

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: Disability Retirement Benefits

DATE: March 4, 2014

Approved



Date 3/4/14

Information

Background

Questions have been raised regarding the disability retirement benefits for employees, specifically sworn employees in the Police Department. [Councilmember Rocha's memo](#) dated December 9, 2013, asked City staff to provide information to the City Council regarding the new disability retirement benefits established by Measure B and requested that staff provide scenarios that would explain the differences between the prior definition and current definition of a disability retirement.

The information memo released on December 19, 2013, entitled, "[Work Related Injuries and Illnesses](#)" provided an overview of the changes made to the definition of disability under the provisions of Measure B. As mentioned in the memo, the changes to the definition of disability retirements were made subsequent to the City Auditor's report, "[Disability Retirement: A Program in Need of Reform](#)" published in April 2011.

Pursuant to the findings of the report, the City Auditor made several recommendations, which included changing the definition of a disability retirement to a more stringent definition that aligned more closely with the Social Security Administration definition. The Auditor recommended that the definition "...limit disability retirement benefits to those employees who are incapable of engaging in gainful employment." In addition, the Auditor recommended that the City clarify that the purpose of disability retirements is to provide a stable source of income for those who are incapable of engaging in any gainful employment but are not yet eligible to retire, which is the Social Security definition. These recommendations were approved by the City Council.

Analysis

Disability Retirement Definition and Benefits

Through Measure B, the definition of a disability retirement was modified for Police and Fire employees in the Police and Fire Department Retirement Plan. Prior to Measure B, the definition for Police and Fire employees was as follows:

“Disability,” “incapacity for the performance of duty,” and “incapacitated for the performance of duty,” as a basis for retirement, means disability of a member, short of death, of permanent or extended and uncertain duration, occurring while such member is a member of this system, as a result of injury or disease, which renders a person physically or mentally incapable of assuming the responsibilities and performing the duties of the position then held by him and of any other position in the same classification of positions to which the city may offer to transfer him, as determined by the retirement board, on the basis of competent medical opinion. It does not mean or include mere inability to assume said responsibilities or perform said duties.

The new Measure B definition, specifically for Police and Fire employees, is as follows:

“To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.” “An employee is considered “disabled” for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.”

For police officers in the Police and Fire Department Retirement Plan, the “other jobs described in the City’s classification plan” in the Police Department include, but are not limited to, Dispatchers, Police Data Specialists, Community Service Officers, and Crime Prevention Specialists. For firefighters in the Police and Fire Department Retirement Plan, the “other jobs described in the City’s classification plan” in the Fire Department include, but are not limited to, Dispatchers, Hazardous Materials Inspectors, Analysts, and Fire Prevention Inspectors. Attached are complete lists of the classifications in both the Police and Fire Departments.

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Measure B provisions have been generally incorporated into the Municipal Code when the Council approved the Tier 2 ordinance for employees in the Federated City Employees' Retirement System and Police employees in the Police and Fire Department Retirement Plan. Currently, there is no Tier 2 in place for Fire. Although the City Charter amendment to the definition applies to all City employees, it has not yet been implemented for employees in Tier 1 due to a Stipulation and Order agreed to by the Court, the bargaining units and the City that stays implementation of Measure B until July 2014. Tier 2 employees are not covered by the Stipulation and Order so retirement benefits, including disability retirement benefits, for Tier 2 employees in the Federated City Employees' Retirement System and Tier 2 sworn employees in the Police Department in the Police and Fire Department Retirement Plan can be implemented before July 2014. However, no ordinance has been adopted to define the implementation process. This will be accomplished with consultation with the bargaining units and the Retirement Boards.

The [Police Tier 1](#) disability benefit for a service-connected disability is dependent on the employee's years of service. An individual with less than 20 years of service receives 50% of the employee's final compensation. An individual with 21-30 years of service is allowed 4% per years of service, with a maximum of 90% of the employee's final compensation. Pursuant to the Stipulated Award re: Tier 2 Arbitration Between the City and San Jose Police Officers' Association, the [Police Tier 2](#) service-connected disability retirement benefit is 50% of the employee's final compensation.

	Police Tier 1	Police Tier 2
City of San Jose Disability Retirement Benefit	<20 years of service – 50% of final compensation	50% of final compensation
	21-30 years of service - 4% per year of service, maximum 90% of final compensation	

Long-Term Disability

Councilmember Rocha's memo refers to the issue raised regarding new Tier 2 Police Officers purchasing long-term disability insurance to supplement their salary in the event they become disabled and are placed in a position that has a lower salary. The City offers long-term disability insurance on a voluntary basis for all employees through Standard Insurance. Employees have two (2) available: LTD-30 and LTD-60, under which benefits begin after 30 or 60 days of continuous disability, respectively. Long-term disability insurance benefits are available to employees who are no longer able to work in their profession for up to two years. Eligibility criteria for LTD insurance can vary for those who are determined completely disabled compared with employees who are still working in their own occupation or that can work in other occupations. Under the LTD disability terms, an employee who is considered to meet the definition of disabled from any occupation can receive LTD benefits until age 65. Employees who are considered to be unable to work in their own occupation or are working in their own occupation, but are unable to make 80% of their pre-disability earnings, will have LTD coverage

for the first 24 months of the benefit. The terms of the LTD insurance can be found in the [Standard Insurance LTD Booklet](#).

These benefits are subject to deductions for certain incomes, including any income received from working in another occupation and from when the employee is considered disabled. Under Measure B, the City may be able to provide matching funds to purchase long-term disability insurance for employees who incur long-term reductions in compensation as a result of work related injuries, but who do not qualify for a disability retirement. This remains an option that the City and the POA can discuss. The City Administration is also looking into other benefits to determine what other options may be available. It is important to note that, under the Internal Revenue Code, LTD insurance benefit amounts received by an employee must be included in gross income to the extent such amounts are either attributable to contributions by the employer which were not includible in the gross income of the employee, or are paid by the employer. In other words, employees who receive LTD benefit amounts will be taxed on the LTD payments to the extent the City made the premium payments.

Exempt Officer Equality Program

In 2005, the City implemented the Exempt Officers Equality Program as part of a stipulated agreement to settle a disability discrimination lawsuit in federal court, known as the Consent Decree for police officers in the Police Department. This program is for those officers who are permanently restricted from performing the forcible arrest function or are otherwise permanently physically restricted from a patrol assignment or are so restricted on a long term basis.

At one time, the maximum number of exempt officer positions was determined to be 30 officers under the Consent Decree. In October 2011, the City and San Jose Police Officers' Association agreed to reduce the maximum number of exempt positions to ten (10). As we consider options for Police Department employees on modified duty, increasing the maximum number of exempt officers is an option that can be explored further. In addition, when any City employee is considered to be permanently disabled, the City must try to provide reasonable accommodation for the employee's workplace restrictions in the employee's current position or determine if there are other employment placements that can be offered to the employee that provides reasonable accommodation for the employee's work restrictions.

The Consent Decree also requires that, in certain situations, when an exempt officer applies for a disability retirement, the Department shall advise the Police and Fire Retirement Board that the Department does not have a position available for the officer because of the officer's physical restrictions and the lack of available exempt officer positions in the Exempt Officers Equality Program. The Retirement Board independently determines whether the employee is incapacitated from the performance of his/her duty and is otherwise eligible to retire for disability pursuant to the Police and Fire Retirement Plan. The Retirement Board will consider whether or not the employee is in an exempt officer position when determining whether to grant a disability retirement.

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Other Agencies

Councilmember Rocha’s memo asked for other public agencies’ disability benefit. The City and County of San Francisco’s “Industrial Disability Retirement” benefit is shown below. The term industrial disability is synonymous with the City’s term for service-connected disability retirement.

<u>City and County of San Francisco</u> Industrial Disability Retirement for non-retired members hired on or after January 1, 2003	If qualified for a service retirement: service retirement benefit, but not less than 50% of final compensation
	If not qualified for service retirement: 50-90% of final compensation as determined by Workers’ Compensation Appeals Board until member reaches qualified for service retirement, at which time the benefit is adjusted to service retirement calculated as if member had continued to render service without interruption in the rank held at retirement.

[CalPERS](#) agencies may have differing industrial disability benefits, but generally for local safety members, the benefit is 50% of final compensation, unless the agency has agreed to more in their contract provisions. Pursuant to California Government Code 21156, a local safety member is eligible for a disability retirement if the local contracting agency makes a determination under the following:

“If the medical examination and other available information show to the satisfaction of the board or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefore prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.”

Under the Public Employees’ Pension Reform Act of 2013 (PEPRA), safety members who retire after January 1, 2013, will receive the greater of:

- 50% of final compensation (or more by additional contract provisions). An additional annuity may be payable if the member has contributions associated to non-safety service.
- A service retirement allowance, if qualified for service retirement.
- If under age 50, an actuarially reduced benefit factor (determined by the retirement formula and how many quarter years under age 50) multiplied by the number of years of service credit.

The above will remain in place until January 1, 2018, at which time the date will have to be extended by statute.

Hypothetical Disability Retirement Scenarios

We have been asked to demonstrate the differences in the prior and current definition of disability retirements using hypothetical situations that could apply to Police employees. The following charts present two scenarios that may be heard by the Police and Fire Retirement Board. The scenarios include the decisions that would be made for these hypothetical situations under the prior and current definitions for a service-connected disability retirement.

Disability Retirement Scenario #1

Classification: Police Officer

Work Restrictions:

1. Cannot push, pull or lift over 20 pounds.

Prior Definition of Disability Retirement	Current City Charter Definition of Disability Retirement
<i>The incurrance of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.</i>	<i>An employee in the Police and Fire Department Plan cannot do work that they did before; and cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and the employee's disability has lasted or is expected to last for at least one year or to result in death.</i>
Yes – Disability Retirement granted	No – Disability Retirement denied due to positions in the Department that can accommodate restrictions, for example, Public Safety Radio Dispatcher.

Disability Retirement Scenario #2

Classification: Police Officer

Work Restrictions:

1. Cannot engage in any activities requiring recall of information on a regular basis.
2. Cannot engage in any activities requiring prolonged conversations.
3. Cannot participate in any activities requiring processing of information on a regular basis.

Prior Definition of Disability Retirement	Current City Charter Definition of Disability Retirement
Yes – Disability Retirement granted	Yes – Disability Retirement granted

Pay Differential

In Disability Retirement Scenario #1, the Police Officer would not qualify for a disability retirement under the Measure B definition of disability in the City Charter due to the work restrictions being able to be accommodated in a position within the Police Department. A question has been raised as to the difference in pay that the individual would receive if placed in a lower paying classification, as noted in the chart below. Actual pay differentials would depend on the replacement position selected.

Classification	Top Step Annual Salary
Police Officer	\$97,198.400
Public Safety Radio Dispatcher	\$73,195.200
Differential	\$24,003.20

In this instance, the individual may be receiving workers’ compensation and Long-Term Disability benefits, whether through the City’s plan or another. Although there are some limitations on the duration of these benefits, staff is looking into LTD insurance options and coverage. However, depending on the employee’s particular situation, LTD insurance products identified to date may not cover the entire pay differential and may limit the duration of payments. Once these options have been developed, they will be brought forward.

Other Questions

There were several other questions raised in Councilmember Rocha’s memo, for example, the issue of soliciting feedback from the Police and Fire Retirement Board on the implementation of the Tier 2 disability benefits and how to interpret the new definition of a disability. Regarding this issue, the retirement boards are given the opportunity to provide feedback to the City Council when the boards are provided the draft ordinances that modify the City’s Municipal Code.

Councilmember Rocha also asked whether Tier 2 police officers were purchasing LTD insurance. There are several options to buy LTD insurance including through the City, the SJPOA, and private vendors. As such, the City does not have all the records to show that newly hired officers are purchasing their own LTD insurance. Additionally, we are working on issues related to Tier 2 police officers and do not yet have any specific information related to retention.

Next Steps

During the January 8, 2014, Rules Committee meeting, it was discussed that the City Administration should invite the San Jose Police Officers’ Association and the International Association of Fire Fighters, Local 230 to a working group to continue discussing the disability

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retirement issue in a moderated setting. This working group would be similar to the current retiree healthcare working group in that the members would be discussing different options that could lead to long-term solutions. Given the complexity of the issues and interrelationships between workers compensation and disability retirement benefits and limitations, staff is also seeking a specialist in this area to advise on how other programs operate and options that may be considered.



Alex Gurza
Deputy City Manager

For more information, please contact Alex Gurza, Deputy City Manager, at (408) 535-8155.

Attachment

Police Department

Departmental Position Detail

Position	2012-2013 Adopted	2013-2014 Adopted	Change
Account Clerk II	1.00	1.00	-
Accountant I/II	1.00	1.00	-
Administrative Assistant	1.00	1.00	-
Administrative Officer	1.00	1.00	-
Analyst I/II	10.00	11.00	1.00
Assistant Chief of Police	1.00	1.00	-
Chief of Police	1.00	1.00	-
Community Service Officer I/II	0.00	21.00	21.00
Crime and Intelligence Analyst	11.00	12.00	1.00
Crime Prevention Specialist	4.00	7.00	3.00
Darkroom Technician	1.00	1.00	-
Deputy Chief of Police	4.00	4.00	-
Deputy Director U	1.00	1.00	-
Division Manager	4.00	4.00	-
Information Systems Analyst	4.00	4.00	-
Latent Fingerprint Examiner II	13.00	3.00	(10.00)
Latent Fingerprint Examiner Supervisor	1.00	0.00	(1.00)
Maintenance Worker II	1.00	1.00	-
Messenger Clerk	1.00	1.00	-
Network Engineer	2.00	2.00	-
Network Technician I/II	4.00	4.00	-
Office Specialist II	15.00	15.00	-
Office Specialist II PT	0.50	0.50	-
Police Captain	8.00	8.00	-
Police Data Specialist	63.00	63.00	-
Police Data Specialist PT	0.50	0.50	-
Police Lieutenant	35.00	35.00	-
Police Officer	870.00	870.00	-
Police Property Specialist II	17.00	26.00	9.00
Police Property Supervisor	2.00	2.00	-
Police Sergeant	188.00	188.00	-
Principal Office Specialist	5.00	6.00	1.00
Program Manager I	2.00	2.00	-
Program Manager II	1.00	1.00	-
Public Safety Communication Specialist	59.00	59.00	-
Public Safety Communication Specialist PT	1.00	1.00	-
Public Safety Radio Dispatcher	79.00	79.00	-
Public Safety Radio Dispatcher PT	1.50	1.50	-
School Crossing Guard PT	31.87	31.87	-
School Safety Supervisor	2.00	2.00	-
Secretary	3.00	2.00	(1.00)
Senior Accountant	1.00	0.00	(1.00)
Senior Account Clerk	5.00	5.00	-
Senior Analyst	6.00	7.00	1.00
Senior Auditor	3.00	3.00	-
Senior Crime and Intelligence Analyst	2.00	2.00	-
Senior Latent Fingerprint Examiner	6.00	6.00	-

Police Department

Departmental Position Detail

Position	2012-2013 Adopted	2013-2014 Adopted	Change
Senior Office Specialist	19.00	19.00	-
Senior Police Data Specialist	10.00	10.00	-
Senior Public Safety Dispatcher	14.00	14.00	-
Senior Systems Applications Programmer	2.00	2.00	-
Staff Specialist	10.00	10.00	-
Staff Technician	3.00	3.00	-
Supervising Applications Analyst	2.00	2.00	-
Supervising Auditor	1.00	1.00	-
Supervising Police Data Specialist	4.00	4.00	-
Supervising Public Safety Dispatcher	6.00	6.00	-
Supply Clerk	1.00	1.00	-
Video/Multimedia Producer	1.00	1.00	-
Video Unit Supervisor	1.00	1.00	-
Total Positions	1,548.37	1,572.37	24.00

Note: Of the 1,572.37 positions in the Police Department in 2013-2014, 1,107.00 are sworn positions and 465.37 are civilian positions.

Fire Department

Departmental Position Detail

Position	2012-2013 Adopted	2013-2014 Adopted	Change
Account Clerk II	2.00	2.00	-
Accounting Technician	1.00	1.00	-
Administrative Assistant	1.00	1.00	-
Administrative Officer	2.00	1.00	(1.00)
Analyst II	5.00	5.00	-
Analyst II C PT	0.50	0.50	-
Arson Investigator	3.00	3.00	-
Assistant Fire Chief	1.00	1.00	-
Associate Engineer	12.00	14.00	2.00
Battalion Chief	21.00	21.00	-
Deputy Director	1.00	1.00	-
Deputy Fire Chief	3.00	3.00	-
Director, Emergency Services	1.00	1.00	-
Fire Captain	163.00	166.00	3.00
Fire Chief	1.00	1.00	-
Fire Division Chief	0.00	3.00	3.00
Fire Engineer	207.00	214.00	7.00
Fire Equipment Technician	2.00	2.00	-
Fire Fighter	242.00	256.00	14.00
Fire Prevention Inspector	10.00	11.00	1.00
Hazardous Materials Inspector II	8.00	7.00	(1.00)
Information Systems Analyst	1.00	1.00	-
Network Technician	2.00	2.00	-
Office Specialist II	3.00	3.00	-
Permit Specialist	1.00	1.00	-
Principal Office Specialist	1.00	1.00	-
Program Manager I	1.00	1.00	-
Public Safety Radio Dispatcher	30.00	30.00	-
Public Safety Radio Dispatcher PT	0.48	0.48	-
Senior Account Clerk	2.00	2.00	-
Senior Analyst	4.00	3.00	(1.00)
Senior Engineer	2.00	2.00	-
Senior Engineering Technician	2.00	0.00	(2.00)
Senior Hazardous Materials Inspector	0.00	1.00	1.00
Senior Office Specialist	4.00	4.00	-
Senior Permit Specialist	1.00	2.00	1.00
Senior Public Safety Dispatcher	11.00	11.00	-
Senior Systems Applications Programmer	1.00	2.00	1.00
Staff Specialist	3.00	3.00	-
Staff Technician	1.00	1.00	-
Supervising Applications Analyst	0.00	1.00	1.00
Supervising Public Safety Dispatcher	3.00	3.00	-
Training Specialist	3.00	3.00	-
Total Positions	762.98	791.98	29.00

Note: Of the 791.98 positions in the Fire Department in 2013-2014, 679 are sworn positions and 112.98 are civilian positions.