

## ORDINANCE NO. F-2046

### AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION," ARTICLE VI, "PERSONNEL" OF THE WHEATON CITY CODE TO ESTABLISH AN ADMINISTRATIVE PROCEDURE FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT

**WHEREAS**, the City of Wheaton is an Illinois Home Rule Municipality ("City"); and

**WHEREAS**, pursuant to its Home Rule powers (IL Const art. 7 & 6), the City has the 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 by adopting ordinances and promulgating rules and regulations that pertain to its government affairs; and

**WHEREAS**, the Public Safety Employees' Benefits Act ("PSEBA") or "Act" was enacted in 1997 to require taxpayer payment for health insurance benefits, when a "full-time law enforcement officer, correctional or correctional probation officer, or firefighter suffers a catastrophic injury or is killed in the line of duty." (820 ILCS 320/10 (a)); and

**WHEREAS**, the City under its Home Rule Authority and, pursuant to *Pederson v. The Village of Hoffman Estates*, 380 Ill. Dec. 541 (1<sup>st</sup> Dist. 2014), has authority to establish an administrative procedure for determining claims for benefits under the Act; and

**WHEREAS**, among other things, the Act fails to define "basic group health insurance plan."

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and the City Council of the City of Wheaton, pursuant to its Home Rule Authority, that Article VI "Personnel" of Chapter 2 "Administration" of the Wheaton City Code is hereby amended by the addition of Sections 2-487 through 2-498, which shall read as follows:

#### **SECTION 1:**

Section 2-487. *Title.*

*Administrative Procedure to Determine Eligibility Under the Public Safety Employees' Benefit Act and Establish Definitions and Procedures for the Maintenance of Such Benefits After Their Award.*

Section 2-488. *Purpose.*

The purpose of this ordinance is to provide a fair and efficient method of determining the eligibility of full-time Wheaton police officers and firefighters to the benefits enumerated under the Public Safety Employees' Benefits Act ("PSEBA" or "Act"). All benefits shall be consistent with PSEBA and be no less than nor greater than, those provided by the Act and this Ordinance.

Section 2-489. *Not a Contract.*

The administrative procedure provided in these sections is not a contract that bestows a benefit or entitlement on any particular individual and may be modified or amended by the City at any time.

*Section 2-490. Definitions.*

*Basic Level Insurance.* Basic level insurance shall mean the lowest-cost plan available to the City.

*Catastrophic Injury.* Catastrophic Injury shall have the meaning established by the Illinois courts or legislation: whichever is more restrictive.

*Dependent Child and Dependent for Support.* Dependent child and Dependent for Support shall both be defined as a Dependent Child according to the City's Health Insurance Plan.

*Director.* Director shall mean the Director of the City's Human Resources Department or their designee.

*Emergency.* Emergency shall mean a serious unexpected and dangerous situation occurring in the line of duty requiring immediate action but excluding training exercises, seminars, or continuing education related in any manner to being a police officer or firefighter.

*Firefighter.* Firefighter shall mean a full-time firefighter employed by the City of Wheaton on duty at the time of his/her catastrophic injury.

*Police Officer.* Police officer shall mean a full-time law enforcement officer of the City of Wheaton on duty at the time of his/ her catastrophic injury.

*Reasonably Believed.* Reasonably believed shall mean a standard based on the reasonable belief of an objective police officer or firefighter and not on the subjective belief of any individual police officer or firefighter.

*Spouse.* Spouse of the "injured Firefighter or Police Officer" shall be defined by the City's Health Insurance Plan.

*Section 2-491. PSEBA Initial Qualification.*

Any full-time firefighter or police officer who, after November 14, 1997, suffers a catastrophic injury or is killed in the line of duty, may apply for health insurance benefits under PSEBA in strict conformance with the standards set forth in this Ordinance. The same benefits may be extended to a Spouse and eligible Dependent Children (hereinafter "Applicant's Beneficiaries"), provided that all terms and conditions as established in PSEBA and this Section are fully satisfied.

*Section 2-492. Application Procedure.*

A PSEBA application shall be filed by a PSEBA applicant no later than thirty (30) days from the date a permanent duty-related disability pension claim is awarded. Any Police Chief or Fire Chief who is not subject to the jurisdiction of the Police or Fire Pension Board shall submit a completed PSEBA application within six months of sustaining the alleged catastrophic injury.

The Director shall provide the applicant with a copy of this Section at the time the PSEBA application is provided. In the event that an employee is receiving PSEBA as of the date of adoption of this ordinance, the employee shall within thirty (30) days of notice fully complete a PSEBA application as furnished by the Director.

- A. The application shall include the name of the employee; the full name of the applicant's Spouse, date of marriage, with marriage license attached; birth certificates or adoption orders for all Dependent Children, and any and all other documents establishing that the child is "dependent" as set forth in the City's Health Insurance Plan Document; the date of hire; detailed information regarding the incident including date, time, place and nature of injury, and any other factual circumstances surrounding the incident giving rise to said claim; the identities of witnesses to the incident, the names of witnesses the applicant may call at a PSEBA hearing and the names and addresses of the employee's medical providers; information and supporting documentation filed with the Pension Board by the applicant and all exhibits on file with the Pension Board; any and all rulings or determinations by the Pension Board; any and all documents supporting the PSEBA eligibility requirement for Applicant's Beneficiaries, including: proof of active school enrollment and employment. Failure to file a fully complete application, along with submittal of all supporting documents, shall result in a forfeiture of PSEBA benefits until the next date of open enrollment for the insurance.
- B. *Medical Release Required.* Medical records shall be secured by the City. Medical Releases provided by the Director, authorizing the collection of medical information by the City related to the incident, including, but not limited to, disability pension proceedings, workmen's compensation records and medical records shall be signed by the applicant and submitted with the PSEBA application. The PSEBA Medical Release shall specify the name, address, email and phone information for pertinent health care providers and hospitals, along with the employee's signature and a witness's signature. The release shall comply with HIPAA standards. Medical records shall be considered "Supporting Documents" as required above.

- C. *Additional Information.* The Director shall, at any time, have the authority to modify the PSEBA application, or seek additional information from an applicant, to better enable the City to ascertain the applicant's qualifications.
- D. *No Review Until Complete Application Filed.* The City's initial review of the PSEBA application will not occur until all of the required information, including the Supporting Documents, are submitted to the Director.
- E. *Sworn Application.* Any application for PSEBA benefits shall be sworn to by the applicant and notarized. All Supporting Documents filed for PSEBA qualification shall be verified under oath by the applicant and notarized.

Section 2-493. *Application Review by City Manager (Notification).*

Upon receipt of a timely fully completed PSEBA application filed, the City Manager shall have thirty (30) days to review the application and Supporting Documents and make an initial determination as to whether or not a PSEBA qualification hearing is required.

- A. *Additional Information.* The City Manager may require other information necessary to make a determination as to whether or not a qualification hearing is required, including, but not limited to, health insurance benefits the employee is currently receiving or is eligible to receive or any other health insurance benefits the applicant's Beneficiaries are otherwise entitled to.
- B. *PSEBA Approval.* If the City Manager determines that all PSEBA requirements have been satisfied, the City Manager may grant the PSEBA benefits. Upon such grant, the applicant will be notified and required to contact the Director within thirty (30) calendar days for benefit explanation and processing.
- C. *PSEBA Denial.* If the City Manager denies the application, the applicant will receive notice of such denial and the applicant shall have the right to request, in writing, a qualification hearing, which shall be served on the City Manager not later than thirty (30) calendar days after being served with a written notice of initial denial.
- D. *Request PSEBA Hearing.* If the applicant fails to request a PSEBA qualification hearing within thirty (30) days, the applicant shall contact the Director to discuss other potential health insurance options. Failure

to request an administrative hearing when thirty (30) days after being served with a written notice of denial of the application by the City Manager, shall result in a forfeiture of PSEBA benefits.

E. *Setting Initial Date.* If the applicant requests an administrative hearing, the Mayor will appoint an Administrative Hearing Officer within 30 days of the request. The Administrative Hearing Officer shall set the first date of the administrative hearing within thirty (30) calendar days of being appointed.

Section 2-494. *Hearing Officer/Hearing.*

A. *Appointment of Hearing Officer.* The Mayor with the advice and consent of the City Council is hereby authorized to appoint one or more persons to hold the position of Administrative Hearing Officer for any City PSEBA administrative hearing. In making this selection, the Mayor shall consider all of the pertinent information, including at a minimum:

- i. The candidate's ability to completely perform the services;
- ii. The candidate's background, service and performance data on file with the City or otherwise obtained by the City; and
- iii. The candidate shall be an attorney licensed to practice law in the state of Illinois for at least three years prior to appointment and have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence and administrative practice.

B. *Power of the Hearing Officer.* The Hearing Officer shall have all the powers granted under common law relative to the conduct of an administrative hearing, including the power to:

- i. Preside over PSEBA hearing(s);
- ii. Administer oaths;
- iii. Hear testimony under oath or affirmation and accept evidence that is relevant to the issue of eligibility;
- iv. Issue subpoenas to secure attendance of witnesses in the production of relevant papers or documents upon request of the parties or their representative;

- v. Rule upon objections and the admissibility of evidence and other motions;
- vi. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and
- vii. Issue written factual findings and a decision based on: each element required under the Act to establish the applicant's qualifications, the evidence presented at the hearing, the law, and after entertaining (oral or written) arguments as directed by the Administrative Hearing Officer.

C. The Administrative Hearing Officer shall also conduct hearings for fire chiefs and police chiefs, who are not subject to the jurisdiction of the fire or police pension boards when a chief's PSEBA application is denied by the City Manager. In such case a chief shall make application for an PSEBA hearing in conformance with Section 2-492 and 2-493 A of this ordinance. The Administrative Hearing Officer shall make a determination of whether a chief sustained a "Catastrophic" injury, under one or more of the circumstances set forth in 820 ILCS 320/10 (b), following the same law and making factual inquires as if the chief was subject to the jurisdiction of a fire or police pension board. All provisions of this ordinance shall be followed by the Administrative Hearing Officer in this type of hearing.

Section 2-495. *Administrative Hearing.*

- A. The administrative hearing shall be held to adjudicate and determine whether the applicant is eligible for PSEBA benefits consistent with the Act and this Ordinance and as follows:
  - i. *Time and Date.* Hearing shall be held on the date, time and place established by the Administrative Hearing Officer with appropriate notice served upon the applicant.
  - ii. *Hearing Transcription.* The Applicants shall ensure that all hearings shall be attended by a certified court reporter and transcripts of all hearings shall be made by a certified court reporter and a copy provided to the City at the applicant's expense within fourteen (14) days of the PSEBA hearing. If the applicant establishes, by a final non-appealable order, that he or she is qualified for PSEBA, the City shall reimburse the applicant for the court reporter and transcript costs.

- iii. *Procedures.* The City and the applicant shall be entitled to representation by counsel at said hearing and may present witnesses, testimony and documents, cross-examine witnesses, request the issuance of subpoenas to compel appearances of witnesses and the production of relevant documents. Each party shall bear its own costs of counsel and witnesses.
- iv. *Evidence.* The Illinois Rules of Evidence shall apply to the extent practicable unless the Administrative Hearing Officer determines that application of a 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 their affairs. Such determination shall be in the sole discretion of the Administrative Hearing Officer, but the Administrative Hearing Officer shall state on the record the reason for that determination.
- v. *Burden of Proof.* The applicant shall have the burden of proceeding and the burden of proof to establish that the applicant and Applicant's Beneficiaries are qualified to receive PSEBA benefits.
- vi. The determination of the applicant's eligibility for PSEBA benefits shall constitute a final administrative determination for purposes of judicial review.
- vii. *Administrative Records.* All records pertaining to the administrative process will be held in a separate file in the employee's name in the City's Human Resources Department.

Section 2-496. *Administrative Review.*

The Administrative Hearing Officer's determination shall be subject to a common law writ of certiorari by the applicant or the City.

Section 2-497. *Health Insurance Benefits.*

Upon qualification for PSEBA benefits, the beneficiary shall be entitled to the City's Basic Level Insurance. An applicant may choose to enroll in any other health insurance plan offered by the City different from the basic level insurance, but shall pay the difference in insurance premium between the City's basic plan and the other selected plan. Failure of the PSEBA beneficiary to timely pay the premium's non-basic level coverage shall result in coverage in the basic plan.

*Open Enrollment.* Applicants receiving benefits under PSEBA shall annually complete a PSEBA extension application provided by the Director no later than thirty (30) days prior to the end date of all City open enrollment periods.

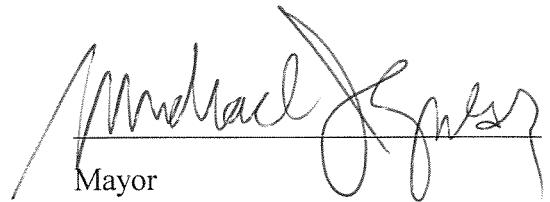
Section 2-498. *Other Health Insurance Benefits.*

- A. *Other Benefits.* Health insurance benefits payable from any other source will reduce the benefits payable from the City. Each applicant shall sign an affidavit attesting that the applicant is not eligible for insurance benefits from any other source, unless there is another source. If there is another source, the applicant shall notify the City of that source no later than five (5) business days from that source becoming available to the applicant or the applicant's beneficiaries.
- B. *Disclosure of Health Insurance Coverage.* The applicant has an ongoing obligation and shall update health insurance coverage information provided and failure to do so may result in the denial of benefits and/or reimbursement to the City for duplicate coverage. If duplicate coverage has been received by a PSEBA beneficiary, further PSEBA benefits will be denied until the City has been fully reimbursed by the PSEBA beneficiary for what it would have been credited if it had known about other coverage.
- C. *Reimbursement.* Receipt of health insurance benefits from other sources without notice to the City shall require the applicant to reimburse the City for the value of those benefits.
- D. *Medicare Eligibility.* The applicant shall notify the City when the applicant becomes Medicare eligible regardless of the status of the enrollment period, so the City may assist with the transition to Medicare coverage and/or adjust health insurance benefits or PSEBA benefits accordingly.

**SECTION 2:** If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

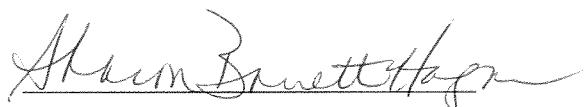
**SECTION 3:** Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

**SECTION 4:** This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.



Michael Gresk  
Mayor

ATTEST:



Karen Bennett Hagan

City Clerk

Roll Call Vote

Ayes: Councilman Prendiville  
Mayor Gresk  
Councilman Rutledge  
Councilman Scalzo  
Councilman Barbier  
Councilwoman Fitch

Nays: None  
Absent: Councilman Suess  
Motion Carried Unanimously

Passed: December 4, 2017

Published: December 5, 2017

