

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

443



FROM: Human Resources Department

SUBMITTAL DATE:
October 5, 2011

SUBJECT: Resolution No. 2011-245, Safety Member Disability Retirement and Reinstatement Procedures

RECOMMENDED MOTION: That the Board of Supervisors adopt Resolution 2011-245. Resolution 2011-245 will supersede Resolution 2007-236 (Procedures for Disability Retirement Determinations for Sworn Local Safety Officers Under PERL and for Reinstatement of Local Officers Retired on Account of Disability under PERL), and rescind Board Policy C-32 (Industrial Disability Safety Retirement and Reinstatement Procedures) approved by the Board of Supervisors on May 8, 2007, 3.23.

BACKGROUND: Under California Government Code Section 21150, et. seq., it is the responsibility of the County of Riverside to make determinations relating to local safety disability retirements as well as reinstatement of such retirees. It has become necessary to revise Resolution 2007-236 and to rescind Board Policy C-32 because they have been read and interpreted to preclude the County from exercising its statutory rights to reject and/or modify proposed decisions from Administrative Law Judges of the Office of Administrative Hearings in disability retirement appeals of local safety members.

Barbara A. Olivier

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Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12
SOURCE OF FUNDS: N/A				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Elizabeth J. Olson*
Elizabeth J. Olson

County Executive Office Signature

Policy ☒ Policy ☒
Consent ☒ Consent ☒
Consent ☐ Consent ☐

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 5/8/07; 3.23

District: ALL

Agenda Number:

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ATTACHMENTS FILED

WITH THE CLERK OF THE BOARD

3.23

BACKGROUND continued:

Both Government Code Section 21156(b)(2) and the Administrative Procedures Act (APA) (§11517(c)) expressly provide the County the statutory right to adopt, modify, or reject proposed decisions of Administrative Law Judges in disability retirement appeals and decide the case on its own. Thus, Resolution 2011-245 sets forth a procedure consistent with and pursuant to Government Code Section 21156 (b)(2) and the APA and confirms the County's right to adopt, modify or reject proposed decisions from Administrative Law Judges in such matters. In addition, Resolution 2011-245 confirms the obligation of the County to file an application for disability retirement with CalPERS in order to obtain a medical evaluation in accordance with Government Code Section 21154.

RESOLUTION NO. 2011-245

A RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF RIVERSIDE REGARDING DISABILITY RETIREMENT
DETERMINATIONS AND APPEALS FOR LOCAL SAFETY MEMBERS
UNDER THE PUBLIC EMPLOYEES' RETIREMENT LAW

THE BOARD OF SUPERVISORS of the County of Riverside finds:

A. The County of Riverside is a contracting agency of the Public Employees' Retirement System ("PERS"); and

B. California Government Code Sections 21150, *et seq.* and 21190, *et seq.* require that a contracting agency make determinations relating to disability retirement applications for its local safety member employees, as well as reinstatement of such retirees.

C. In the event of a dispute regarding retirement or reinstatement of a sworn local safety member, where a determination of incapacity is necessary, the Board of Supervisors is required by California Government Code Sections 21156 and 11512, as well as the holdings in Usher v. County of Monterey (1998) 65 Cal.App.4th 210 and Langan v. City of El Monte (2000) 79 Cal.App.4th 608, to have the hearing conducted by an Administrative Law Judge ("ALJ") from the Office of Administrative Hearings ("OAH") alone, who will then submit a proposed decision to the Board upon which it may act. The appeal hearing is required to be conducted consistent with the provisions of the Administrative Procedures Act ("APA"), California Government Code Section 11500, *et seq.*; and

D. Government Code Section 21173 allows the governing body of a contracting agency to delegate any of its authority or duty to make determinations regarding disability under the PERL. The Board of Supervisors of the County of Riverside delegated its authority and duty under this section to the County's Human Resources Director pursuant to Resolution 2011-246.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on _____, that effective

1 upon the adoption of this resolution, appeals taken by employees of disability retirement determinations
2 for local safety members under the Public Employees' Retirement Law and for reinstatement of local
3 safety members who are retired on account of disability under the Public Employees' Retirement Law
4 shall be governed by the provisions of the Administrative Procedures Act (California Government Code
5 Section 11500, *et seq.*);

6 BE IT FURTHER RESOLVED that pursuant to California Government Code Section 11517(c),
7 the County shall retain the statutory right to review the proposed decision of the Administrative Law
8 Judge from the Office of Administrative Hearings and to adopt, modify or reject that proposed decision.
9 The County will follow and comply with all procedural requirements set forth in California Government
10 Section 11517.

11 BE IT FURTHER RESOLVED that in the absence of judicial review that may be brought by the
12 employee, the Human Resources Director's final decision shall be certified by the County to PERS in the
13 manner and within the time provided by law.

14 BE IT FURTHER RESOLVED that to the extent the Human Resources Director determines that a
15 local safety member is eligible for disability retirement but is not eligible for industrial disability
16 retirement the employee's appeal of the Human Resources Director's decision that the disability
17 retirement is not industrial shall be conducted and heard by the Workers' Compensation Appeals Board.

18 BE IT FURTHER RESOLVED that in the event that the County of Riverside has not yet rendered
19 a determination on whether a local safety employee is substantially incapacitated for the performance of
20 duty and the employee has yet to undergo an evaluation in accordance with Government Code Section
21 21154, the County of Riverside may file an application for disability retirement with PERS in order to
22 obtain said evaluation for purposes of addressing substantial incapacity. When the evaluation has been
23 received by the County of Riverside, the County of Riverside will endeavor to make a prompt
24 determination on the application.

25 BE IT FURTHER RESOLVED that this Resolution hereby supersedes Board Resolution 2007-
26 236 and expressly repeals Board Policy C-32.

27
28 FORM APPROVED COUNTY COUNSEL
BY: Pamela J. Walls 10/6/11
PAMELA J. WALLS DATE

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BOARD OF SUPERVISORS POLICY

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PURPOSE:

Under California Government Code §21150, et seq., it is the county's responsibility to make determinations relating to disability retirement applications for its employees who are sworn local safety members of the Public Employees' Retirement System ("PERS"), as well as to reinstatement of such retirees. The procedures set forth herein describe the process to be followed when there is: 1) a safety member-initiated application for disability retirement, 2) a county-initiated application for disability retirement of a safety member, 3) a county-initiated reinstatement of a previously retired safety member, and/or 4) a previously retired safety member-initiated reinstatement application. The following paragraphs set forth the procedures to be followed in such cases.

SAFETY MEMBER INITIATED APPLICATION FOR DISABILITY RETIREMENT:

- A. An application for disability retirement may be secured from Human Resources, the Sheriff's Department or PERS. The employee must fully complete and sign the application and submit it directly to PERS.
- B. Upon receipt of a completed application for retirement from a safety member, PERS mails a copy of the application along with a request for determination letter to the Human Resources Department. The date of the request for determination letter shall begin the six month timeframe in which the delegated authority has to make a determination and so certify that determination to PERS. This is in accordance with Government Code Section §21157.

At the time the County of Riverside is notified of an application for industrial disability retirement, the employee is provided a copy of these procedures.

- C. Investigation and proposed disposition: Upon application for a disability retirement, the Human Resources Director, pursuant to Board of Supervisors Resolution 74-108, shall investigate all facts and circumstances pertaining to the application for disability retirement. Assessing 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).

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- D. 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 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. Upon completion of this investigation, the Board of Supervisors or its designee shall, based upon the investigation, determine whether to approve or deny the application for disability retirement. If the Board of Supervisors or its designee approves the application, the county shall certify such determination to PERS. Should the county deny the application, the employee shall be advised of his/ her rights to appeal the determination as described in the Hearing Procedures section herein.

COUNTY-INITIATED APPLICATION FOR DISABILITY RETIREMENT OF A SAFETY MEMBER:

- A. If the county determines the employee is substantially incapacitated from performing the usual and customary 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 PERS by the employee, the Board of Supervisors or designee may elect to make an application on behalf of the county for disability retirement of the safety member. The employee shall be notified: (1) that an initial determination of incapacity from the performance of duty has been made; (2) that an application for disability retirement has been submitted to PERS by the county; and (3) whether the condition is determined to be industrial or non-industrial.

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- B. If the employee disputes the county's determination, the employee shall promptly be advised of his/her right to appeal the determination, as described in the Hearing Procedures herein.

COUNTY-INITIATED REINSTATEMENT OF PREVIOUSLY RETIRED SAFETY MEMBER:

- A. Government Code section 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 county 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 section 21175. The county shall provide notice to the retired employee of the date, time, and place of the medical evaluation and the name and address of the medical evaluator.
- B. If the county determines from a medical evaluation[s] and other available evidence that the previously retired employee is no longer incapacitated from employment, and that there is a vacant position within the job classification from which the individual was retired, the employee shall be reinstated to the previously held job classification and the retirement cancelled. Such reinstatement may be conditional upon completion of such additional training as may be necessary to re-establish 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 the right to appeal the determination as described in the Hearing Procedure herein.

PREVIOUSLY RETIRED SAFETY MEMBER-INITIATED APPLICATION FOR REINSTATEMENT:

- A. Government Code section 21191 permits a sworn safety member who received a disability retirement to seek reinstatement on the grounds that the

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incapacity no longer exists, and Government Code section 21192 sets 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 enclose 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 the formerly held position. Such reinstatement may be conditional upon completion of such additional training as may be necessary to re-establish skills or other requirements of the position. Failure to cooperate may constitute grounds for cancellation of the retirement.

If the county determines the reinstatement application should be denied, the retiree shall be advised of his/her rights to appeal the determination as described in the Hearing Procedure herein.

**DISPUTED INDUSTRIAL CAUSATION WITH RESPECT TO DISABILITY
RETIREMENT APPLICATIONS:**

- A. If, following the evaluation of medical reports and other evidence, the county determines that the cause of the claimed incapacity is not industrial; the employee shall be given written notice of the county'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.

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TIME LIMITS FOR OBJECTING TO DETERMINATIONS BY COUNTY:

- A. Time lines for the employee's/retiree's objection and appeal of the county's determination of disability shall be the applicable provisions of Government Code section 11500 et seq. If no objection is received in writing within the applicable time period, the county shall certify the disposition of the matter to PERS.
- B. Pursuant to Government Code §21157, determinations with respect to applications for disability retirement or for reinstatement shall be acted upon by the county within six months of the request for determination letter from PERS, unless such time is waived by the employee. A waiver of the six-month time limitation does not prevent the county from making its determination before six months has elapsed from the time of the application.

ADMINISTRATIVE HEARING IF OBJECTION TIMELY FILED:

- A. If timely objection is made by the employee to the county's determination regarding retirement or reinstatement, the Board of Supervisors or designee shall endeavor to schedule a hearing with the Office of Administrative Hearings no later than ninety (90) calendar days after the date of the appeal notification.
- B. At their discretion, the parties may request a pre-trial conference before an administrative law judge (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.
 - 6. Briefing schedule.
 - 7. Issuance of subpoenas to ensure witness attendance at hearing.
 - 8. Order of proof.

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9. Burden 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.

HEARING PROCEDURES:

- A. Following a determination by the county and the timely filing of an appeal by the employee/retiree, the appeal hearing shall be conducted by the ALJ in conformity with the Administrative Procedures Act ("APA").
- B. The county shall inform the employee/retiree of the date, time and place of the hearing.
- C. An 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 may be by Writ of Mandate in Riverside County Superior Court.
- D. The parties shall each bear all costs incurred by that party, including 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 shall be the responsibility of the county.
- 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. In the absence of request for judicial review by any aggrieved party the county shall certify the ALJ's decision to PERS, or shall order or deny reinstatement of a retiree based thereon. Pursuant to Code of Civil Procedure §1094.6, the ALJ and/or the county 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.

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ADVANCE DISABILITY RETIREMENT BENEFITS:

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

JUDICIAL REVIEW:

- A. Any judicial review of the decision of the ALJ 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 county shall promptly inform PERS.
- C. Upon completion of all appellate review and the decision having become final, the county shall advise PERS.

Reference:

Minute Order 3.28 of 08/26/03
Minute Order 3.3 of 04/10/07