

## CIVIL SERVICE COMMISSION POLICY

<b>SUBJECT:</b> PUBLIC SAFETY DISABILITY RETIREMENT APPEALS	<b>FILED UNDER:</b>	<b>ITEM NO:</b> 1.60 <b>PAGE</b> 1 of 3
<b>APPROVED BY:</b>  _____	<b>EFFECTIVE DATE:</b> 6-12-96	
<b>AUTHORIZED SIGNATURE</b>		
<b>NOTES:</b>		

**Purpose:** To provide appeal procedures for contested disability retirement determinations. The City Manager shall determine disability of a local safety member on complete and competent medical evidence. Pursuant to Government Code § 21025, as amended January 1, 1992, wherein a local safety member may appeal a determination of the City Manager and such appeal shall be conducted by an administrative law judge (ALJ) and in accordance with the Administrative Procedures Act (APA), Government Code § 11500 et seq.

**Procedures:** The following procedure have been developed pursuant to the APA, the City's Civil Service Rules and Regulations and the Personnel Ordinance, and shall be applicable to the consideration of all applications for disability retirement under the Public Employee's Retirement System (PERS) submitted by local safety members (member).

- 1. APPEAL HEARING PROCEDURES.** The member shall have 15 days upon receipt of the City Manager's determination as to disability to file a written notice of appeal with the Civil Service Commission.

Upon receipt of the member's request for appeal, the Civil Service Commission shall delegate the appeal to an administrative law judge as defined under § 11502 of the APA. No hearing date shall be established before the member contacts the Commission and confirms that all medical evidence is available and copies have been forwarded to the City Prosecutor. After all medical evidence is provided to the Civil Service Commission and to the City Prosecutor's Office, a hearing date shall be scheduled within 30 days from receipt of the medical evidence. Subsequently, any request of a continuance shall be made through the ALJ. If an employee or his attorney fails to contact the Commission and comply with this provision within two years commencing from the date the appeal was filed the appeal shall be dismissed with prejudice, unless good cause is shown. Good cause may be shown at any time prior to the dismissal of the action. The ALJ shall be vested with the same powers resting in the Civil Service Commission with respect to the conduct of the hearings, except that the decisions of the ALJ shall not be binding upon the Commission. All requests for continuance of hearing shall be considered in accordance with Section 78 of the City's Civil Service Rules and Regulations. In accordance with the APA, the hearing need not be conducted under the technical rules of evidence. Unless otherwise admissible, hearsay evidence may be used solely for the purpose of supplementing or explaining a finding but shall not be sufficient in itself to support a finding. Oral evidence shall be taken only under oath or affirmation. Each party shall

have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses on any matter relevant to the issues, to impeach any witness and to rebut any evidence. The ALJ shall only consider such medical evidence that has been previously provided to the opposing party within ten calendar days of the date set for hearing unless good cause can be shown.

**2. PROPOSED STATEMENT OF DECISION.** Within 30 days following the conclusion of the hearing and the submission of the case, the ALJ shall prepare a proposed decision and submit such decision to the Civil Service Commission for consideration. The decision shall set forth findings of fact and conclusions of law. Upon receipt of the proposed decision, the Commission shall consider the proposal at its next regularly scheduled meeting or as soon thereafter as is feasible. The Commission shall mail a copy of the proposed decision to the City and the member and shall notify both parties as to the date the Commission will consider the decision. Either party, within five days of receipt of the proposed decision or prior to the date of consideration by the Commission, whichever occurs first, may submit written argument to the Commission in support or opposition to the proposed decision. In addition, either party may present oral argument during the Commission meeting. Such argument shall last no longer than five minutes and the other party shall have five minutes to rebut such argument. At the conclusion of the arguments, the Commission members may question the parties or their counsel, and shall then take the matter under advisement.

**3. ORDER OF THE COMMISSION.** Within thirty days after receipt of the proposed statement of decision by the ALJ, the Civil Service Commission shall either adopt the proposed decision in its entirety, modify all or parts of the decision, reject the recommendation of the ALJ in its entirety, or order all or parts of a hearing to be reheard by the same or another ALJ. The Commission may choose to **rehear** itself all or parts of the appeal hearing. If heard by the Commission, an ALJ must preside over such an appeal hearing. The Commission shall take no action to modify all or parts of the decision or reject the recommendation of the ALJ without first reviewing a certified transcript or certified recording of the hearing conducted by the ALJ. The 30-day time period mentioned earlier in this paragraph shall be suspended for a reasonable period, not to exceed 60 days, in the event it becomes necessary to prepare a transcript of the proceeding. Within seven days of its determination, the Commission shall give written notice to the City Manager and the local member including any reasons for rejection, modification or rehearing of the ALJ decision. The decision of the Commission shall be final and binding, except that the member shall have **90** days following the adoption of the decision to file a writ of mandate pursuant to California Code of Civil Procedure § 1094.6 and § 11523 of the APA.

**4. RECONSIDERATION.** Within ten days after receipt of the final determination of the Commission, either party may file a request for reconsideration with the Commission

on grounds that (a) the findings of fact were procured by fraud, (b) the evidence does not justify the findings of fact, and/or (c) that there is new evidence which should have been considered but was not available at the time of the hearing. Requests for reconsideration will only be reviewed on these three grounds. Upon receiving a request for reconsideration, the Commission may deny the request, or review the request itself either through written or oral argument, or may order all or parts of the case to be heard by an ALJ. A request for reconsideration does not suspend the **90-day** time period for filing a writ of mandate under CCP § 1094.6.

Throughout the procedures as set forth above, the confidentiality of medical and personnel records will be maintained in order to protect against unauthorized use and disclosure.