

# DRAFT

## FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

### DISABILITY RETIREMENT APPLICATION RULES AND PROCEDURES

#### PURPOSE AND BACKGROUND

1. Pursuant to San José Municipal Code ("SJMC") § 3.28.1260, the Board of Administration ("Board") for the Federated City Employees' Retirement System ("FCERS") has the sole authority to grant or deny a member's disability retirement application based on whether there is sufficient evidence to the satisfaction of the Board showing that the member ("Applicant") is incapacitated for the performance of their duty and that the incapacity is service connected.
2. SJMC § 3.28.140 authorizes the Board to make and enforce reasonable rules and regulations for the administration, management, and control of FCERS. Each person retired from FCERS shall be subject to such rules and regulations as are adopted by the FCERS Board. *Id.*
3. The Board wishes to adopt the following Rules and Procedures ("Disability Retirement Application Procedures") to apply to and govern the FCERS Disability Committee's ("Committee") fair, timely, and effective consideration of disability retirement applications.
4. The Board delegates to the Committee the discretion to modify or excuse strict compliance with these rules with regard to a particular applicant when, in the Committee's sole judgment, good cause exists to do so under the circumstances.
5. "Good cause" for purposes of these rules includes excusable neglect; events over which an applicant does not have control, including, but not limited to, unexpected illness or family emergency; or other equitable considerations.

#### APPLICANT'S FILING OF THEIR DISABILITY RETIREMENT APPLICATION

6. The Applicant shall complete their disability retirement application on the approved forms provided by the Office of Retirement Services ("ORS"). The Applicant must file their disability retirement application with ORS within the time prescribed in the SJMC applicable to FCERS.
- 6-7. At the time of filing their disability retirement application, the Applicant shall verify and certify by signature on the application that they have reviewed and understand the Plan's Disability Retirement Application Procedures and understand that failure to respond to ORS communications, as outlined herein, will result in the withdrawal of their application.
- 7-8. At the time of filing their disability retirement application, the Applicant shall verify and certify by signature that the contact information listed on their disability retirement application is true and correct, and up-to-date. An Applicant is responsible for providing to ORS, with their application, their current contact information, including mailing address, email address, and phone number(s) and text number(s) (together, "Contact Information"), and any changes to any of their Contact Information during the pendency of their application. **FAILURE TO PROVIDE AND MAINTAIN TIMELY CONTACT INFORMATION COULD DELAY OR OTHERWISE PREJUDICE AN APPLICANT'S DISABILITY RETIREMENT APPLICATION AND BE GROUNDS FOR DENIAL.** ORS shall have no obligation to investigate other sources in order to discover an Applicant's current contact information.

#### COMMUNICATIONS BETWEEN APPLICANT AND ORS

- 8-9. ORS shall provide the Applicant with a copy of these Disability Retirement Application Procedures within thirty (30) calendar days following the filing of the application (and the next business day if the thirty (30) day deadline falls on a weekend or holiday), using one or more of the methods of contacting the Applicant provided in their application.

~~9-10.~~ ORS shall maintain a log of its contact efforts during the pendency of the application.

~~10-11.~~ Unless good cause is shown, if an Applicant is non-responsive or non-cooperative to ORS' communications for a period of ninety (90) calendar days from the date of either the filing of the disability retirement application or ORS' last communication with the Applicant (whichever is later), ORS shall issue a **Final Written Notice**. ORS shall not issue a Final Written Notice until ORS has attempted to contact the Applicant via every communication method listed in Paragraph ~~7-8~~ above at least twice in the ninety (90) day period.

- a. For the purposes of this Policy, the following definitions shall apply to the following terms:
  - i. "Non-Responsive" shall mean that the Applicant has failed to respond to a communication issued from ORS to the Applicant.
  - ii. "Non-Cooperative" shall mean failing to commit to complete a specific phase or task, or failing to commit to set a date certain, necessary for the processing of the disability application at issue. If ORS attempts to schedule a date or obtain records ~~three-two (23)~~ times in a ninety (90) day period and is unsuccessful during that time, then the Applicant shall be deemed "non-cooperative."

~~11-12.~~ The Final Written Notice shall inform the Applicant that the application will proceed to the Disability Committee and/or Board with the records that ORS currently has in its files, if any, unless the Applicant contacts ORS within thirty (30) calendar days from the date on the Final Written Notice (and the next business day if the thirty (30) day deadline falls on a weekend or holiday). The Final Written Notice shall include another copy of these Disability Retirement Application Procedures, and shall be sent via email and certified mail.

~~12-13.~~ If thirty (30) calendar days from the date of the Final Written Notice has elapsed (and the next business day if the thirty (30) day deadline falls on a weekend or holiday) and the Applicant has not responded to ORS, then the disability retirement application file is deemed withdrawn/losed for further evidence, except for the Independent Medical Examiner's materials ("Disability Retirement Application File"). ORS shall send the Disability Retirement Application File to its Independent Medical Examiner ("IME") for review and evaluation. ORS shall proceed with processing of the Application pursuant to these Disability Application Procedures. A withdrawn disability retirement application will be treated as voided without prejudice and will not proceed to the Disability Committee and/or Board.

## DEFERRED APPLICATIONS

14. In accordance with SJMC § 3.28.1240, applications for disability retirement may not be deferred by the applicant for more than four (4) years from the date the application was filed with ORS.

15. The Applicant may request an extension of the four (4) year limitation under SJMC § 3.28.1240 due to good cause, subject to approval by the Disability Committee and the Board.

## **SELECTION OF PERSONNEL TO FCERS IN EVALUATION OF APPLICATION**

~~13-16.~~ The Disability Committee shall receive recommendations from ORS Staff, a Board-certified Physician ("Physician") and outside disability counsel ("Advocate Counsel"), all of whom shall evaluate each disability application. The Physician will provide an evaluation of Applicant's medical condition and any appropriate work restrictions. -The ORS Staff and Advocate shall determine whether or not to oppose granting the application. The ORS Staff advocates will be designated by the Chief Executive Officer of ORS. The Physician and Advocate Counsel (and any alternates) will be selected by the Board or by the Board's designated delegates.

~~14-17.~~ During the entire course of these proceedings, until a final determination is made on the Applicant's application, there shall be no ex parte communications about the application between ORS Staff, the Physician and Advocate Counsel on the one hand, and the Committee, Board and its General and Fiduciary Counsel on the other hand.

## INDEPENDENT MEDICAL EXAMINATIONS AND EVALUATION

15-18. In accordance with SJMC § 3.28.1250(A), an Independent Medical Examination of the Applicant and their records must be conducted following receipt of an application.

16-19. ORS shall attempt to contact an Applicant via email and telephone to select a mutually acceptable date for the Independent Medical Examination. When scheduling the Independent Medical Examination, ORS shall inform the Applicant in writing that, absent good cause, no further medical records may be submitted after the file has been provided to the Physician, unless requested by the Physician. The Applicant shall make themselves available at a reasonable time and place for the examination, if requested.

17-20. In advance of the meeting, ORS and Advocate Counsel shall evaluate the application file and prepare a preliminary recommendation to the Committee, by completion of a checklist form as adopted by the Board, with specific recommended findings and conclusions on each of the essential elements of proof (e.g., MMI, service causation, available accommodation by the employing Department, etc.). If the ORS Staff and Advocate Counsel agree on a preliminary recommendation, they will indicate that in their report to the Committee. The preliminary recommendations to the Committee also shall be provided to the Applicant at the same time as the Committee/Board in advance of the scheduled meeting.

## SCHEDULING PROCEEDINGS BEFORE THE DISABILITY COMMITTEE

18-21. When an Applicant requests, or ORS believes an Applicant's file is ready for Committee consideration, or if the Applicant is non-responsive or non-cooperative pursuant to Paragraph 11-13 of these Disability Retirement Application Procedures, ORS will agendize the application for a future Committee meeting.

19-22. ORS shall contact an Applicant via email and telephone to select a mutually acceptable meeting date before the Committee for the Committee's consideration of the application. The Applicant and/or their counsel has the right to attend all Committee meetings at which the application is considered, though are not required to do so.

20-23. After a meeting date has been established, ORS shall confirm by written notice of the meeting date and time with the Applicant. The written notice shall include a reminder that the Committee will not consider documentary evidence that was not presented to the Physician, absent good cause shown. The written notice shall further include a copy of these Disability Retirement Application Procedures.

21-24. At the Applicant's request and upon a showing of good cause, ORS may agree to postpone the scheduled Committee meeting, *provided* such request is communicated to and received by ORS more than five (5) calendar days in advance of the scheduled meeting (and the next business day if the thirty (30) day deadline falls on a weekend or holiday). A maximum of one (1) such postponement may be approved, unless further good cause is shown.

## DISABILITY COMMITTEE MEETING PROCEDURE

22-25. The Disability Committee meetings shall be duly noticed in compliance with the Ralph M. Brown Act ("Brown") and the City of San Jose's sunshine ordinance.

23-26. The Disability Committee shall process all disability retirement applications in open session unless (1) the application involves a stigmatizing injury or illness, or (2) upon request by the Applicant, subject to ORS review.

24-27. Disability Committee meetings shall be informal and the Committee is not bound by formal rules of civil procedure or evidence. The Committee may consider any information and

documentation it considers relevant and probative of its determination whether to recommend granting or denying an application. If the Applicant and/or their counsel is present at the meeting, the Committee shall advise them about the manner in which the Committee shall proceed.

~~25-28.~~ At the Committee meeting, ORS Staff and Advocate Counsel must be present for the Committee to address any application. The Committee will consider each of the required elements of proof, and any presentations by ORS Staff and/or Advocate Counsel, and/or the Applicant. The Committee shall prepare for the Board a summary indicating the Committee's findings, conclusions and recommendations on each of the essential elements of proof, including completion of a checklist form as adopted by the Board.

~~26-29.~~ The Applicant and/or their counsel shall have the opportunity to present and discuss medical and work-related evidence, question witnesses, present argument, and explain why the Committee should recommend approval of the application.

~~27-30.~~ Advocate Counsel and ORS Staff shall have the opportunity to present and discuss medical and work-related evidence, question the Applicant and witnesses, present argument and explain why they believe the Committee should recommend approval or denial of the application.

~~28-31.~~ City personnel shall have the opportunity to present and discuss medical and work-related evidence, question the Applicant and witnesses, present argument and explain why they believe the Committee should recommend approval or denial of the application.

~~29-32.~~ The Committee may subpoena the Applicant, other witnesses and documents; and may administer oaths to the Applicant and other witnesses before hearing their testimony, pursuant to SJMC § 3.28.250.

~~30-33.~~ The Committee may continue a meeting to a future date. If possible, that future date shall be set at the meeting. ORS shall give the Applicant written notice of the continued meeting date at least thirty (30) calendar days' in advance of the continued meeting date.

~~31-34.~~ If the Committee requests additional information for their consideration of the application, the matter shall be continued so that the information may be gathered and provided to the Committee. If possible, that future date shall be set at the meeting. ORS shall give the Applicant written notice of the continued meeting date at least thirty (30) calendar days' in advance of the continued meeting date.

~~32-35.~~ The Committee's voting to approve or deny an application shall be pursuant to the rules set forth in the FCERS Disability Committee Charter, which provides:

"All actions and/or recommendations of the Disability Committee shall be by affirmative vote of the majority if all three Disability Committee members are present. If there are only two members of the Disability Committee present, the action and/or recommendation must be made by unanimous affirmative vote of both members present. Alternatively, the Committee may refer a matter to the full Board without a recommendation."

~~33-36.~~ If the Committee's recommendation is to approve the application, ORS shall notify the Applicant that the application will appear for approval on the consent calendar of the Board at the Board's next available meeting. The Applicant need not attend a Board meeting in which their application is placed on the consent calendar.

~~34-37.~~ If the Committee's recommendation is to deny the application, ORS shall provide written notice to the Applicant that the Applicant will have thirty (30) calendar days from the date of the written notice (and the next business day if the thirty (30) calendar day deadline falls on a weekend or holiday) to request consideration by the Board.

- a. If the Applicant requests the Board's consideration, ORS will contact the Applicant to select a mutually acceptable meeting date before the Board, at which time the Applicant should be prepared to present evidence, testimony and other witnesses in support of the

application. However, no new evidence shall be presented to the Board that was not presented to the Committee, unless good cause is shown.

- b. If the Applicant does not request consideration by the Board of the Committee's recommended denial, or does not cooperate in setting a meeting date for the Board's consideration after requesting it, ORS shall provide written notice to the Applicant that the Committee's recommendation will be placed on the Board's agenda at the next regularly scheduled Board meeting.

## SCHEDULING BOARD'S CONSIDERATION OF AN APPLICATION

~~35-38.~~ After a Board meeting date has been mutually selected, ORS shall confirm the meeting date and time with the Applicant via written notice. ORS Staff shall include a reminder that the Board, absent good cause, will not consider medical records or reports first submitted at the Board meeting.

~~36-39.~~ At the Applicant's request and upon a showing of good cause, ORS may agree to postpone the scheduled Board meeting, *provided* such request is communicated to and received by ORS more than five (5) calendar days in advance of the scheduled meeting (and the next business day if the thirty (30) day deadline falls on a weekend or holiday). A maximum of one (1) such postponement may be approved, unless further good cause is shown.

## BOARD'S CONSIDERATION OF APPLICATION

~~37-40.~~ If the Board grants the application, no further action need be taken by the Board, Committee or Applicant.

~~38-41.~~ If the Board sends the application back to the Committee for additional findings and conclusions (as specified by the Board), or schedules the application before itself again for further consideration, no further action need be taken by the Board unless and until the matter appears on a subsequent Board agenda.

~~39-42.~~ For applications to which the Committee recommends a denial and the Applicant has requested the Board's consideration pursuant to these Disability Retirement Application Procedures, the ORS staff and Advocate Counsel must be present for the Board to address such application.

~~40-43.~~ Advocate Counsel and ORS Staff shall have the opportunity to present and discuss medical and work-related evidence, question the Applicant and witnesses, present argument and explain why they believe the Board should approve or deny the application.

~~41-44.~~ The Board's General and Fiduciary Counsel shall advise the Board. A professional "ethical wall" will be observed between the Advocate Counsel on one hand, and the Board's General and Fiduciary Counsel on the other, at all times.

~~42-45.~~ The Applicant may appear with or without counsel. If the Applicant and/or their counsel appears, they shall have the opportunity to present and discuss medical and work-related evidence, question witnesses, present argument, and explain why the Board should approve the application.

~~43-46.~~ City personnel shall have the opportunity to present and discuss medical and work-related evidence, question the Applicant and witnesses, present argument and explain why the application should be approved or denied.

~~44-47.~~ The Board may subpoena the Applicant, other witnesses and documents; and may administer oaths to the Applicant and other witnesses before hearing their testimony, pursuant to SJMC § 3.28.250.

~~45-48.~~ If the Board denies the application, the Board shall adopt written findings and conclusions.

## APPLICANT'S RIGHT TO APPEAL BOARD'S DENIAL OF APPLICATION

~~46.49.~~ Following final action by the Board, the Applicant shall have the right to seek review in the Superior Court, pursuant to the California Code of Civil Procedure § 1085.

## POLICY REVIEW AND HISTORY

~~47.50.~~ The Disability Committee approved these ~~Rules~~ Disability Retirement Application Procedures on January 16, 2024, and on [INSERT].

~~48.51.~~ The Board adopted these Disability Retirement Application Procedures ~~Rules~~ on January 18, 2024, and on [INSERT].