

TO: Mayor and City Council

FROM: Wendy Bednarek, Director of Human Resources

DATE: March 22, 2022

RE: COW ORD 22-16 Establishing an Administrative Procedure to Determine Eligibility for Benefits under the Illinois Public Safety Benefits Act (PSEBA)

The Public Safety Employee Benefit Act, 820 ILCS 320-10 (PSEBA) provides taxpayer-funded health insurance benefits to a firefighter or police officer who “suffers a catastrophic injury or is killed in the line of duty”. The employer must pay the entire premium for the health insurance benefits of the employee, the employee’s spouse and the employee’s dependent children. In order to qualify for benefits, the employee must have been injured or killed “as a result of the officer’s response to fresh pursuit, the officer or firefighter’s response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act”. In summary, in order to receive PSEBA benefits, the employee must: 1) to be catastrophically injured; 2) while responding to an emergency or investigating a criminal act.

PSEBA is one of the costliest unfunded mandates passed by the Illinois State Legislature. With family health insurance benefits costing in excess of \$33,000 per year and factoring the pace of health care inflation some PSEBA claims can easily be expected to cost the City more than \$1 million over the course of the employee’s lifetime. The accumulation of multiple PSEBA claims over time can be devastating to the City’s budget. The City currently has five (5) active PSEBA claims with an annual cost of \$140,040.

The doctrine of collateral estoppel has been regularly applied to PSEBA, worker’s compensation and line of duty disability pensions. (Definition: the situation in which a judgment in one case prevents a party to that suit from trying to litigate the issue in another legal action. The effect, once decided, the parties are permanently bound by that ruling). With this in play, an employer can be responsible for some costly benefit decisions over which they have little to no control over. To minimize the risk of an adverse decision, it is important that employers take a proactive role starting day 1 of the injury instead of reacting to forces beyond their control.

To gain some control over costly PSEBA benefits, it is recommended employers create an administrative hearing process to determine employees’ eligibility to receive PSEBA benefits. Home rule jurisdictions are allowed to create administrative hearing process for PSEBA benefits (*Pedersen v. The Village of Hoffman Estates, 2014*)

The positive benefits of having a formal policy and procedure in place for the application and determination of PSEBA eligibility will help to:

- Ensure a consistent and fair process in determining PSEBA eligibility;

- Ensure that all public safety officers employed by the City understand the benefits to which they may be entitled;
- Ensure that an eligible employee understands his or her responsibility in reporting information regarding other available insurance coverage or change-in-circumstance; and
- Reduce the potential for inappropriate City expenditures for applicants that are not entitled to this benefit.

With all this information, staff is recommending the City Council approve an ordinance establishing an administrative procedure to determine eligibility for benefits under PSEBA. Along with the policy itself, the procedure includes a formal application (attached) which is completed by the employee themselves. In addition, medical information release form. Based on common law writ of certiorari (PSEBA administrative hearing process is reviewed under), there is a six-month statute of limitations in which to file a claim.

Staff recommends approval of ORD 22-16 Establishing an Administrative Procedure to Determine Eligibility for Benefits under the Illinois Public Safety Benefits Act at the next City Council meeting.

w/attachments: ORD 22-16 Establishing an Administrative Procedure to Determine Eligibility for Benefits under the Illinois Public Safety Benefits Act

PSEBA Application Form

Cc: Laura Newman, City Administrator

Peggy Colby, Finance Director

Police Chief Dan Eul

Craig Hanson, Interim Fire Chief

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 22-16**

**AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE
TO DETERMINE ELIGIBILITY FOR BENEFITS UNDER
THE ILLINOIS PUBLIC SAFETY BENEFITS ACT**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 4TH DAY OF APRIL 2022**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 4th day of April 2022

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 22-16**

**AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE PROCEDURE
TO DETERMINE ELIGIBILITY FOR BENEFITS UNDER
THE ILLINOIS PUBLIC SAFETY BENEFITS ACT**

WHEREAS, the City of Batavia is a home rule municipality authorized to act in accordance with the Constitution of the State of Illinois and powers granted to it thereunder and by statute; and

WHEREAS, the City, pursuant to its municipal powers under the Illinois Constitution of 1970 and the Illinois Municipal Code, including 65 ILCS 5/1-2-1 and 65 ILCS 5/10-4-1 relating to its General Corporate Powers and General Corporate Powers Respecting Employment, has authority to adopt ordinances and to promulgate rules and regulations consistent with state law on matters of group health insurance and other related benefits in relation to all municipal officers and employees in respect to each other, the municipality, and the people; and

WHEREAS, the Corporate Authorities desire to establish and provide a fair and efficient method of determining the eligibility of applicants for the benefits enumerated under the Public Safety Employee Benefits Act (820 ILCS 320/1 *et seq.*); and

WHEREAS, the Corporate Authorities believe that the procedures set forth in this Ordinance achieve the goal of providing a fair and efficient method which will benefit public safety workers and the City; and

WHEREAS, the Corporate Authorities have determined that the procedures set forth herein are in the best interest of the municipality and its citizens and therefore desire to amend the City Code.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of

Batavia, DuPage and Kane Counties, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: The above state recitals are incorporated by this reference.

SECTION 2: The City Municipal Code is amended by adding the following as Title 1, Chapter 19:

CHAPTER 15: ADMINISTRATIVE PROCEDURE TO DETERMINE ELIGIBILITY FOR BENEFITS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT

1-15-1 PURPOSE

The purpose of this Chapter is to provide a fair and efficient method of determining the eligibility of applicants for the benefits enumerated under the Public Safety Employee Benefits Act (820 ILCS 320/1 *et seq.*) (“PSEBA”). All benefits provided applicants pursuant to PSEBA will be consistent with PSEBA.

1-15-2. ADMINISTRATIVE COMPOSITION

A. *Appointment of a PSEBA Claims Administrator.* The Director of Human Resources is hereby appointed as PSEBA Claims Administrator, who shall be responsible for scheduling and making all necessary arrangements for the holding of hearings under this Administrative Procedure. The duties of the PSEBA Claims Administrator include, but are not limited to:

- 1) Receiving and filing applications for PSEBA benefits;
- 2) Receiving and filing all documents required by this Ordinance to accompany such claims;
- 3) Reviewing applications for completeness and returning incomplete applications to the applicant;
- 4) Upon receipt of a complete application, scheduling hearings in accordance with the availability of the applicant, his or her counsel, counsel for the City, and the Hearing Officer; and posting and publishing a Notice of Hearing in accordance with the Illinois Open Meetings Act, 5 ILCS 120/1;
- 5) At the direction of the Hearing Officer, posting and publishing required amended notices of hearing in the event that any hearing date should be continued to a later date;
- 6) Arranging for a court reporter to prepare a transcription of the hearing;
- 7) Receiving and filing the determination of the Hearing Officer and any order, ruling, or intermediate or supplemental determination of the Hearing Officer;
- 8) Responding to requests for information or subpoenas relating to an application for PSEBA benefits or a hearing thereon; and
- 9) Preparation of the record of any application and hearing thereon for purposes of any appeal or similar attack on the decision.

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B. *Appointment of a Hearing Officer.* The Mayor, with the consent of the City Council, is hereby authorized to appoint a person to hold the position of Hearing Officer for the purpose of holding hearings and making determinations concerning the eligibility for persons claiming benefits under PSEBA. In making such selection, the Mayor shall consider:

- 1) The candidate's ability to perform the duties set forth herein;
- 2) The background and experience of the candidate;
- 3) The qualifications of the candidate, including but not limited to, the requirement that the candidate must be an attorney licensed to practice law in the State of Illinois for at least five (5) years, with a knowledge of and experience in labor and employment law, general civil procedure, rules of evidence, and administrative practice.

C. *Power of the Hearing Officer.* The Hearing Officer shall have all of the powers granted to him or her under applicable state statutes and the common law relative to the conduct of administrative hearings, including the power to:

- 1) Preside over all City of Batavia hearings involving PSEBA;
- 2) Administer oaths;
- 3) Hear testimony, and accept evidence that is relevant to the issue of eligibility for benefits under PSEBA upon an applicant for such benefits;
- 4) Issue subpoenas and orders to secure attendance of witnesses and the production of relevant papers and documents upon the request of one or more of the parties to a hearing or their representatives;
- 5) Rule upon objections concerning the admissibility of evidence;
- 6) Preserve and authenticate the record of any hearing and all exhibits that are introduced into evidence at the hearing;
- 7) Issue a determination based on the evidence presented at the hearing;
- 8) If the determination is that the applicant is eligible for PSEBA benefits, issue a finding as to the extent of the reduction, if any, of PSEBA benefits resulting from the existence of health insurance benefits payable from any other source.

1-15-3. PROCEDURE

A. *Application for PSEBA Benefits.* A PSEBA benefit application form prepared by the City shall be the standard form required for PSEBA benefit applicants to use in requesting benefits under PSEBA. The form shall be completed and executed by the requesting applicant and delivered to the PSEBA Claims Administrator. Information required by the form shall include:

- 1) The full particulars of the employee's claim for benefits, including the date, time, place, and nature of the injury giving rise to the claim for benefits,
- 2) The names of any witnesses to the injury and the circumstances under which it occurred, together with any other factual circumstances surrounding the incident(s) alleged to have occasioned the injury;

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- 3) The names, ages, and relationship to the applicant of legal dependents for whom PSEBA benefits may be claimed; and
- 4) Information relating to the existence of health insurance benefits payable from any other source, which information must be current as of the date of application.

The application also must be accompanied by:

- 1) The written decision of any public safety pension board determining or declaring the injury to have been incurred in the applicant's line of duty as a public safety employee of the City of Batavia;
- 2) A signed medical authorization release authorizing the collection and production by voluntary agreement or subpoena, of information, including protected medical information, relating to the injury and the incident giving rise to the injury; and
- 3) If the applicant is seeking reimbursement for health insurance premium payments or out-of-pocket payments for PSEBA-related health insurance coverage or medical expenses, copies of all payment records or receipts for payments made by the applicant.

B. *Application Review.* The PSEBA Claims Administrator shall review the application for completeness. If incomplete, the PSBA Claims Administrator shall return the application to the applicant for completion in accordance with the requirements of Section 1-19-2. If complete, the PSBA Claims Administrator shall forward the completed application to the Hearing Officer and, after determining the availability of the parties, shall give notice concerning the holding of a hearing on the application. No hearing on the application shall be held until the application is complete.

C. *Administrative Hearing.* The conduct of the administrative hearing shall be as follows:

- 1) Upon receipt of a completed application, the PSEBA Claims Administrator shall arrange for the posting and publishing of a Notice of Hearing in accordance with the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.*, notifying the parties and the public of the date, time, and place of a hearing to be held on the application.
- 2) The parties to the hearing, who may be represented by counsel, shall be the applicant and the City of Batavia. Both the applicant and the City of Batavia are necessary parties to the hearing.
- 3) Upon motion by a party or determination upon consultation with the parties by the Hearing Officer, the initial hearing date or any subsequent date for the hearing may be reset by the Hearing Officer to mutually convenient dates and times.
- 4) Hearings shall be held on the date and time and at the place specified in the Notice of Hearing, as originally set or reset and posted and published in accordance with law;

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- 5) All hearings shall be attended by a certified court reporter whose presence at the hearing has been arranged by the PSEBA Claims Administrator at the direction of the Hearing Officer, and a transcript of all proceedings shall be made and preserved.
- 6) The applicant and the City may examine and cross-examine witnesses, introduce exhibits, and request orders or subpoenas compelling the appearance of relevant witnesses or the production of relevant documents.
- 7) It shall be the applicant's obligation at the hearing to present in evidence any and all documents, including medical records, that were presented to any public safety pension board that considered the applicant's claim for a duty-related pension. All other medical records, health insurance records (including records relating to health insurance or self-insurance coverage of the applicant as a dependent), employment records, military records, accident reports, witness statements, injury reports (including any or all injury reports prepared or submitted by the applicant, whether or not in conjunction with the injury giving rise to the claim for PSEBA benefits), police reports, workers' compensation claims, reports and records, and records establishing dependency status (including marriage and birth certificates) that are relevant to the applicant's claim for PSEBA benefits shall be admissible at the hearing and shall be obtainable by any party requesting such records in pre-hearing discovery, subject to the requirements of applicable law.
- 8) Upon conclusion of the hearing, the parties may make closing arguments on the record or, if either party so requests, may submit post-hearing briefs in support of their positions, which briefs may contain appropriate citations to legal authority.
- 9) The determination by the Hearing Officer as to whether the applicant is eligible for benefits under PSEBA shall be in writing, shall include findings of fact and conclusions of law, and shall be consistent with PSEBA. If the Hearing Officer determines that the applicant is eligible for benefits under PSEBA, the determination shall include a finding as to the extent of the reduction, if any, of PSEBA benefits resulting from the existence of health insurance benefits payable from any other source.
- 10) Such determination shall constitute a final and appealable determination.

D. Other Health Insurance Benefits.

- 1) Health insurance benefits payable from any other source 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 source.
- 2) It is the responsibility of the benefit recipient to notify the City within 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

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insurance is available or payable to the Applicant, his/her spouse and/or his/her qualifying dependent children.

- 3) A benefit recipient is also required to notify the City when he or she becomes Medicare eligible so the City can assist with the transition to Medicare coverage and/or adjust health insurance benefits accordingly.

SECTION 3: If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance, and the application of these provisions to any person or circumstances shall not be affected thereby.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

SECTION 5: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6: If any part or parts of this Ordinance shall be held invalid for any reason such decision shall not affect the validity of the remaining part or parts of this Ordinance.

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PRESENTED to the City Council of the City of Batavia, Illinois, this 4th day of April, 2022.

PASSED by the City Council of the City of Batavia, Illinois, this 4th day of April, 2022.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 4th day of April, 2022.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	Baerren					Solfa				
2	Leman					Wolff				
3	Chanzit					Ajazi				
4	Malay					Connelly				
5	Uher					Beck				
6	Cerone					Russotto				
7	Vogelsinger					Miller				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Kate Garrett, City Clerk



Application for Public Safety Employee Benefits Act (“PSEBA”) Benefits

The completion of the Application does not automatically qualify one for benefits. The City of Batavia shall determine eligibility. Additional information may be requested or required. Failure to complete or provide sufficient details of the circumstances of the incident may result in denial of benefits.

Name of Individual Completing Application: _____

If the person completing this application is not the full-time employee, state your relationship to the injured or deceased employee.

Was the injured/deceased a full-time police officer/firefighter? _____

Is the police officer/firefighter injured or deceased? _____

The undersigned states, under oath, as follows:

Name of Injured/Deceased Police Officer/Firefighter: _____ Phone Number: _____

Address: _____ City/State/Zip: _____

Date of hire of employee: _____

1. Name, age, and relationship of legal dependents of the employee: (Provide a copy of marriage license and birth certificates of each dependent child with this application.)

2. Describe in detail when, where and how injury and/or death occurred: (Use additional page if length exceeds space)

3. Describe in detail when, where and how disabling and any contributing injuries and/or death occurred and provide any documents in support.

4. List any and all witnesses to the qualifying injury and/or death:

5. Identify the individual to whom the injury was reported, and the circumstances surrounding that report. If the report was not made contemporaneous to the injury, provide an explanation as to why the report was not made contemporaneous to the injury.

6. Was the injury/death in response to fresh pursuit, in response to what was reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act? If so, describe how.

7. Identify the Incident Report Number (s)_____

8. Please describe the nature, extent, date, and circumstances of any previous personal injuries or illness that created any temporary, partial or permanent disability for the employee. This information should be provided without regard to the work-related nature of the injury or illness. Please indicate the name and address of the treating physician(s).

9. Did any of the injuries identified in the question immediately preceding affect the employee's ability to perform his/her job duties (or the essential functions of his/her job) in any manner? If yes, please explain how the officer was affected. _____

10. Please identify (name and address) all physicians and physician associated treaters (such as physical therapists, chiropractor, physician assistants etc.) that you have seen in the past ten (10) years.

11. Describe any outside activities, sports, sports leagues, hobbies any other physical activities in which the employee participated. Provide sufficient information to identify the league and/or location of the activity in which the officer participated.

12. Aside from the accident for which the employee is seeking benefits, has any physician rendered an opinion that the employee is physically unable to perform the essential functions of the job of a police officer/firefighter. _____

13. Aside from the accident for which the employee is seeking benefits, has any physician rendered an opinion, that the employee is physically or mentally disabled for any other reason and unable to perform the essential functions of the job of a police officer/firefighter.

14. Please state whether the employee was employed by any other employer or was self-employed in the twelve (12) months preceding the injury. If so, identify the employer, position held, and hours worked. _____

15. Was the employee working in any other capacity in the forty-eight hours preceding the injury for which benefits are being sought? If so, where were they working, what were they doing, and who was with them? _____

16. Has a line-of-duty disability pension been granted by the applicable Pension Fund Board?
 Yes No

17. If yes, provide the date the pension was granted along with a copy of the Pension Board decision. In addition, provide copies of any materials submitted in support of such a pension as well as any other materials that are in your possession that were considered by the Pension Board:

18. If no, provide the date and a copy of the pension application (if any) along with copies of any materials submitted.

19. Provide any other facts that would qualify the injured or deceased employee for PSEBA benefits:

20. Is the employee currently employed? If yes, provide the name, address and telephone number of the employer. _____

21. Is the employee eligible for health insurance benefits through his/her current employer? If yes, provide details of benefits offered. _____

22. Is the spouse of the employee currently employed? If yes, provide the name, address and telephone number of the employer. _____

23. Is the spouse of the employee eligible for health insurance benefits through their current employer? If yes, provide details of benefits offered. _____

24. Is the child(ren) of the employee currently employed? If yes, provide the name, address and telephone number of the employer(s). _____

25. Is the child(ren) of the employee eligible for health insurance benefits through their current employer? If yes, provide details of benefits offered. _____

26. Is the child(ren) of the employee eligible for health insurance benefits through any other source, such as a mother or father who is not the spouse of the applicant? If so, provide the details of the eligibility for insurance including the identity and relationship of the individual through whom the child(ren) are eligible for insurance. _____

27. Is the child(ren) currently enrolled in school? If yes, identify the date(s) the child was enrolled, course of study, and anticipated date of graduation. _____

28. The Act states that benefits shall be provided to the injured employee, the employee's spouse and for each dependent child of the employee. List other current sources of health insurance benefits payable to the injured or deceased employee through other employment, and other entity or spouse; include company name, benefit plan, description of benefits and costs to you and/or spouse for single and/or family coverage.

29. Has the injured or deceased employee or any family member on his/her behalf previously made a request for benefits? If so, identify when the request was made, how it was made and to whom it was made and provide any documentation supporting the previous request for benefits.

If the employee, his/her spouse or any of their dependent children become eligible and/or obtain other sources of health insurance benefits, the City of Batavia must be notified within 30 days of the effective date.

If you or your spouse becomes employed, or are self-employed, the City of Batavia must be notified within 30 days of the effective date along with the identity of the employer, and position held.

Essential Functions of the Position of Employee

From the position description attached as Appendix 1, list the essential functions that you or the injured employee are unable to perform. Also list any reasonable accommodations that you feel could be made to allow you or the injured employee to perform functions as an employee.

It will be assumed that you or the injured employee are able to perform those duties not listed without accommodation.

Duty that I am Unable to Perform	Reasonable Accommodation to Perform Duty

Medical Information

To determine eligibility for PSEBA benefits, the City of Batavia will review relevant medical records concerning the injured employee. Please have the waiver form (attached as Appendix 2) completed to authorize the City of Batavia to review these medical records.

VERIFICATION OF INFORMATION PROVIDED BY APPLICANT

This statement is made for the sole purpose of receiving benefits under the Public Safety Employee Benefits Act from the City of Batavia. The information contained in this application is true to the best of my knowledge and belief. I understand that it is unlawful for a person to *willfully and knowingly make*, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided by the Public Safety Employee Benefits Act. 820 ILCS 320/10(a)(3). Such actions constitute a Class A Misdemeanor and can serve as the basis for denial or forfeiture of any benefits paid out under the Public Safety Employee Benefits Act.

I agree to abide by the requirements set forth above for retention of any benefits provided by the City of Batavia.

I, _____, being duly sworn, and state that I have reviewed the information provided in this application FOR BENEFITS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFITS ACT, and declare, under the penalties provided by law pursuant to section 1-109 of the Code of Civil Procedure, that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters, I certify that I believe them to be true.

Signature of Applicant

Date

State of Illinois)
County of _____)

Subscribed and sworn to
Before me this ___ day of

Notary Public