

Mayor Nolan offered the following Resolution and moved its adopted:

R-13-125

RESOLUTION GRANTING THE BOROUGH RIGHT OF ENTRY ONTO PRIVATE PROPERTY WITHOUT OBTAINING PERMISSION OF OWNER AND CONCERNING OTHER MATTERS TO FACILITATE RECOVERY FROM HURRICANE SANDY

WHEREAS, Hurricane Sandy struck the State of New Jersey, inflicting unprecedented damage throughout the State, and causing catastrophic flooding and damage to communities across the State of New Jersey, including the Borough of Highlands, NJ, which has threatened the safety and security of the citizens of the Borough of Highlands, along with private property and public facilities;

WHEREAS, the Governor of the State of New Jersey on October 27, 2012, declared a state of emergency for the entire state pursuant to Executive Order No. 104, and such is currently still in effect **(a copy of said Executive Order is attached as Attachment A)**;

WHEREAS, the President of the United States declared a major disaster for the State of New Jersey, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 *et seq.* (the “Stafford Act”) which, by subsequent amendments, includes all counties in the State;

WHEREAS, N.J.S.A. 40:48-2.13 confers upon the Borough the power to remove debris from private property without a court order or the owner’s consent, if conditions constitute a health or safety hazard;

WHEREAS, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53 confer upon the Monmouth County Regional Health Commission No. 1, the power to remove debris from private property without a court order or the owner’s consent, upon due notice, if the debris is the cause of ill health or disease;

WHEREAS, the New Jersey Department of Health has issued a notice dated December 7, 2012, pursuant to N.J.S.A. 26:1A-26 (the “Commissioner’s Notice”), finding that certain kinds of accumulated storm-generated debris on public and private property constitute a public health hazard and are the cause of ill health or disease **(a copy of the Commissioner’s Notice is attached as Attachment B)**;

WHEREAS, the New Jersey Attorney General has issued an opinion letter addressed to the Federal Emergency Management Agency (FEMA), dated December 7, 2012, (the “Attorney General’s Letter”), stating that under New Jersey law a municipality has the power to authorize the removal of debris from its jurisdiction, without a court order or the owner’s consent, upon due notice, if conditions constitute a health or safety hazard **(a copy of the Attorney General’s Letter is attached as Attachment C)**;

WHEREAS, N.J.S.A. 40:48-2.13, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53 authorize the Borough to remove debris from private property following a hurricane, upon due notice, if the Borough determines that such removal is necessary for the public welfare, or to protect the public from ill health or disease; and

WHEREAS, an emergency exists of the nature provided for in the Attorney General's Letter referred to above, which triggers the Borough's right of entry on private property when the landowner is not available to sign a Right of Entry form in order to remove debris in the public interest to eliminate an immediate threat to public safety, health, and welfare.

NOW THEREFORE, for the reasons recited above and in exercise of powers vested in them, the Mayor and Council of the Borough of Highlands hereby specifically find, determine and certify as follows:

1. Removal of Hurricane Sandy-generated debris from private property is necessary and in the public interest to eliminate immediate threats to life, public health and safety as determined by the Commissioner's Notice.
2. Under N.J.S.A. 40:48-2.13, N.J.S.A. 26:3-48, N.J.S.A. 26:3-49, N.J.S.A. 26:3-50, and N.J.S.A. 26:3-53, the Borough of Highlands has the legal responsibility, duty and authority to remove debris from private property.
3. Based upon Paragraphs (1) and (2) above, we have determined to exercise these authorities to enter onto private property in order to abate the declared public health nuisance and safety emergency by removal of the hurricane-generated debris.
4. We certify that before we initiate removal, when at all practicable, we will satisfy all the legal processes and receive all legal permissions to carry out these actions of debris removal on private property through the use of rights of entry with indemnity clauses signed by the property owner/those with legal interest in the property or we shall use a legal process for condemnation or nuisance abatement.
5. There may be circumstances where, because of the immediate urgency of the situation, the procedures of obtaining a Right of Entry or pursuing a condemnation proceeding, as set out in paragraph (4) above, may be too time consuming. We then will act under the auspices of the attached Attorney General's Letter and the attached Commissioner's Notice which together confirm the legal basis under law for the Borough of Highlands to proceed to remove the debris on these private properties utilizing its police power. We certify that the Borough of Highlands shall prepare a written process to determine which properties will require this extraordinary process to protect the public safety. In these circumstances, a reasonable period of time will be provided for public notification before private property debris removal will commence. During this period a homeowner may inform the Borough of Highlands that entry is denied. This request will be respected unless it is determined that protection of the public interest requires the

Borough of Highlands to take action in which case the forgoing emergency process will take precedence.

6. The Borough of Highlands will recognize and respect all laws and regulations that concern historic preservation and environmental protection.

7. In the unusual circumstance that we desire to remove solitary standing walls as debris, We certify that: a) the Borough of Highlands and state law conclude that such solitary standing walls are defined as debris; b) the Borough of Highlands will have obtained a Right of Entry to the subject property that includes specific permission to remove the standing wall and that states that if there was insurance, the adjuster has inspected the property; c) the solitary wall has no historic significance; and d) the work necessary to remove the wall will not involve any additional contracting, equipment or any other change in the contract scope of work.

8. We determine that aggregating titled personal property such as cars, trucks, recreational vehicles, and boats in order to clear streets and make properties accessible for short and long term housing is necessary and in the public interest to abate a public health nuisance/emergency and certify that we have taken all appropriate action to declare so called "junk cars" a nuisance and to immediately remove them to a central, safe, and secure location for storage.

9. As required by section 407(b) of the Stafford Act (42 U.S.C. 5173(b)), the Borough hereby agrees that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. The Borough hereby acknowledges that, in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

11. To avoid duplication of benefits pursuant to section 312 of the Stafford Act (42 U.S.C. § 5155) the Borough will obtain from private property owners, who participate in this debris removal program, information and documentation relating to insurance coverage, proceeds and settlements and provide this information and documentation to the New Jersey Office of Emergency Management and FEMA.

12. This Resolution R-13-125 shall apply to all private properties in the Borough of Highlands, NJ with the municipal addresses within areas that require debris removal in the public interest in order to eliminate immediate threats to life, public health, and safety.

Seconded by Ms. Ryan and adopted on the following Roll Call Vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Redmond, Mr. Francy, Ms. Kane, Mayor Nolan

NAYES: None

ABSTAIN: None

ABSENT: None

DATE: June 5, 2013

Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of Resolution R-13-125 adopted by the Governing Body of the Borough of Highlands at a meeting held on June 5, 2013.

Borough Clerk/Deputy Clerk