

**VILLAGE OF BUCHANAN RESOLUTION
APPROVING AN AMENDMENT TO THE
BUCHANAN ENGINE COMPANY #1
LENGTH OF SERVICE AWARD PROGRAM (LOSAP)**

Introduced by: _____
Seconded by: _____
Dated: _____

WHEREAS, in 1988, in order to help municipalities recruit and retain volunteer firefighters, New York State enacted Article 11-A of the General Municipal Law, authorizing the establishment of Length of Service Award Programs for the benefit of volunteer firefighters who annually meet certain point totals based on participation in department activities; and

WHEREAS, in 1992, the Village of Buchanan, with voter approval, established the “Buchanan Engine Company #1 Length of Service Award Program” (“Buchanan LOSAP”), providing for service benefits to its volunteer members in accordance with the terms of the approved Plan; and

WHEREAS, the Buchanan LOSAP Plan fixes the entitlement age, i.e., the age at which Plan participants can begin to collect benefits, at 65 years of age, but prohibits those who reach entitlement age from continuing to accrue post-entitlement years of service, even if such members continue to achieve point totals based on their continuing volunteer activities. Those point totals would otherwise entitle them to additional years of service credit but for the fact that they have reached entitlement age; and

WHEREAS, while the Buchanan LOSAP Plan restriction on the post-entitlement age accrual of further years of service was consistent with the provisions of General Municipal Law Article 11-A when the Plan was established, recent court decisions have held that such a restriction is a form of unlawful age discrimination; and

WHEREAS, the Buchanan LOSAP Plan may only be amended by resolution of the Village Board of the Village of Buchanan; and

WHEREAS, the Village Board deems it to be in the best interests of the Village and the residents served by Buchanan Engine Company #1 to amend the Plan to allow Plan participants who have reached entitlement age to earn additional years of service credit; and

WHEREAS, GML § 216(3)(e) provides that, except in limited circumstances, a LOSAP Program, once established, may only be amended prospectively, and then only subject to referendum; and

WHEREAS, GML § 216(3)(e) cannot legally be reconciled with the case decisions regarding age discrimination, because a failed referendum on a change intended solely to correct a plan illegality would leave the Plan legally infirm, potentially exposing the Plan sponsor to damages; and

WHEREAS, it would be pointless to incur the expenses associated with a referendum of an issue that legally must be corrected; as a consequence, no referendum herein need be conducted;

NOW BE IT THEREFORE RESOLVED, that upon the recommendation of the Village Attorney, the Village Board, by an affirmative vote of a least 60% of the Board, hereby approves an amendment to the Buchanan LOSAP Adoption Agreement and Plan authorizing and permitting any Plan Participant who reaches entitlement age to continue to earn additional years of service credit for any year in which he or she earns sufficient points for designated activities, thereby increasing his or her monthly LOSAP benefit; and

BE IT FURTHER RESOLVED, that the Buchanan LOSAP Plan Sponsor and/or Administrator shall be authorized to credit all qualifying Plan Participants who already have reached entitlement age with the additional years of post-entitlement age service (if any) actually earned by reason of their department activities, and shall pay any such qualifying Plan Participant the additional Plan benefits to which such participants would have been entitled had the Plan restriction on post-entitlement age service credit not been a part of the Plan when adopted; and

BE IT FURTHER RESOLVED, that all Plan Participants shall hereafter be permitted to earn and receive credit and benefits for post-entitlement age years of service for which they may qualify; and

Upon Roll Call Vote:

Mayor Theresa Knickerbocker _____

Trustee Richard Funchion _____

Trustee Duane Jackson _____

Trustee Cesare Pasquale _____

Trustee Nicolas Zachary _____

Vote: Resolution carried by a vote of ____ to ____ .

STATE OF NEW YORK)
)SS.:
COUNTY OF WESTCHESTER)

I, KEVIN HAY, Village Clerk of the Village of Buchanan, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Village Board of the Village of Buchanan at a meeting of said Board held May 7, 2019.

KEVIN HAY, Village Administrator/Clerk