for the FBI, staff is considering changes to the IDR procedures (AI 563). As a part of this effort, the Police Department has reviewed data of Sworn Police Officer IDRs from the last seven years and has developed internal procedures to monitor future IDRs. The monitoring will include periodic review of an IDR recipient's ability to perform the essential functions of the job they previously held. Since law enforcement agencies customarily contact former employers, the City's Police Department (OPD) was able to review data regarding previous inquiries from potential employers of IDR recipients.

As part of the ongoing monitoring, OPD will compile and maintain a list of Sworn Officer IDRs. Upon notification that another law enforcement agency requests to review a file, OPD will conduct a preliminary investigation to determine job requirements. If it appears that the retired officer (under 50 years of age) may be able to perform the duties of a police officer, the City Risk Management unit will complete a more thorough investigation and determine further actions. This may result in a request for a medical examination and an offer to return to work. If the employee who was determined to be no longer disabled refuses the job offer, the IDR could be terminated.

Out of the current 212 Police Department IDR recipients, OPD was contacted by 5 prospective law enforcement employers only. In June 2014, these employers were contacted where it was determined that one of the five IDR recipients (other than the recent case highlighted in the media) may potentially be working in a job with essential functions similar to that of a City of Oakland Police Officer. However, the employer declined to provide a list of specific job functions and therefore we are unable to determine with certainty if the position is sufficiently similar, let alone determine if fraud occurred.

Of the other four IDR recipients, one currently works for a public agency in a non-sworn capacity, two are not currently working within a law enforcement capacity, and the fourth had worked temporarily for a federal law enforcement officer until June 2008.

The City's Fire Department attempted to conduct a similar review. However, The OFD did not maintain a record of the employment inquires since they routinely refer employment inquiries to Human Resources Management (HRM) which also did not track requests for employment verifications. Therefore, OFD was not able to review past IDR cases. OFD requested and the Retirement Unit provided a list of Sworn employee IDR for the past seven years. Moving forward OFD will:

- Maintain a list of Fire Department IDRs
- Cross check the IDR list when receiving a request for background information for a Sworn firefighter position
- Conduct a preliminary investigation to determine:
  - What job is applied for, or holding?
  - If it appears that the retired firefighter may now be able to perform the Sworn firefighter duties, refer the issue to the City's Risk Management division for investigation and recommendations for action.

The Risk Management Division in HRM will monitor and review future non-sworn IDRs to ensure continued eligibility for the benefit.

Respectfully submitted,

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/s/

ANIL COMELO  
Director, Human Resources Management

This report was prepared with the assistance and input of staff in the Police Department, Retirement Office, Fire Department, City Attorney's Office (for review of legal issues), and the City Administrator's Office. For questions, please contact Anil Comelo, Director of Human Resources, at (510) 238-6450

***Attachments:***

- A. Administrative Instruction 563
- B. AI 563 Flow Chart

***Link:***

The following is a link to the CalPERS retirement application and guide which describes various aspects of disability retirement.

<http://www.calpers.ca.gov/eip-docs/about/pubs/member/disable-retire-guide.pdf>

## CITY OF OAKLAND



## ADMINISTRATIVE INSTRUCTION

SUBJECT	Rules and Regulations for PERS Safety Disability Committee	NUMBER	563
REFERENCE		EFFECTIVE	August 1, 1989
SUPERSEDE	A.1. 563 dated July 1, 1987		

COMPOSITION OF THE COMMITTEE

- A. The PERS Safety Disability Committee will be comprised of three (3) members appointed by the City Manager.
- B. The City Attorney's Office will provide an advisory unit attorney who will advise the Committee and a litigation unit attorney who will represent the City Manager's position before the PERS Safety Disability Committee where hearings are involved.
- C. The City Physician will serve as advisor to the Committee.
- D. The Advisory City Attorney and the City Physician will be available on an on-call basis during disability hearings.
- E. This committee applies only to sworn members of the Police and Fire Departments who are covered by PERS.

II - SECRETARY TO THE COMMITTEE

The City Manager will designate one of the three committee members to serve as secretary to the Committee. The secretary will perform all the functions of a secretary, including but not limited to providing notice of meetings, coordinating medical packets, scheduling hearing dates, communicating recommendations of the Committee to the City Manager, preparing resolutions and serving as a liaison between the City of Oakland and the Public Employees' Retirement System.

III - LEGAL STANDARD FOR PERS SAFETY DISABILITY COMMITTEE'S REVIEW

- A. The PERS Safety Disability Committee acts to review all pertinent medical evidence and other available information regarding a safety member's application for disability retirement. The Committee makes recommendations to the City Manager as to whether or not a disability retirement should be granted. The City Manager must decide whether to accept or reject the Committee's recommendations and must make a determination and certify that determination to PERS. This determination must be made within six months of the date of application, unless this time requirement is waived by the member employee.

The legal standard for the review of evidence and information submitted is based on the Public Employees' Retirement Systems' regulations which currently provide:

Before the Retirement System can act on any local safety member's application for disability retirement, the following questions must be resolved by the agency and the information transmitted in the form of a Resolution.

1. Is the member substantially incapacitated for the performance of work duties, and will the incapacity exist for a permanent or extended and uncertain duration? It is the agency's responsibility to order a medical examination and obtain such evidence as is necessary to make a determination. Such evidence may be obtained from the Workers' Compensation insurer. On the basis of its accumulated evidence, the agency must determine whether the member is disabled. Also, the agency must bear the responsibility for any investigation of retired members for possible reinstatement action.
2. If a determination is made that the member is disabled, is the disability considered "industrial"? Industrial means disability as a result of injury or disease arising out of and in the course of employment as a local safety member (Government Code Section 20038). If there is no application filed with the Workers' Compensation Appeals Board for a determination pursuant to Government Code Section 21026, the agency is required to provide the determination of industrial causation.

If either the member or agency applies to Workers' Compensation Appeals Board for a determination, only that Board can decide the "industrial" question (Government Code Section 21026). A copy of this decision must be sent to the Public Employees' Retirement System. PERS will assume that the findings are not disputed, and will proceed accordingly, unless the agency notifies PERS that a Petition for Reconsideration has been filed.

3. What is the effective date of the retirement? The retirement effective date is established in accordance with Government Code Section 21025.4 which states that:

If a member is found to be disabled, the member's effective date of retirement, without the member's consent, cannot be earlier than the termination of the employee's leave of absence without loss of salary under Section 4850 of the Labor Code or, if earlier, when disability is permanent and stationary as found by the Workers' Compensation Appeals Board.

The member's retirement cannot be effective earlier, without the member's consent, than the expiration of accrued sick leave or compensating time off unless, with respect to sick leave, the provisions of local ordinances, or rules of the employer provide to the contrary (Section 21025.4).

Has member been offered a rehabilitation program? If the member is accepted for rehabilitation benefits, the effective date of retirement will be deferred until the employer thereafter determines the program is ineffective, until the employee requests a release, or until the program is completed.

PERS will require the agency determining the members disability to provide information necessary for PERS to determine the effective date.

4. Is there any third party liability related to the injury which caused the disability? The Retirement System requires that the agency file an accident report along with its decision as to the possibility of any third party liability. The reason for this information is that the System will retain its right of subrogation in disability cases.

5. Did the member come into safety membership with the agency later than January 1, 1980? If so, PERS must be informed of the type of disability and how it occurred. Also, does the agency believe that the injury (a) is the direct consequence of a violent act perpetrated upon the member; or (b) occurred during the performance of those portions of the member's duties which are particularly hazardous or dangerous? The reason for this information is so the System can determine what benefit is payable under Government Code Section 21292.6.
6. If the member is found to be disabled due to a mental disorder, is the member competent to act on his own behalf in legally binding retirement matters? The agency must certify this information to the Retirement System before any decision by the member will be accepted.

#### IV - PUBLIC MEETINGS

All meetings of the PERS Safety Disability Committee are public meetings and will be noticed according to the requirements of the Brown Act. Executive sessions, as provided for in the Brown Act, must be properly noticed before they can be held by the Committee.

#### V - RULES AND PROCEDURES FOR SUBMITTING APPLICATIONS AND HEARING PACKETS

##### A. Purpose

1. These procedures are designed to facilitate the processing of PERS disability retirement applications and ultimately the hearings.

##### B. Disability Retirement Application

1. The applicant, his or her representative, or the PERS Safety Disability Committee must contact the City Physician directly to arrange a timely appointment with the City Physician.

2. A complete Disability Retirement Application packet must be submitted to the Secretary to the PERS Committee at least two weeks prior to the hearing date. Retirement application packets must include at least the following items:
  - (1) All applicable medical reports indexed chronologically with the most recent information at the front of the packet;
  - (2) A disability retirement application, completed and signed;
  - (3) The City Physician's Report;
  - (4) Designation of the employee's representative, if any, including the representative's name, address, and telephone number.
3. The entire application packet must also be numbered sequentially on the bottom right hand corner of each page.
4. If the packet does not comply with the above-stated requirements, it will be returned immediately to the originating person with a notice of deficiencies. If the packet complies with these requirements, a hearing date will be set for the next regularly scheduled PERS Committee meeting date.

#### VI - COMMITTEE MEETING DATES

The PERS Safety Disability Committee will meet on the third Monday of each month at 2:00 p.m. or any other date selected by the Committee and properly noticed.

1. If there are any special requests relating to the calendaring of a disability hearing, the request must be discussed with the PERS Committee's Secretary. Such request must also be followed by a letter confirming the request.

#### A. Special Instructions

1. At the Committee's discretion, new medical reports which could reasonably have been produced by the deadline for the retirement packet may not be accepted once the disability hearing has been scheduled.
2. If new reports are to be submitted, the matter may be taken off the agenda and rescheduled to allow the Committee adequate time to review the new materials.

VII - APPEAL PROCESS

The PERS Safety Disability Committee will submit its recommendations to the City Manager. The City Manager makes a determination and certifies that determination to PERS.

If on the basis of medical and other available information the agency determines that the applicant is not incapacitated from the performance of duty, the applicant will be notified of this determination by certified mail (return receipt requested) or personal service and advised that the applicant will have thirty (30) calendar days within which to advise the City that the applicant requests a hearing.

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 (6) 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 (6) months.

The hearing shall be conducted before the PERS Safety Disability Committee 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 PERS Safety Disability Committee. 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 (30) 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 Alameda County.

VIII - RECORDING OF HEARINGS

- A. The PERS Safety Disability Committee will record by audio tape the proceedings of every Disability Committee meeting where the applicant's case is being reviewed or presented.
- B. An applicant or his/her representative or the City's representative may arrange for and bring a court reporter to record the hearing in addition to the audio taping. The party who retains a court reporter is responsible for paying the reporter.
- C. Handwritten minutes will be recorded by the Committee's Secretary and distributed.

IX - RESOLUTIONS

After the City Manager receives the recommendation of the PERS Safety Disability Committee and makes a final decision as to the disability determination, a resolution will be immediately forwarded to the Public Employees' Retirement System.

X - PERIODIC REVIEW

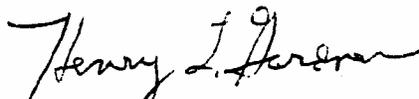
The PERS Safety Disability Committee will recommend to the City Manager on a case-by-case basis whether or not the applicant should return after retiring to appear before the Committee for a periodic review. This recommendation may be made at the time of the disability retirement hearing or at any time subsequent to the retirement, at the discretion of the Committee. Recommendations made at the time of the hearing will be forwarded to the Public Employees' Retirement System in the required resolution.

**XI - RETURN TO WORK UPON CESSATION OF DISABILITY**

Upon cessation of his or her disability, the applicant or the City Manager may request a review by the PERS Safety Committee to determine whether the retired employee can be returned to work.

**XII - QUORUM AND MAJORITY VOTE**

- A. Two (2) members of the three-member Committee shall constitute a quorum for the transaction of the Committee's business.
- B. Any recommendation for or against the disability retirement must be based on the vote of at least two members of the three-member Committee. The Advisory City Attorney and the City Physician are not voting members of the Committee.

  
HENRY L. GARDNER  
City Manager

PERSRULE

### Attachment B

#### AI 563: Rules and Regulations for PERS Safety Disability Committee Flowchart

