

ORDINANCE NO. ____

AN ORDINANCE AMENDING TITLE III, CHAPTERS 31 AND 35 OF THE LOMBARD VILLAGE CODE TO ESTABLISH AN ADMINISTRATIVE PROCEDURE FOR ASSESSING AND DETERMINING CLAIMS UNDER THE PUBLIC SAFETY EMPLOYEE BENEFIT ACT

WHEREAS, the Village of Lombard (“Village”) is a non-home rule unit of local government as provided by Article VII, Section 7 of the Illinois Constitution of 1970: and

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, 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, . . . suffers a catastrophic injury or is killed in the line of duty” (820 ILCS 320/10(a)); and

WHEREAS the Illinois Appellate Court has held 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, the Village finds that it is in the best interests of the citizens’ health, safety, and welfare to amend the Village Code as set forth below;

NOW THEREFORE BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois as follows:

SECTION 1: That the recitals above are hereby incorporated in this Section 1 as if restated herein.

SECTION 2: That Title III, Chapter 35 of the Lombard Village Code is hereby amended by adding an Article VI thereto, consisting of new Sections 35.60 through 35.65, which shall read in its entirety as follows:

“ARTICLE VI-PSEBA BENEFIT ADMINISTRATION

§35.60: PURPOSE.

The purpose of Sections 35.60 through 35.65 of this Code 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 ILCS 320/1 et seq.) (hereinafter “PSEBA” or the “Act”) through an administrative process, including if necessary, an administrative hearing.

§35.61: APPLICATION PROCEDURE.

- (A) Employees or family member(s) of injured or deceased employees, who may qualify for PSEBA benefits (hereinafter an “Applicant”) must file a full and complete application in writing with the Village Manager no later than sixty (60) days from the date of issuance of a written decision by the Police Pension Fund Board or Firefighter Pension Fund Board, whichever is applicable, granting a line of duty disability pension. Failure to timely file a full and complete application shall result in a forfeiture of benefits under PSEBA.
- (B) A complete PSEBA application includes the following:
- (1) The name of the Applicant, date of hire, detailed information regarding the incident, including information relating to how the injury was sustained in the line of duty (date, time, place, nature of injury, and other factual circumstances surrounding the incident giving rise to said claim);
 - (2) The Applicant’s firsthand knowledge explaining, to the Village’s satisfaction, how the injury/death directly resulted from:
 - a. Response to fresh pursuit;
 - b. Response to what is reasonably believed to be an emergency;
 - c. Response to an unlawful act perpetrated by another; or
 - d. 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 names, addresses and telephone numbers of witnesses to the incident resulting in the injury for which PSEBA benefits are sought, along with any statements of the witnesses which the Applicant either possesses, may obtain or is aware of;

- (6) The names, addresses, and telephone numbers of witnesses the Applicant intends to call at the PSEBA hearing, along with their anticipated subjects of testimony and any opinions the witnesses are expected to give;
 - (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 the Village Manager 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 Manager 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 Manager 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, time and location 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.

§35.62: ADMINISTRATIVE HEARING OFFICER.

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 authority granted to her/him 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 to 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 Village President, with the advice and consent of the Village Board, 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 Village. In making said selection, at a minimum, the individual's ability to comply with the job description as set forth herein should be considered.

Additionally, 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.

§35.64: 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 thereof 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 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 Sections 35.60 through 35.65 of this Code 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.

§35.65: PSEBA BENEFITS GRANTED BY THE VILLAGE

- (A) Basic Group Insurance Plan. If an Applicant is determined to be eligible for PSEBA benefits, the Applicant will be eligible to receive continued health coverage consistent with the PSEBA under the Village's basic group health insurance plan. The basic group health insurance plan shall be the health plan offered to Village employees at the time PSEBA benefits are awarded, with the lowest premium cost to the Village, as determined solely by the Village from time to time. PSEBA benefits do not include benefits not provided in the Village's basic group health insurance plan, such as, but not limited to, dental, vision, life insurance, etc.

- (B) Reduction or Elimination of PSEBA Benefits by Other Health Coverage. If health insurance benefits become payable to an Applicant from any other source, including, but not limited to, Medicare, the applicant's PSEBA coverage may be reduced or eliminated as determined by the Village consistent with PSEBA.
- (C) Affidavit of Continued PSEBA Eligibility. All recipients of PSEBA benefits from the Village shall complete and return to the Village Manager on a biannual basis an affidavit verifying the recipient's continued eligibility for PSEBA benefits. The affidavit must be completed and returned to the Village Manager within sixty (60) calendar days of written notice from the Village. If the recipient does not complete and return the affidavit within the time required, the Village Manager shall give the recipient an additional written notice providing an additional thirty (30) calendar days for the recipient to complete and return the affidavit. Failure to return the affidavit on or before the thirtieth (30th) calendar day following the date of the additional written notice shall result in the recipient incurring responsibility for reimbursing the Village for health insurance premiums paid by the Village, relative to the recipient's individual and/or family health insurance, from the date of the initial sixty (60) day written notice until the affidavit is filed."

SECTION 3:

That Title III, Chapter 31.69 of the Lombard Village Code is hereby repealed.

SECTION 4:

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 5:

This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of ____, 2017.

First reading waived by action of the Board of Trustees this 2nd day of November, 2017.

Passed on second reading this 2nd day of November, 2017.

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Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Johnston, Pike and Ware

Nays: None

Absent: None

Approved this 2nd day of November, 2017.

Keith T. Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk

Published by me in pamphlet form on this 3rd day of November, 2017.

Sharon Kuderna
Village Clerk