

**City of Palo Alto**  
Office of the Mayor and City Council

**FILED**

NOV 12 2013

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY BRITNEY HUBBIG

October 7, 2013

Honorable Brian C. Walsh  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Re: Response to the 2012-2013 Santa Clara County Civil Grand Jury Report, "The State of Public Safety Disability Retirement rates in the County"

Honorable Brian C. Walsh,

Attached (Attachment A) is the City of Palo Alto's response to the Grand Jury's Final Report on the state of public safety disability retirements in the County. Palo Alto's City Council approved the response on September 16, 2013.

The City wants to thank the Grand Jury for its valuable work and recommendations.

Sincerely,



Honorable Nancy Shepherd  
Vice Mayor  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

cc: James Keene  
City Manager  
City of Palo Alto

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## Attachment A

### City of Palo Alto's Response to the Grand Jury's Final Report on the State of Public Safety Disability Retirements in the County

#### **Finding 3**

Averaged over the past five years, the City of Palo Alto has the highest IDR rate in the county at 51%.

#### **RESPONSE:**

The City of Palo Alto disagrees with the finding. The Grand Jury reported that Palo Alto has the highest percentage of Industrial Disability Retirements in the county at 51%. The City of Palo Alto is not clear on how the total was calculated. Based on the data provided to the Grand Jury on November 9, 2012 (see Exhibit 1) the City found the percentage to be lower than indicated in the Grand Jury report. As illustrated in the table below, the City finds its percentage of Industrial Disability Retirements (IDR) to be 34%. While the City found one IDR incorrectly reported to the Grand Jury as an Industrial Disability Retirement for a non-sworn employee who suffered an occupational injury, this would not account for the difference.

	Total Retirements	Service Retirements	Industrial Disability Retirements	Percentage IDR
<b>Fire</b>	35	25	10	28.6%
<b>Police</b>	27	16	11	40.1%
<b>Total</b>	62	41	21	33.87%

Based on the City's figures, the City of Palo Alto's IDR rates for safety personnel are consistent with the average of other entities in Santa Clara County. In addition, Palo Alto's safety IDR rates from July, 2008 - July, 2012 represent a decrease in the industrial disability rate for Firefighters and for Police personnel since a separate audit on this issue in April 2005, by the Palo Alto City Auditor. That report indicated that 40.7% of Firefighter and 45.5% of Police retirements were classified as IDR.

IDRs result from injuries on the job; therefore it is helpful to begin the analysis with workers' compensation claim rates. During the last five years at the City, workers' compensation rates for Police have declined 12% and for rates for Fire have declined 20%. The graphs in Exhibit 2 indicate a gradual decline in the total number of claims. In FY 12-13, the Fire Department experienced an all-time low of 14 total claims while Police decreased their total claims to 22. The decrease in claims for Police and Fire substantiates that the City of Palo Alto is actively preventing injuries and providing safe work conditions; however, the goal must be to continue this trend of reduced claim numbers.

Lower workers compensation claim rates are reflected in lower IDR rates for the City. The City's IDR rates averaged 34% over the past five years (FY 08 to FY 12 – the span of time studied by the Grand Jury). This places Palo Alto near the average of entities reporting to the Grand Jury - 30% IDR rate over the past five years. Thus Palo Alto, with more firefighters than



other cities in the County except San Jose, experiences an average number of IDRs compared with cities in the County.

**Recommendation 3a**

The City of Palo Alto should identify what factors other than its high percentage of firefighters influence its IDR rate.

**RESPONSE:**

Although the City of Palo Alto disagrees with the Grand Jury's finding regarding Palo Alto's IDR rate (see Response to Finding 3 above), the City agrees with this Recommendation 3a. Identifying the factors that may contribute to the City's IDR rate is critical to understanding what actions are needed to lower the rate. And, low IDR rates reflect higher levels of health and productivity in the work force, and low IDR rates reduce Workers' Compensation costs that can be used for other department programs. The City evaluated both the types of claims and the process for submitting claims to inform this analysis.

Based on the City's analysis of claims, the public safety officers identified in the Grand Jury report were an average age of 49.5 years old. The nature of claims involved varied significantly primarily involving injuries to knees, backs, neck and heart. This average age is common for public safety officers as found in the Rand report, "Occupational Safety and Health for Public Safety Employees," which analyzed data from 29 different public employers in California and found that both firefighters and police officers become more susceptible to disability as they age. Public Safety Officers are more likely to claim permanent disability benefits after an injury at older ages. The Palo Alto experience is the same as that described in the Rand Report. Public Safety Officers had served an average of 22 years on the job in the Palo Alto Fire Department. The Police Officers personnel had served an average of 13 years on the job in the Palo Alto Police Department. Some of the personnel had years of work in other organizations prior to their Palo Alto service.

While most public safety officers identified in this report suffered serious permanent disabilities, others suffered injuries or illnesses that were not as severe yet incapacitated the officer from performing work duties. Although all officers completed long term medical treatment, their injuries still precluded them from performing their public safety officer duties and thus were unable to continue working in their jobs on a permanent basis and therefore sought retirement. Some agencies, such as the City of San Jose, provide an option for permanently disabled officers to remain employed in a permanent light duty capacity. This may involve desk work or other limited-duty functions. Palo Alto does not offer this option.

In Palo Alto, all permanent public safety positions require the ability to perform the full duties of the job, such as fighting fires, lifting gurneys and making forcible arrests. Palo Alto offers light duty on a temporary basis for sworn personnel who are continuing in treatment and expected to progress towards recovery. At the point that an officer is certified to have a permanent disability that prevents performance of essential duties, the officer must elect retirement or may retain in public employment in a non-sworn capacity. By requiring that all sworn personnel maintain the ability to perform the full duties of their positions, Palo Alto ensures that the Police and Fire Departments prioritize direct and essential services to the public. At the same time, the decision

not to create permanent light duty positions may contribute to a somewhat higher IDR rate compared to agencies that retain sworn officers who are permanently unable to perform the essential duties of a police officer or firefighter.

Because the City of Palo Alto is bound to follow the California Workers Compensation and CalPERS retirement laws, it is limited in its ability to dispute retirements as not being entitled to an IDR. A public safety officer applying for IDR is required to provide documentation based on competent medical opinion that substantiates they are a Qualified Injured Worker and “incapacitated for the performance of duty” as defined under the Public Employee’s Retirement Law (PERL) Government Code Section 20026. Once City of Palo Alto staff receives medical documentation from the officer’s treating physician and a second opinion from a Workers’ Compensation Board certified Qualified Medical Examiner (QME), it is reviewed to determine if it meets the criteria based on this state law. The QME is not selected by the City of Palo Alto. As part of the workers’ compensation claim process, the public safety officer can select a QME from a list of state-certified doctors specializing in specific medical conditions, such as orthopedics, cardiology, podiatry, etc. If an employee is represented by an attorney (the majority of public safety officers in this report had decided to be represented), their attorney can work with a City’s attorney to select an Agreed Medical Examiner. On several occasions, the City has not certified an industrial disability retirement due to inadequate medical documentation.

As indicated in the Grand Jury report, IDR is available for Public Safety officers, which include firefighters, whose job-related injuries or presumptive illnesses result in their inability to perform the usual and customary duties of their job. This outcome can be the end result of a workers’ compensation claim in cases where the claimant does not recover sufficiently to return to full duty. One of the first steps in the City’s workers’ compensation process is to ensure that injuries and illness are work-related. Public Safety supervisors complete a report identifying witnesses, and interviewing witnesses, if needed, about how the injury or illness occurred. If there is any question that an injury did not occur on the job (for example if a claim is filed late), the City’s workers’ compensation administrator will question an employee and may send an investigator to interview witnesses. If there is a question whether an employee is able to perform more activities than they are stating to a treating doctor during the life of a workers’ compensation claim, the City’s workers’ compensation administrator may hire an investigator to conduct surveillance. Also key is to evaluate what preventive action can be completed to prevent reoccurrence.

### **Recommendation 3b**

The City of Palo Alto should implement a plan to lower its IDR rate.

### **RESPONSE:**

Although the City of Palo Alto disagrees with the Grand Jury’s finding regarding Palo Alto’s IDR rate (see Response to Finding 3 above), the City agrees with this Recommendation 3b.

The City will continue its efforts to reduce the rate of disability retirements through proactive measures to prevent occurrence of injuries. Most importantly, the Public Safety Department is reviewing its injury and illness prevention program. The City’s response to the Grand Jury described various activities such as comprehensive training that are strong tools for improving



safety that have led to a decrease in claims over the last ten years. In support of complying with CalOSHA's general orders for an effective injury and illness prevention program, the Fire Department conducts monthly safety committee meetings in which all injury claims, vehicle accidents and near-miss incidents are reviewed in order to review and suggest worksite or equipment improvement to prevent reoccurrence.

Examples of improvements which have resulted from this committee are the purchase of alternate gurneys that are lighter and easier to maneuver, and, a safety video produced to train firefighters on how to safely exit fire engines without causing knee injuries. The video was developed after staff analyzed a trend that was occurring involving knees when firefighters stepped on and off engines.

Public Safety also conducts a wellness program that allows officers to work out on a daily, limited basis to maintain the physical fitness required by their jobs. In addition, Police and Fire conduct physical exams that have been successful in proactively identifying medical conditions. These exams include blood pressure and lipid profile tests, and treadmill fitness exercise. The Fire Department plans to explore the implementation of the International Association of Fire Chiefs and the International Foundation of Firefighters Fitness Initiative Program to increase the participation in fitness training by all firefighters.

One option that the City will evaluate and consider is to establish a review committee including a physician to review IDR applications and supporting medical reports. A second option that will be explored with the City Attorney's office is the criteria a City can use to deny an industrial disability retirement and still be in compliance with state law.

Finally, legislative changes would be helpful to eliminate the incentive against returning to work that is created under state law that provides for 50% of the disability retirement benefit tax-free. According to the Rand report, public safety retirees are considerably more likely to have made a workers' compensation claim prior to retirement. This finding is based on data from individuals making a workers' compensation claim for a lost-time injury between 1991 and 1996 and looked at CalPERS retirement data as well. Their findings reflected that public safety officers might be more susceptible to work limitations because of the physically demanding nature of their work; that public safety employees claim a work-related disability at a higher rate than employees in non-safety occupations, and that this is more pronounced at older ages. In addition, an increase in disability benefits could be an incentive for not returning to work.

Thank you for this opportunity to respond to this 2012-13 Civil Grand Jury report and develop strategies to further decrease the City of Palo Alto Industrial Disability Retirement rates.