

RESOLUTION NO. 99-20

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ESTABLISHING A PROCEDURE FOR INDUSTRIAL DISABILITY RETIREMENT
DETERMINATIONS OF LOCAL SAFETY OFFICER EMPLOYEES OF THE PUBLIC
EMPLOYEES' RETIREMENT SYSTEM**

RESOLVED by the City Council of the City of Los Altos that following the filing of an application for industrial disability retirement by a local Safety Officer under the California Public Employees' Retirement System the following procedures shall be employed:

1. An initial determination will be made by the City Manager (or designated authority) pursuant to Resolution No. 73-52, to determine whether the applicant is incapacitated from the performance of duty within the meaning of the Public Employees' Retirement Law. The determination will be based upon medical and other available evidence offered by either the applicant or the City. The determination shall be made within six months of the date of receipt by the City from CalPERS of the request to make the disability determination unless the applicant waives this time requirement in writing.
 - A. If the City determines that the applicant is incapacitated and the incapacity is industrial, the City Manager (or designated authority) will so certify to CalPERS.
 - B. If the City determines that the applicant is incapacitated but that the cause of incapacity is nonindustrial, the City Manager (or designated authority) will so certify to CalPERS.
 - C. If the City determines 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. If the WCAB determines the cause of incapacity to be industrial, or nonindustrial, the City Manager (or designated authority) will so certify to CalPERS. The WCAB decision can be subject to judicial review by either party filing a Petition for Writ of Mandate in the appropriate court of review. Following a decision on the merits by the appropriate court of review, the City Manager will certify the decision to CalPERS.
 - D. If the City determines that the applicant is not incapacitated from the performance of duty, the City Manager (or designated authority) will notify the applicant and CalPERS of this determination. The notification to the applicant will be by certified mail (return receipt requested) or by personal service and will notify the applicant of his/her right to appeal the decision and request a hearing within thirty calendar days of the notice.

2. If the applicant requests a hearing, the hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the City will notify CalPERS. The City will also notify the Office of Administrative Hearings and will request a hearing date and a pre-hearing conference with the 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.
 - A. The hearing shall be conducted before the Administrative Law Judge alone.
 - B. An administrative record shall be generated at the hearing pursuant to the Administrative Procedures Act. A Certified Shorthand Reporter shall record all testimony.
 - C. Following the hearing, the Administrative Law Judge shall prepare a Proposed Decision for review by the City Council. The decision will include a determination of issues, findings and summary of facts. The City Council in reviewing the decision of the Administrative Law Judge may take one of the following action:
 1. Adopt the decision as its own decision; or
 2. Reject the decision and make its own decision without hearing additional evidence; or
 3. Accept or reject the decision based upon additional evidence. If the City Council wishes to receive additional evidence, the Administrative Law Judge shall conduct an additional hearing to receive the evidence and shall provide the City Council additional findings and summary of facts, based on the new evidence received.
 - D. The decision and findings will be served on the applicant by certified mail and CalPERS will be notified.
 - E. An applicant will be advised that the City may order a reconsideration of all or part of the determination on its own motion or on petition of the applicant. The ability to petition for reconsideration by the applicant shall expire thirty (30) calendar days after the delivery or mailing of the decision to the applicant. An applicant need not seek reconsideration by the City as a prerequisite to filing a Petition for Writ of Mandate as outlined below.
 - F. An applicant will be further advised that he or she has thirty (30) calendar days, after the last day upon which reconsideration can be ordered, to seek judicial review. Such review is by means of filing a Petition for Writ of Mandate in the appropriate court of review.

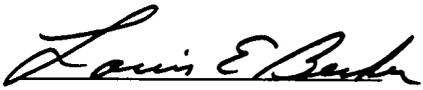
- G. Upon receipt of notice that applicant has filed a Petition for Writ of Mandate in the appropriate court of review, or upon expiration of thirty (30) calendar days (after the last day upon which reconsideration can be ordered) where applicant has not filed a Petition for Writ of Mandate, CalPERS will be notified.
- H. Upon receipt of Writ of Mandate in the appropriate court of review, CalPERS will be notified.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a regular meeting thereof held on the 22nd day of June, 1999, by the following roll call vote:

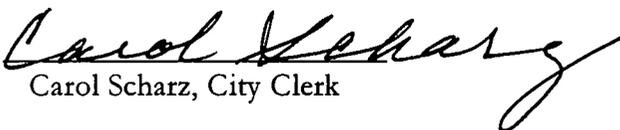
AYES: Mayor Becker, Councilmembers Casto, La Poll, Lear, and Moss

NOES: None

ABSENT: None


Louis E. Becker, Mayor

ATTEST:


Carol Scharz, City Clerk