

## ORDINANCE

### **AN ORDINANCE AMENDING CHAPTER 2 ("ADMINISTRATION") OF THE OAK PARK VILLAGE CODE TO ADD A NEW ARTICLE 37 ("ADMINISTRATIVE PROCEDURES FOR PSEBA CLAIMS") TO ESTABLISH ADMINISTRATIVE PROCEDURES FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT**

**WHEREAS**, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, pursuant to its Constitutional home rule powers, the Village 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.*, 364 Ill.App.3d 506, 514 (2<sup>nd</sup> 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 Village of Quincy*, 209 Ill.App.3d 821, 825-826 (4<sup>th</sup> Dist. 1991); and

**WHEREAS**, the Public Safety Employee Benefits Act (“PSEBA” or “Act”), 820 ILCS 320/1 *et seq.*, 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. Village of Bloomington*, 204 Ill. 2d 392, 395 (2003); and

**WHEREAS**, pursuant to the court’s holding in *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1<sup>st</sup>) 123402, ¶ 37, the Village has the right to establish an “administrative procedure for assessing claims without acting in a manner inconsistent with the requirements of the Act,” including the ability to use home rule authority to enact an ordinance to determine, assess, and outline the administrative process for assessing eligibility under PSEBA; and

**WHEREAS**, the Village, under its home rule authority and pursuant to the holding in the *Pedersen* case, has “the authority to establish an administrative procedure for determining claims for benefits under the Act,” *Id. at* ¶ 63); and

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

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Recitals Incorporated.** The above recitals are incorporated herein as though fully set forth.

**Section 2. Village Code Amended.** Chapter 2 (“Administration”) of the Oak Park Village Code is amended to add a new Article 37 (“Administrative Procedures for PSEBA Claims”) to read as follows:

**ARTICLE 37**  
**ADMINISTRATIVE PROCEDURES FOR PSEBA CLAIMS**

**2-37-1: PURPOSE:**

**2-37-2: DEFINITIONS:**

**2-37-3: APPLICATION PROCEDURE:**

**2-37-4: ADMINISTRATIVE COMPOSITION:**

**2-37-5: ADMINISTRATIVE HEARING:**

**2-37-1: PURPOSE:**

The purpose of this article is to provide a fair and efficient method for determining the eligibility of a full-time employee for the benefits enumerated under the Public Safety Employee Benefits Act, 820 Illinois Compiled Statutes 320/1 et seq. ("PSEBA") through an administrative process, including if necessary, an administrative hearing.

**2-37-2: DEFINITIONS:**

For the purpose of this article, 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.

**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, 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.

**2-37-3: APPLICATION PROCEDURE:**

An application for PSEBA benefits must meet the requirements set forth in this section below.

- A. Public safety employees, or family member(s) of an injured or deceased public safety employee ("applicant") must file a full and complete PSEBA application in writing within thirty (30) days of filing a pension claim with the Village or within thirty (30) days of the date of the adoption of this article in the event that an applicant has filed for a PSEBA

claim prior to the date of adoption of this article, whichever is later, if the applicant is seeking benefits under PSEBA. The Village 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 shall include 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 Village'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, if applicable;
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 Village's 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 Village, the completed application shall then be submitted to the Village 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 Village 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.

#### **2-37-4: 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 the hearing officer under common law relative to the conduct of an administrative hearing, including the authority to:
  1. Preside over Village 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.

#### **2-37-5: ADMINISTRATIVE HEARING:**

The system of administrative hearings for the determination of eligibility for benefits under PSEBA shall be initiated either by the Village 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 Village 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 Village 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 the hearing officer's 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 article 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 Village.

**Section 3. Village Code Amended.** Chapter 2 ("Administration"), Article 4 ("Village Manager") of the Oak Park Village Code is amended to add the underlined language and delete the overstricken language as follows:

**2-4-18: HEARING OFFICER FOR THE PURPOSE OF THE PUBLIC EMPLOYEE BENEFITS ACT:**

The Village Manager shall ~~act as a~~ appoint an attorney to hold the position of hearing officer ~~under the for each hearing on an application under the public safety employee benefits act pursuant to article 37 of this chapter. He shall, as hearing officer, hold hearings and make determinations as to whether or not any employee of the Village subject to the act is entitled to the benefits provided by the act. The decision of the Manager shall be a final administrative determination of the Village and may be appealed to the circuit court under the administrative review act.~~ The attorney must be licensed to practice law in the State of Illinois and the Manager shall take into account the attorney's knowledge and experience in employment and labor law, general civil procedure, the rules of evidence and administrative practice.

**Section 4. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

**ADOPTED** this 4<sup>th</sup> day of September, 2018, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Andrews				
Trustee Boutet				
Trustee Button				
Trustee Moroney				
Trustee Taglia				
Trustee Tucker				

**APPROVED** this 4<sup>th</sup> day of September, 2018.

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Anan Abu-Taleb, Village President

**ATTEST**

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Vicki Scaman, Village Clerk

Published in pamphlet form this 4<sup>th</sup> day of September, 2018.

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Vicki Scaman, Village Clerk