

Mr. Redmond offered the following Ordinance and moved in its final reading and adoption.:

**O-13-9**  
**BOROUGH OF HIGHLANDS**  
**COUNTY OF MONMOUTH**

**ORDINANCE ESTABLISHING A PREFERENCE FOR BOROUGH RESIDENTS  
SEEKING EMPLOYMENT WITH THE BOROUGH**

**WHEREAS**, the Borough of Highlands (hereinafter referred to as “Borough”) determines the requirements for those seeking employment within the Borough and enumerates such in Section 2-7A and Section 2.10.2 of the Code of the Borough of Highlands; and

**WHEREAS**, N.J.S.A. 40A:9-1.1 et seq. permits municipalities to require residency preferences for officers and employees; and

**WHEREAS**, N.J.S.A. 40A:14-123.1a permits municipalities to establish a residency preference for appointment to municipal police departments; and

**WHEREAS**, in In the Matter of Leary, 91 N.J. 151 (1982), the New Jersey Supreme Court held that a municipality may, pursuant to statute, elect to require residency as of the date of hiring in order to obtain the residency preference established by N.J.S.A. 40A:14-123.1a;

**WHEREAS**, the Borough wishes to amend Section 2-7A, “Residency” to establish a preference for Borough residents in the hiring and promotion of individuals to various positions within the Borough; and

**WHEREAS**, the Borough also wishes to establish a preference for residents in hiring members of the Borough’s Police Department;

**WHEREAS**, the Borough finds that it is in the best interests of the citizens of the Borough to establish a residency preference for employment and/or a promotions within the Borough.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Highlands, County of Monmouth, State of New Jersey, as follows:

**SECTION ONE.** Borough Code Section 2-7A (previously Reserved), "Residency," shall be amended to provide as follows:

**(a) Residency in Borough required.** All officers and employees becoming hereafter employed by the Borough of Highlands are hereby required, as a condition of commencing employment, to be a bona fide resident of the Borough. Failure of any employee to maintain residency in the Borough, when required to do so under the terms of this article, shall be cause for removal or discharge from service.

**(b) Grandfather clause.** No current Borough employee shall be affected by the fact of non-residence at the time that this article is adopted. However, the Borough reserves all other rights it may have in regards to such employees' continued employment, except for any claims the Borough may have against such continued employment on the grounds of an employee's residency at the time of the final adoption of this article, except as otherwise set out herein.

**(c) Term defined.** A bona fide "resident" is defined as any person having a permanent domicile within the Borough of Highlands from the time of posting or advertising of any vacancy for any position through and including the date employment commences.

**(d) Applicability; autonomous agencies.**

i. The provisions of this article shall apply to all municipal officers and employees not otherwise exempt from residency requirements by N.J.S.A. 40A:9-1.3 et seq., 40A:14-9.1 and 40A:14-122.1 and also shall not apply to persons rendering special, unique or professional services to the Borough of Highlands, including but not limited to doctors, architects, nurses, scientific or chemical analysts, attorneys, accountants, auditors and planners, Municipal Clerk, Deputy Municipal Clerk, subject to the requirements set forth in N.J.S.A. 40A:9-133 et seq., and Chief Financial Officer, subject to the requirements set forth in N.J.S.A. 40A:9-140.1 et seq., and the Municipal Administrator.

ii. Wherever legally permissible, autonomous or semiautonomous municipal agencies or authorities of the Borough of Highlands shall adhere to the residency policy set forth in this article when hiring employees, agents or servants.

iii. Except as may otherwise be required by Section 2-10.2A of the Borough Code [being adopted herewith], with respect to police positions and candidates for these positions, residency, for purposes of consideration of appointment to the employ of the Borough and inclusion on any Civil Service Commission employment eligibility list for the Borough, shall be as of the date of appointment, and residency must be continuously maintained from the

closing date of the examination up to and including the date of appointment to the employ of the Borough.

**(e) Hiring of nonresidents.**

i. Where the appointing authority shall determine that there cannot be recruited a sufficient number of qualified residents from within the Borough for available specific positions or employments, the appointing authority may, in its discretion, hire nonresidents for such positions or employments in the following manner:

- (a) Class 1: Other residents of Monmouth County.
- (b) Class 2: Residents of counties contiguous to Monmouth County.
- (c) Class 3: Other residents of the state.
- (d) Class 4: All other applicants

ii. When the necessity arises to invoke this section, the hiring authority shall first appoint all those in Class 1 and then those in each succeeding class in the order above listed and shall appoint a person or persons in any such class only to a position or positions of employment or employments remaining after all qualified applicants in the preceding class or classes have been appointed or have declined an offer of appointment. The preference established by this section shall in no way diminish, reduce or affect the preferences granted pursuant to any other provisions of the law.

**(f) Preference in promotion.** Hereinafter, the Borough shall give preference in promotion to officers and employees who are bona fide residents of Borough. When promotions are based upon merit as determined by suitable promotion tests or other objective criteria, a resident shall be given preference over a nonresident in any instance when all other measurable criteria are equal. The preference granted by this section shall in no way diminish, reduce, or affect the preference granted pursuant to any other provision of law.

**(g) Preemption of order of court or of state or federal agency to eliminate discrimination.** Any requirements concerning eligibility, appointment or promotion contained in any ordinance or resolution adopted pursuant to this act shall be subject to any order issued by any court, or by any state or federal agency pursuant to law, with respect to a requirement of action to eliminate discrimination in employment based upon race, creed, color, national origin, ancestry, marital status or sex, except that any requirement contained in any such ordinance or resolution pursuant to the provisions of this article shall continue to apply notwithstanding any such order.

**SECTION TWO.** Borough Code Section 2-10, "Police Department," shall be supplemented to include the following new subsection, which shall be designated at Borough Code Section 2-10.2A, and entitled "Residency:"

**(a)** Applicants seeking to obtain a position in the Borough's police department, who are residents of the Borough, shall be given a preference when the Borough determines its factors and requirements for filling a position. The same preference for residents will be included as a factor when promoting an individual currently within the department. Notwithstanding, pursuant to N.J.S.A. 40A:14-122.1, residency is not a condition of employment, but rather residency will be one of various factors when determining which individual(s) will be offered employment to become a member of the police department.

**(b) Classification of applicants.** Before any person shall be appointed as a member of the paid Police Department, the Appointing Authority shall classify all the duly qualified applicants for the available position or positions in the following classes:

- (1) Class I: residents of the Borough of Highlands.
- (2) Class II: residents of Monmouth County.
- (3) Class III: other residents of the state.
- (4) Class IV: all other qualified residents.

Within each such classification, duly qualified applicants who are veterans shall be accorded all such veterans preferences as are provided by law. Persons discharged from the service within six months prior to making application to such municipality, who fulfill the requirements of N.J.S.A. 40A:14-10.1 and who thereby are entitled to appointment notwithstanding their failure to meet the New Jersey residency requirement at the time of their initial application, shall be placed in Class III.

**(c) Order of appointments.** In making such appointments, the Appointing Authority shall first appoint all those in Class I and then those in each succeeding class in the order above listed and shall appoint a person or persons in any such class only to a vacancy or vacancies remaining after all qualified applicants in the preceding class or classes have been appointed or have declined an offer of appointment.

**(d) Certification of eligibles for positions.** The classes of qualified applicants defined by this section shall be considered as separate and successive lists of eligibles, and the Civil Service Commission shall, when requested to certify eligibles for positions specified in this article, make such certifications from said classes separately and successively and shall certify no person from any such class until all persons in the preceding class or classes have been appointed or have declined offers of appointment.

**(e) Applicability.** This article shall apply only to initial appointments and to promotional appointments of persons already members of the Police Department.

**(f) Temporary appointments.** In making temporary appointments, the Appointing Authority shall utilize the classifications set forth herein and shall classify accordingly all duly qualified applicants for the position or positions to be temporarily filled.

**SECTION THREE. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

**SECTION FOUR. Repealer.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION FIVE. Effective.** This Ordinance shall take effect after final passage as provided by law.

Seconded by Ms. Ryan and introduced on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSENT: Mayor Nolan

ABSTAIN: None

DATE: July 17, 2013

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Carolyn Cummins, Borough Clerk