

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE V (OFFICERS AND EMPLOYEES), DIVISION 7 (PUBLIC SAFETY EMPLOYEE BENEFITS), SECTION 2-350 (PUBLIC SAFETY EMPLOYEE BENEFITS ACT) OF THE CODE OF THE CITY OF PEORIA

WHEREAS, the City of Peoria (the “City”) is a home rule municipality in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, pursuant to its Constitutional home rule powers, the City has authority to “perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare” (IL Const art. 7 § 6) by adopting ordinances and promulgating rules and regulations that pertain to its government and affairs that protect the public health, safety, and welfare of its citizens; and

WHEREAS, in enacting home rule authority, the Constitutional Convention established legislative intent and authority for home rule municipalities, noting “a liberal construction [of home rule authority] shall be given to the powers of local government units” Sixth Illinois Constitutional Convention (July 23, 1970) (statement of Ralph Dunn); and

WHEREAS, the Constitutional Convention established the constitutional intent of home rule authority as follows “why should they [municipalities] get home rule power? Because they’re closer to the citizens; they’re more responsive . . . We want to encourage people at the local level to meet new and expanding responsibilities” Sixth Illinois Constitutional Convention (July 23, 1970) (statement of John G. Woods); and

WHEREAS, in examining the grant of home rule authority in the Illinois Constitution, Illinois courts have noted that the “intentionally imprecise language grants local governmental units ‘the broadest powers possible’” *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505 ¶ 108; and

WHEREAS, in line with the Constitutional Convention’s stated intent, Illinois courts have interpreted home rule authority broadly in the face of judicial activism, “the intent and purpose of the home rule provisions in the Illinois Constitution is to severely limit the judiciary’s authority to preempt home rule powers of municipalities through judicial interpretation of unexpressed legislative intent” *City of Oakbrook Terrace v. Suburban Bank and Trust Co.*, App. 2 Dist.2006; and

WHEREAS, home rule municipalities have been granted the constitutional authority to enact regulatory ordinances, “municipalities which have populations of more than 25,000 are home-rule units and may enact ordinances pertaining to municipal employees which conflict with State statutes concerning same matters,” *Burgess v. Board of Fire & Police Com’rs of City of Quincy*, 209 Ill.App.3d 821; and

WHEREAS, the Public Safety Employee Benefits Act (“PSEBA” or “Act”) was enacted in 1997 to provide free health insurance benefits when a “full-time law enforcement, correctional or correctional probation officer, or firefighter, who ... suffers a catastrophic injury or is killed in the line of duty” (820 ILCS 320/10(a)); and

WHEREAS, Illinois courts have noted that “although the legislature made [PSEBA benefits] contingent upon the existence of a ‘catastrophic injury,’ the Act nowhere defines ‘catastrophic injury’” (*Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395 (2003)); and

WHEREAS, Illinois courts have determined that an award of an Occupational Disease disability Pension does not qualify the employee for PSEBA benefits since an Occupational Disease Disability Pension is awarded under 4-110.0 of the Pension Code and not under the “catastrophic injury” section in 10(a) of PSEBA” (*William Bremer v. City of Rockford*, 2016 IL 119889 (December 30, 2016); and

WHEREAS, pursuant to *Pedersen*, the City has the right to establish an “administrative procedure for assessing claims without acting in a manner inconsistent with the requirements of the Act” (*Id.* at ¶ 37), including the ability to use home rule authority to enact an ordinance that would determine, assess, and outline the administrative process for assessing eligibility under PSEBA; and

WHEREAS, the City, under its home rule authority and pursuant to *Pedersen* has “the authority to establish an administrative procedure for determining claims for benefits under the Act,” (at ¶ 63); and

WHEREAS, the City, pursuant to its authority, adopted administrative procedures for determining claims for benefits under the Act via Ordinance No. 17462 on April 25, 2017; and

WHEREAS, as a result of the decision in *Pedersen*, the City now desires to amend the Ordinance previously adopted finds that this is in the best interest of the citizens’ health, safety, and welfare.

NOW, THEREFORE, be it ordained by the corporate authorities of the City of Peoria that Chapter 2, Article V, Division 7, Section 2-350 is hereby amended by adding the following underlined words and deleting the stricken words:

Section 1. PURPOSE.

The purpose of this section is to provide a fair and efficient method of determining the eligibility of a full-time employee for the benefits enumerated under the Public Safety Employee Benefits Act (820 ILCS 320/1 *et seq.*) through the process of initial evaluation of eligibility by the City's human resources department and administrative hearing when necessary. All benefits provided employees pursuant to the Public Safety Employee Benefits Act (Act) will be consistent with the Act.

Section 2. DEFINITIONS.

For the purpose of this Ordinance, the following terms will have the following meanings:

<u>Catastrophic injury</u>	<u>An injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.</u>
<u>Gainful work</u>	<u>Full- or part-time activity that actually is compensated or commonly is compensated.</u>
<u>Basic Group Health Insurance Plan</u>	<u>The City’s high-deductible health insurance plan is designated as the basic group health insurance plan.</u>
<u>Injury</u>	<u>A traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, but does not include— (1) Any occupational disease; or (2) Any condition of the body caused or occasioned by stress or strain.</u>

Section 3. APPLICATION PROCEDURE.

As noted by the Court in *Pedersen*, “the Act, however, does not provide any guidance on the proper procedure for seeking [PSEBA] benefits.” ¶ 37. This ordinance and the application procedure of this section establishes guidance on the proper procedure for Public Safety Officers seeking PSEBA benefits in the City.

- A. Public Safety Officers, or family member(s) of an injured or deceased Public Safety Officer, (“Applicant”) must file a full and complete PSEBA application in writing on a form provided by the human resources department, within thirty (30) days of the granting of a line-of-duty disability pension or within thirty (30) days of the date of the adoption of this Ordinance in the event that an Applicant has filed for a PSEBA claim prior to the date of adoption of this Ordinance, whichever is later, if the Applicant is seeking benefits under PSEBA. The City shall notify Applicant if the PSEBA application is incomplete and Applicant shall have five (5) days to remedy their application. Failure to timely file the full and complete application shall result in a forfeiture of the benefits under PSEBA by failure to properly submit a complete application.
- B. A complete PSEBA application includes the following:
 - 1. The name of the Applicant, date of hire, detailed information regarding the incident, including information relating to how the injury was sustained in the line of duty (date, time, place, nature of injury, and other factual circumstances surrounding the incident giving rise to said claim);

2. The Applicant's firsthand knowledge explaining, to the City's satisfaction, how the injury/death directly resulted from:
 - i. Response to fresh pursuit;
 - ii. Response to what is reasonably believed to be an emergency;
 - iii. Response to an unlawful act perpetrated by another; or
 - iv. Participation during the investigation of a criminal act;
 3. A signed PSEBA medical authorization release which authorizes the collection of information related to the incident including, but not limited to, disability pension proceedings, worker's compensation records, and medical records and specifies the name and address for pertinent health care provider(s);
 4. A signed PSEBA general information release specifying the name and signature of the Applicant or her/his authorized representative along with legal proof of said representation and name and signature of witness authorizing the collection of information pertinent to the incident review process;
 5. The name(s) of witnesses to the incident;
 6. The name(s) of witnesses the Applicant intends to call at the PSEBA hearing;
 7. Information and supporting pension documentation filed with the appropriate pension board;
 8. Information supporting the PSEBA eligibility requirements; and
 9. All sources of health insurance benefits currently enrolled in or received by the Applicant and/or family members if the Applicant is deceased.
- C. The PSEBA application must be submitted to the human resources department in its entirety.
- D. The PSEBA application must be sworn and notarized to certify the truthfulness of the content of the information. A review of the application shall not occur until the application is complete.
- E. On the date that the PSEBA application is deemed complete by the City, the completed application shall then be submitted to the City as the Preliminary Record, and a copy of the same shall be date stamped and provided to the Applicant.
- F. Upon receipt of a complete application for PSEBA benefits, the City shall set the matter for an administrative hearing before a hearing officer to make a determination on whether to grant the Applicant PSEBA benefits based on the result of the administrative hearing.

G. The Applicant will be given written notice of the date for the scheduled administrative hearing to be served not less than ten (10) days prior to the commencement of the hearing. If the Applicant, upon receiving written notice of the administrative hearing, cannot attend said date, the Applicant must contact the hearing officer in writing within seven (7) days after being served. The hearing officer shall establish an alternative hearing date which is within thirty (30) days of the original hearing date. Failure to appear at the administrative hearing shall result in denial of PSEBA benefits.

~~(1) Any eligible public safety employee who desires to receive PSEBA benefits shall make application for such benefits on a form provided by the human resources department or on a form similar in content and format. In the application, the employee shall state, in full detail, the nature of the employee's claim. The employee's application shall, at minimum, include the date, time, place, and nature of injury. The application shall further contain any and all other factual circumstances surrounding the incident that gave rise to said claim. Within 30 business days, the human resources department shall evaluate the employee application and render a written decision to the employee. The written decision shall be dated, and if applicable, it shall specify the reasons for denial of benefits.~~

~~(2) If the human resources department denies the employee's application for PSEBA benefits, and the employee desires to have an administrative hearing on the matter, the employee shall serve written notice on the human resources department, within 21 business days from the date of the written decision.~~

Section 4. ADMINISTRATIVE COMPOSITION.

The administrative hearing shall be scheduled and conducted by a hearing officer whose authority and limitations are as follows:

- A. Authority of the hearing officer. The hearing officer shall have all of the authorities granted to her/him under common law relative to the conduct of an administrative hearing, including the authority to:
1. Conduct a hearing in a formal setting;
 2. Preside over City hearings involving PSEBA;
 3. Administer oaths;
 4. Hear testimony and accept evidence that is relevant to the issue of eligibility under PSEBA;
 5. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;
 6. Rule upon objections in the admissibility of evidence;
 7. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and
 8. Issue a determination based on the evidence presented at the hearing, the determination of which shall be in writing and shall include a written finding of fact, decision and order.

B. Hearing officer. The Corporation Counsel, with the advice and consent of the City Council, is hereby authorized to appoint a person to hold the position of hearing officer for each hearing on PSEBA benefits that shall come before this City. In making said selection, the following information should be considered, at a minimum:

1. The individual's ability to comply with the job description as set forth herein; and
2. The individual must be an attorney licensed to practice law in the State of Illinois and have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence, and administrative practice.

~~(3) If a public safety employee gives the proper notice, as contained in subsection (2) above, an administrative hearing shall be held to adjudicate the matter and determine all claims for benefits under the Public Safety Employee Benefits Act (820 ILCS 320/1 et seq.).~~

~~a. The system of the administrative hearing shall be comprised of a hearing officer whose power and authority and limitations are as follows:~~

~~1. *Power of the hearing officer.* The hearing officer shall have all of the powers granted to him under common law relative to the conduct of an administrative hearing including the power to:~~

~~i. Conduct a hearing in a formal setting;~~

~~ii. Preside over all city hearings involving the Public Safety Employee Benefits Act (820 ILCS 320/1 et seq.);~~

~~iii. Administer oaths;~~

~~iv. Hear testimony and accept evidence that is relevant to the issue of eligibility under the Public Safety Employee Benefits Act (820 ILCS 320/1 et seq.);~~

~~v. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;~~

~~vi. Rule upon objections in the admissibility of evidence;~~

~~vii. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing;~~

~~viii. Issue a determination based on the evidence presented at the hearing. The determination shall be in writing and shall include a written finding of fact, decision and order.~~

~~2. *Hearing officer.* The corporation counsel with the approval of the city council is hereby authorized to appoint a person to hold the position of a hearing officer for each and every individual hearing that shall come before this city. In making said selection, the corporation counsel shall consider all pertinent information including, at a minimum:~~

~~i. The candidate's ability to comply with the job description as set forth herein;~~

- ~~ii. Background and performance data made available to the corporation counsel on file with the city or otherwise obtained by the city;~~
- ~~iii. The candidate must be an attorney licensed to practice law in the State of Illinois for at least three years and have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence, and administrative practice;~~
- ~~iv. An administrative hearing shall be held to adjudicate and determine whether the subject public safety employee is eligible for benefits under the Public Safety Employee Benefits Act (820 ILCS 320/1 et seq.). If the employee is found eligible, the employee benefits shall be consistent with this Act.~~
 - ~~a. *Time and date.* Hearings shall be held on the date, time and place as established by the city with appropriate notice served upon the public safety employee.~~
 - ~~b. *Record.* All hearings shall be attended by a certified court reporter and transcripts of all proceedings shall be made by said certified court reporter.~~
 - ~~c. *Procedures.* The city and the petitioning public safety employee may be represented by counsels at said hearing with each party bearing his/her own cost of counsel and may present witnesses, may present testimony and documents, may cross-examine opposing witnesses, and may request the issuance of subpoenas to compel the appearance of relevant witnesses or the production of relevant documents.~~
 - ~~d. *Evidence.* The rules of evidence as set forth in the Illinois Code of Evidence shall apply.~~
 - ~~e. *Final determination.* The determination by the hearing officer of whether the petitioning public safety employee is eligible for benefits under the Act shall constitute a final determination for the purpose of judicial review under the common law writ of certiorari.~~

Section 5. ADMINISTRATIVE HEARING.

The system of administrative hearings for the determination of eligibility for benefits under PSEBA shall be initiated either by the City or by the Applicant after the submission of a full and complete PSEBA application. An administrative hearing shall be held to adjudicate and determine whether the Applicant is eligible for benefits under PSEBA. If the Applicant is found eligible, the benefits shall be consistent with the Act.

- A. **Time and Date.** Pursuant to Section 3(g), the Applicant will be given written notice of the date for the scheduled administrative hearing to be served not less than ten (10) days prior to the commencement of the hearing. If the Applicant, upon receiving written notice of the administrative hearing, cannot attend said date, the Applicant must contact the hearing officer in writing within seven (7) days after being served. The hearing officer shall establish an alternative hearing date which is within thirty (30) days of the original hearing

date. Failure to appear at the administrative hearing shall result in denial of PSEBA benefits.

- B. **Record.** The City shall ensure that all hearings are attended by a certified court reporter and a transcript of all proceedings shall be made by said certified court reporter.
- C. **Procedures.** The City and the Applicant shall be entitled to representation by counsel at said administrative hearing with each party bearing his/her own cost of counsel, and may present witnesses, testimony and documents, may cross-examine opposing witnesses, and may request the issuance of subpoenas to compel the appearance of relevant witnesses or the production of relevant documents.
- D. **Evidence.** The Illinois Rules of Evidence shall apply to the extent practicable unless, by such application, the Hearing Officer determines that application of the rule would be an injustice or preclude the introduction of evidence of the type commonly relied upon by a reasonably prudent person in the conduct of her or his affairs. Such determination shall be in the sole discretion of the Hearing Officer. The Hearing Officer must state on the record her or his reason for that determination.
- E. **Final Determination.** A written determination by the hearing officer of whether the petitioning Applicant is eligible for the benefits under PSEBA shall constitute a final administrative determination for the purpose of judicial review under the common law writ of certiorari.
- F. **Burden of Proof.** At any administrative hearing, the Applicant shall have the obligation and burden of proof to establish that the Applicant is eligible and qualified to receive PSEBA benefits. The standard of proof in all hearings conducted under this Ordinance shall be by the preponderance of the evidence.
- G. **Administrative Records.** All records pertaining to the administrative process shall be held in a separate file under the Applicant's name with the City.

Section 6. HEALTH INSURANCE BENEFITS

- A. If the administrative hearing officer awards PSEBA benefits, the basic group health insurance plan, designated as the City's high-deductible health insurance plan, will be offered. The City's basic group health insurance plan may change from time to time. If the Applicant chooses to enroll in a plan available in the City other than the basic group health insurance plan, then the Applicant must pay any difference in insurance premiums between the City's basic group health insurance plan and that of another plan on a monthly basis, due by the 15th of each month in which coverage is effective. Failure to pay said premium by the 15th of the month in which coverage is effective, may result in cancellation of the health insurance plan.

- B. Individuals receiving benefits under PSEBA will only be able to change from one plan to another during the City's open enrollment period.

Section 7. OTHER HEALTH INSURANCE BENEFITS.

- A. Health insurance benefits payable from any other sources will reduce the benefits payable from the City. Each Applicant will be required to sign an affidavit attesting to the fact that he/she is not eligible for insurance benefits from any other sources.
- B. It is the responsibility of the benefit recipient to notify the City within thirty (30) days of any changes to other sources of health insurance benefits. Receipt of benefits in violation of this provision will require reimbursement to the City of any benefits received. The City reserves the right on an annual basis to have the benefit recipient provide another affidavit affirming whether other health insurance is available or payable to the Applicant, his/her spouse and/or his/her qualifying dependent children.
- C. The applicant is also required to notify the City when the Applicant becomes Medicare eligible so the City can assist with the transition to Medicare cover and/or adjust health insurance benefits accordingly.

Section 7. SEVERABILITY.

If any provision of this Ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 8. CONFLICT OF LAWS.

Where the conditions imposed by any provisions of this Ordinance are more restrictive than comparable provisions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Ordinance will govern.

Section 9. PUBLICATION OF ORDINANCE.

The City Clerk shall publish this ordinance in pamphlet form.

Section 10. EFFECTIVE DATE.

That this Ordinance shall be in full force and effect upon its passage, *nunc pro tunc*.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this ____ day of _____ 2018 pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

APPROVED:

Mayor

ATTEST:

City Clerk

Published by me in pamphlet form this _____ day of _____, 2018

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel