

ORDINANCE NO. ____

AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR
ASSESSING AND DETERMINING CLAIMS UNDER PSEBA

WHEREAS, the City of ____ (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, 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, as a result of the decision in *Pedersen*, the City now desires to adopt the following ordinance and 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 _____ as follows:

Section 1.

PURPOSE.

The purpose of this ordinance is to provide a fair and efficient method for determining the eligibility of a full-time employee for the benefits enumerated under PSEBA through an administrative process, including if necessary, an administrative hearing.

Section 2.

DEFINITIONS.

For the purpose of this Ordinance, the following terms will have the following meanings. These definitions are derived from the federal Public Health and Welfare Act, which was enacted in 1944 and amended in 1984 to define, by inclusion or reference, the following terms.

For use in this Ordinance, provisions containing the words “mayor,” “commissioner,” “alderman,” or “city council” also apply to the president, trustee, councilmember and boards of trustees so far as the provisions are applicable to them.

Catastrophic injury	An injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.
Gainful work	Full- or part-time activity that actually is compensated or commonly is compensated.
Injury	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, virii, or bacteria, but does not include— (1) Any occupational disease; or (2) Any condition of the body caused or occasioned by stress or strain.
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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 within thirty (30) days of filing a pension claim with the City 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:

Home Rule Sample

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. 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. Other 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 **[specify department/position to whom the application must be submitted]** 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.

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. Preside over City hearings involving PSEBA;
 - 2. Administer oaths;
 - 3. Hear testimony and accept evidence that is relevant to the issue of eligibility under PSEBA;
 - 4. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;
 - 5. Rule upon objections in the admissibility of evidence;
 - 6. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and
 - 7. 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 Mayor, 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.

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. 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 and a copy be provided to the Applicant within twenty-eight (28) days of the date of the administrative hearing.

- B. Procedures. The City and the Applicant shall be entitled to representation by counsel at said administrative hearing and 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.
- C. 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.
- D. 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.
- E. 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.

F. 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.

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 7.

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 8.

PUBLICATION OF ORDINANCE.

The City Clerk shall publish this ordinance in pamphlet form.

Section 9.

EFFECTIVE DATE.

That this Ordinance shall be in full force and effect on **[INSERT DATE]**, nunc pro tunc.

Home Rule Sample

Passed this ____ day of _____, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this _____ day of _____, 20__.

_____ Mayor.

Attest:

City Clerk

Published by me in pamphlet form this _____ day of _____, 20__.

_____ City Clerk.

ORDINANCE NO. ____

AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR
ASSESSING AND DETERMINING CLAIMS UNDER PSEBA

WHEREAS, the legislature granted non-home rule municipalities the broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities” (65 ILCS 5/1-2-1); and

WHEREAS, while “non-home rule municipalities have the authority to enact ordinances, such ordinances may in no event conflict with state law or prohibit what a state statute expressly permits . . . A local ordinance may impose more rigorous or definite regulations in addition to those enacted by the state legislature so long as they do not conflict with the statute” (*Village of Wauconda v. Hutton*, 291 Ill. App 3d 1058, 1060 (1997)); 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, *Englum v. The City of Charleston*, 2017 IL App (4th) 160747 (2017) found that a non-home rule municipality’s ordinance establishing an administrative procedure for assessing claims under PSEBA “complemented the determinations of the legislature by enacting a procedural process to fulfill the substantive requirements of the [Act]” and such an ordinance “facilitate[s] the purpose of the [Act]” ¶ 73; and

WHEREAS, the Court in *Englum* found that non-home rule municipalities have the authority to enact an ordinance establishing a local administrative procedure to determine eligibility for PSEBA benefits; and

WHEREAS, as a result of the decision in *Englum*, the City now desires to adopt the following ordinance and 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 _____ as follows:

Section 1.

PURPOSE.

The purpose of this ordinance is to provide a fair and efficient method for determining the eligibility of a full-time employee for the benefits enumerated under PSEBA through an administrative process, including if necessary, an administrative hearing.

Section 2.

DEFINITIONS.

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For use in this Ordinance, provisions containing the words “mayor,” “commissioner,” “alderman,” or “city council” also apply to the president, trustee, councilmember and boards of trustees so far as the provisions are applicable to them.

Catastrophic injury	An injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.
Gainful work	Full- or part-time activity that actually is compensated or commonly is compensated.
Injury	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, virii, or bacteria, but does not include— (1) Any occupational disease; or (2) Any condition of the body caused or occasioned by stress or strain.

Section 3.

APPLICATION PROCEDURE.

As noted by the Court in *Englum*, “while the [Act] contained *substantive* requirements for section 10 eligibility, the [Act] contained no *procedural* requirements for determining whether a former employee met the substantive criteria.” ¶ 55. This ordinance and the application procedure of this section establishes guidance on the proper procedural requirements for Public Safety Officers seeking PSEBA benefits in the City.

H. 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 within thirty (30) days of filing a pension claim with the City 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.

I. A complete PSEBA application includes the following:

10. 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);
11. 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. An unlawful act perpetrated by another; or
 - iv. Participation during the investigation of a criminal act;
 12. 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);
 13. 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;
 14. The name(s) of witnesses to the incident;
 15. The name(s) of witnesses the Applicant intends to call at the PSEBA hearing;
 16. Information and supporting pension documentation filed with the appropriate pension board;
 17. Information supporting the PSEBA eligibility requirements; and
 18. Other sources of health insurance benefits currently enrolled in or received by the Applicant and/or family members if the Applicant is deceased.

- J. The PSEBA application must be submitted to **[specify department/position to whom the application must be submitted]** in its entirety.

- K. 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.

- L. 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.

- M. 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.

- N. 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.

Section 4.

ADMINISTRATIVE COMPOSITION.

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

- C. 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:
 - 8. Preside over City hearings involving PSEBA;
 - 9. Administer oaths;
 - 10. Hear testimony and accept evidence that is relevant to the issue of eligibility under PSEBA;
 - 11. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;
 - 12. Rule upon objections in the admissibility of evidence;
 - 13. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and
 - 14. 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.

- D. Hearing officer. The Mayor, 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:

3. The individual's ability to comply with the job description as set forth herein; and
4. 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.

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.

- G. 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 and a copy be provided to the Applicant within twenty-eight (28) days of the date of the administrative hearing.
- H. Procedures. The City and the Applicant shall be entitled to representation by counsel at said administrative hearing and 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.

- I. 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.

- J. 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.

- K. 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.

- L. 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.

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 7.

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 8.

PUBLICATION OF ORDINANCE.

The City Clerk shall publish this ordinance in pamphlet form.

Section 9.

EFFECTIVE DATE.

That this Ordinance shall be in full force and effect on **[INSERT DATE]**, nunc pro tunc.

Non-Home Rule Sample

Passed this ____ day of _____, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this _____ day of _____, 20__.

_____ Mayor.

Attest:

City Clerk

Published by me in pamphlet form this _____ day of _____, 20__.

_____ City Clerk.