



**Staff Report**

**Date:** December 9, 2021

**To:** Mayor Robbins and Councilmembers

**From:** Christa Johnson, Town Manager

**Subject:** Consideration of Resolution No. 2225 Designating the Authority and Updating the Process and Procedures in the Determination of Disability Retirement for Safety Employees

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**Recommendation**

It is recommended that the Town Council adopt Resolution No. 2225 to update the process and procedures in the determination of Disability Retirement for Safety Employees pursuant to Government Code Sections 21173, 21152(c), 21154, 21156, 21157.

**Background and Discussion**

The California Public Employees' Retirement System (CalPERS) authorizes the Town Council to delegate authority to the Town Manager or their designee to file disability retirement applications and to make disability retirement determinations on behalf of all safety employees pursuant to Government Code section 21173. On November 4, 2010, the Town Council adopted Resolution No. 1724, to delegate the Town Manager authority to make disability retirement determinations on behalf of all safety employees in accordance with Government Code section 21173. However, Resolution No. 1724 does not include the process and procedures by which the Town Manager will make such determinations in accordance with Government Code section 21156.

The Town now seeks to update its disability retirement process to incorporate the procedures by which the Town Manager will make determinations for disability retirement in accordance with Government Code sections 21156.

**Fiscal Impacts**

Staff anticipates no direct fiscal impact to the Town.

**Attachments**

- Resolution No. 2225
- Resolution No. 1724

# **TOWN OF ROSS**

## **RESOLUTION NO. 2225**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ROSS DESIGNATING THE AUTHORITY AND UPDATING THE PROCESS AND PROCEDURES IN THE DETERMINATION OF DISABILITY RETIREMENTS FOR SAFETY EMPLOYEES AND RESCINDING RESOLUTION NO. 1724**

**WHEREAS**, the Town of Ross is a contracting agency of the California Public Employees' Retirement System; and

**WHEREAS**, the Public Employees' Retirement Law ("PERL") requires that a contracting local government agency determine (a) whether an employee of such agency in which he/she is classified as a "local safety member" is disabled for purposes of the Public Employees' Retirement Law and (b) whether such disability is "industrial" within the meaning of the PERL; and

**WHEREAS**, the Town Council wishes to rescind Resolution No. 1724 in its entirety and adopt a new Resolution updating the process and procedures in the determination of disability retirements for safety employees; and

**WHEREAS**, the Town Council of the Town of Ross may delegate responsibility and authority under section 21173 of the Government Code to a body or officer of the Town.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Ross that the Town Council as set forth:

Section 1. The Town Council does hereby delegate to the Town Manager or his/her designee, the authority to make any and all determinations on behalf of the Town of Ross under section 21152(c) of the Government Code, as it may from time to time be amended, of the existence of a disability and whether such disability is industrial, and to certify such determinations and all other necessary information to the California Public Employees' Retirement System; and

Section 2. That the Town Manager or his/her designee is authorized to make applications on behalf of the Town of Ross for disability retirement on behalf of eligible employees and to initiate requests for reinstatement of such employees who have previously been retired for disability; and

Section 3. A certified copy of this Resolution must be placed on file with the California Public Employees Retirement System or must accompany all such resolutions or letters of designation signed by the delegate named in this resolution and be included as part of the submission to the California Public Employees Retirement System.

Section 4. The Town of Ross hereby adopts the following procedures for processing applications of local safety members for disability retirement:

(1) Verification of CalPERS determination of member eligibility

Upon receipt of verification from the California Public Employees Retirement System that the member is eligible to apply for disability retirement the Town Manager will proceed with determination.

(2) Contingencies Completed

An initial determination will begin after determination that the following conditions have been met:

- 4850 payments have been exhausted
- Employee has exhausted all leave balances
- OR Employee has filed for disability retirement

(3) Promissory Note

In the event applicant becomes eligible for Advanced Disability Pension Payments, applicant must sign a promissory note agreeing to repay any Advance Disability Pension Payments made by the Town should the applicant later be deemed ineligible for retirement.

(4) Determination of Disability

An initial determination will be made by the Town upon medical and other available evidence offered by either the applicant or the Town to determine whether the applicant is substantially incapacitated from the performance of his or her duties. The determination shall be made within six months of the date of the Town's receipt of CalPERS request for such determination unless this time requirement is waived in writing by the applicant. The Town Manager or his/her designee shall certify the Town's findings and direct them to CalPERS.

A resolution determination for disability retirement will include all the following information statements:

- A statement certifying under penalty of perjury that the determination was not used as a substitute for the disciplinary process.
- A statement certifying under penalty of perjury that the determination was made based on competent medical opinion.
- A finding indicating the member has been found substantially incapacitated from the performance of the usual duties of his/her position
- A statement that there is competent medical opinion certifying the disability is expected to a) be permanent; b) last at least twelve consecutive months from the date of an application for benefit (c) will result in death.

- A statement confirming whether or not the member had filed a workers compensation claim(s) for his or her disabling condition(s) and if so, whether the claim was accepted.
- A finding by the employer as to whether the causation of the disability was industrial.
- A statement by the employer documenting the member's last day on payroll.
- A statement by the employer as to whether there is, or is not, a possibility of third party liability present.
- The monthly amount and beginning date of Advance Disability Pension Payments (ADPP) paid or to be paid to the member along with the address where the reimbursement check should be mailed.
- A certified copy of this signed resolution must accompany the determination resolution.

(5) Appeal process

If the applicant requests a hearing pursuant to the PERL, the hearing shall be held in conformity with Government Code section 21156, as it may from time to time be amended.

Once the Town issues its decision following a hearing, the decision and findings will be served on the applicant by certified mail and CalPERS will be notified.

If the applicant is found to be substantially incapacitated the Town shall so certify to CalPERS. If applicant is found not to be substantially incapacitated the applicant will be further advised that he or she has thirty calendar days to seek judicial review, not including prospective or prophylactic restrictions as defined by CalPERS guidance on disability retirement and in CA Government Code Section 21156.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 9<sup>th</sup> day of December 2021, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Elizabeth Robbins, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

## TOWN OF ROSS

### RESOLUTION NO. 1724

#### RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ROSS DELEGATING AUTHORITY TO THE TOWN MANAGER TO MAKE DETERMINATIONS OF EMPLOYEE DISABILITY RETIREMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

**WHEREAS**, the Town Council (hereinafter referred to as Agency) is a contracting agency of the California Public Employees' Retirement System; 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 Town Council has determined upon legal advice that it may delegate authority under Government Code Section 21173 to make such determinations to the position of Town Manager; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council delegate to the position of Town Manager authority to make applications on behalf of the Agency pursuant to Government Code Section 21152(c) for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability; and

**BE IT FURTHER RESOLVED**, that the Town Council delegate to the position of Town Manager authority to make determinations of disability on behalf of the Agency under Government Code Section 21156 and whether such disability is industrial and to certify such determinations and all other necessary information to the California Public Employees' Retirement System.

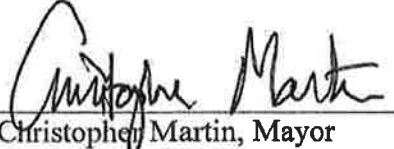
The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 4th day of November 2010, by the following vote:

**AYES:** Council Members Martin, Hunter, Russell, Small, Strauss

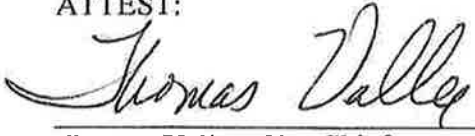
**NOES:**

**ABSENT:**

**ABSTAIN:**

  
Christopher Martin, Mayor

ATTEST:

  
Thomas Vallee, Fire Chief