

Mayor Nolan offered the following ordinance as amended and set the public hearing date for December 18, 2013 at 8:00 p.m. and authorized its publication according to law:

**O-13-32**

**AN ORDINANCE OF THE BOROUGH OF HIGHLANDS, IN THE COUNTY OF MONMOUTH, NEW JERSEY, DISSOLVING THE ATLANTIC HIGHLANDS - HIGHLANDS REGIONAL SEWERAGE AUTHORITY PURSUANT TO N.J.S.A. 40A:5A-20**

**WHEREAS**, the governing body of the Borough of Highlands, in the County of Monmouth, New Jersey ("Highlands"), by ordinance duly adopted by Highlands on May 21, 1968, and the governing body of the Borough of Atlantic Highlands, in the County of Monmouth, New Jersey ("Atlantic Highlands"), by ordinance duly adopted by Atlantic Highlands on March 26, 1968 jointly created the Atlantic Highlands - Highlands Regional Sewerage Authority (the "Authority"), in accordance with the "Sewerage Authorities Law", constituting Chapter 138 of the Pamphlet Laws of 1946 of the State (codified at N.J.S.A. 40:14A-1 et seq.), as the same may from time to time be amended and supplemented (the "Act"); and

**WHEREAS**, the Authority is responsible for the ownership, operation and maintenance of two pump stations, one in each of Highlands and Atlantic Highlands, force mains between the two pump stations and force mains from the pump station in Atlantic Highlands to the discharge point at the Township of Middletown Sewerage Authority ("TOMSA") trunkline (collectively, the "System"); and

**WHEREAS**, the collection systems located in Highlands and Atlantic Highlands are owned by each of Highlands and Atlantic Highlands, respectively; and

**WHEREAS**, in order to fund various capital improvements to the System, or refund outstanding bonds originally issued to fund such various capital improvements, the Authority has previously issued the following outstanding debt:

1. \$753,305.11 outstanding principal amount of Sewer Revenue Bonds, Series 2010, consisting of \$195,000 outstanding principal amount of Sewer Revenue Bonds, Series 2010A (the "Series 2010A Bonds"), issued to the New Jersey Environmental Infrastructure Trust (the "NJEIT") and \$558,305.11 outstanding principal amount of Sewer Revenue Bonds, Series 2010B (the "Series 2010B Bonds" and, together with the Series 2010A Bonds, the "Series 2010 Bonds"), issued to the State of New Jersey, Acting by and through the Department of Environmental Protection;
2. \$7,400,000 outstanding principal amount of Sewer Revenue Refunding Bonds, Series 2011, dated and issued on or about January 24, 2011 and maturing on January 15 in each of the years 2014 through 2032, inclusive (the "Series 2011 Bonds"), issued to the Monmouth County Improvement Authority County-Guaranteed Pooled Loan Program; and

3. \$2,833,082 New Jersey Environmental Infrastructure Trust Interim Financing Note, dated and issued on August 22, 2013 to the NJEIT, maturing on May 21, 2014, and bearing interest at a rate of zero per centum (0.00%) per annum (the "Interim Note" and, together with the Series 2010 Bonds and the Series 2011 Bonds, the "Authority Debt"); and

**WHEREAS**, the Authority Debt is secured by, among other things, Revenues (as defined in the Authority's resolution adopted October 2, 1986, as amended and supplemented (the "General Bond Resolution")), and a Service Contract dated October 6, 1970, as amended and supplemented (the "Service Contract"), by and among Highlands, Atlantic Highlands and the Authority, which Service Contract requires each of Highlands and Atlantic Highlands to make certain payments to the Authority from any available funds, including from the levy of *ad valorem* taxes upon all the taxable real property within Highlands and Atlantic Highlands, respectively; and

**WHEREAS**, Highlands, after a careful examination and analysis, has determined that it is in the best interests of the residents of Highlands to dissolve the Authority; and

**WHEREAS**, Atlantic Highlands, after a careful examination and analysis, has determined that it is in the best interests of the residents of Atlantic Highlands to dissolve the Authority; and

**WHEREAS**, Highlands has determined that dissolving the Authority will provide substantial annual operating savings to Highlands and will allow Highlands full control of the portion of the System that services the residents of Highlands and others (the "Highlands System"); and

**WHEREAS**, Highlands has further determined that dissolving the Authority will not materially impact the residents of Highlands nor the financial operations of Highlands, as Highlands has previously created a separate sewer utility within its municipal budget and has always collected service fees from residents through the utility and paid Highlands obligations to the Authority through such utility; and

**WHEREAS**, section 20 of the Local Authorities Fiscal Control Law (the "Fiscal Control Law") grants to a municipality the power to dissolve an authority, by ordinance, provided that the ordinance makes adequate provision for the payment of all creditors or obligees of the authority and further makes adequate provision for the assumption of services provided by the authority which are necessary for the health, safety and welfare of the recipients of such services; and

**WHEREAS**, Highlands desires to assume fifty-two percent (52.0%) of the Authority Debt payment obligations, as calculated and shown in **Exhibit A** attached hereto (the "Highlands Debt"), as well as to assume fifty-two percent (52.0%) of any outstanding payment obligations of the Authority as of the Effective Date; and

**WHEREAS**, in addition to the Authority Debt and any outstanding payment obligations, the Authority owns various property and assets, including but not limited to a building located on Block 118, Lot 2.02 of the tax maps of Atlantic Highlands (the "Authority Building") and a sport utility vehicle (the "Authority Vehicle"); and

**WHEREAS**, Highlands further desires to assume all of the rights, duties, and obligations of the Authority with respect to the Highlands System, and to assume the provision of those services provided by the Authority that are necessary for the health, safety and welfare of the recipients of such services within Highlands; and

**WHEREAS**, Highlands further desires to negotiate and enter into a service contract with TOMSA, if necessary, on terms substantially similar to those contained in the existing service contract by and between the Authority and TOMSA, with respect to that portion of the Highlands System that provides flow to TOMSA; and

**WHEREAS**, Highlands, in conjunction with Atlantic Highlands, desires to dissolve the Authority in accordance with, and in fulfillment of, the provisions of N.J.S.A. 40A:5A-20.

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

**Section 1.** Dissolution. Highlands hereby dissolves the Authority, subject to the approval of such dissolution by Atlantic Highlands and further subject to the terms and conditions hereof.

**Section 2.** Transfer of Title to Highlands of Authority Property and Facilities. Upon the effective date of the dissolution as set forth in Section 5 of this ordinance (the "Effective Date"), (i) the Highlands System and (ii) certain real and personal property, including but not limited to the property, facilities, contracts, leases and agreements of the Authority and certain monies and funds held by or for the Authority designated as being transferred to Highlands, as such designation is agreed to by both Highlands and Atlantic Highlands, which designation shall reflect a division fifty-two percent (52.0%) to Highlands and forty-eight percent (48.0%) to Atlantic Highlands of such real and personal property, or as close to such percentages as is equitably possible, except for the Authority Vehicle which is being conveyed in its entirety to Highlands and the Authority Building, which is being conveyed in its entirety to Atlantic Highlands, shall be deemed transferred to and become the property of Highlands (collectively, the "Highlands Property"). The existing officers of the Authority are hereby authorized and directed to execute any documents or instruments necessary to transfer legal title to the Highlands System and Highlands Property upon the Effective Date. At least one copy of all applicable documents and records of the Authority shall be delivered to the Highlands Clerk prior to the Effective Date.

**Section 3.** Payment of All Creditors and Obligees. Upon the Effective Date, Highlands and Atlantic Highlands shall initially jointly assume certain legal obligations to all existing and outstanding creditors and obligees of the Authority, subject to the specific terms and conditions of such obligations. It is the intention of Highlands and Atlantic Highlands that, immediately upon the Effective Date, Atlantic Highlands will pay such existing and outstanding creditors from Authority funds, to the extent available, and will thereafter divide any remaining funds fifty-two percent (52.0%) to Highlands and forty-eight percent (48.0%) to Atlantic Highlands (such share to Highlands shall be considered part of the Highlands Property). The Highlands Debt shall be debt of Highlands, payable by Highlands out of the first funds becoming legally available to Highlands, but

if not otherwise available, then from the levy of *ad valorem* taxes upon all the taxable real property located in Highlands.

**Section 4.** Assumption of Services Provided by the Authority. Upon the Effective Date, Highlands shall become successor to the Authority on the Highlands Property; provided, that Highlands shall not be required to, nor shall it assume the obligation to employ any of the Authority's employees or administrators nor shall it assume any professional service contracts, all of whom and all of which, respectively, shall be terminated as of the Effective Date.

**Section 5.** Effective Date of Dissolution. The dissolution of the Authority shall take effect at 11:59 p.m., Eastern Standard Time, on December 31, 2013.

**Section 6.** Nature of Obligations Assumed; Limitation on Liability. Highlands assumes (i) the Highlands System and (ii) the Highlands Property, subject to the same terms, conditions, rights, responsibilities, obligations and limitations applicable to the Authority, and such assumption by Highlands shall not create, express or implied, any additional, extended, enhanced or modified obligation, liability, right or remedy of any party to any such contracts, leases and agreements.

**Section 7.** Authorization of Highlands and Authority to Take all Necessary Action and to Execute Documents for the Provision of Treatment Services. (a) The Mayor, Business Administrator, Chief Financial Officer, Clerk and other Highlands officers, as directed by the Mayor and/or Business Administrator, are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this ordinance. The members of the Authority, its officers, employees, engineers, accountants, counsels and consultants are hereby authorized and directed to take all steps necessary to effectuate the purposes of this ordinance.

(b) The Mayor, Business Administrator, Chief Financial Officer, Clerk and other Highlands officers, as directed by the Mayor and/or Business Administrator, are hereby authorized and directed to negotiate, enter into and execute (i) a service contract with TOMSA on substantially similar terms contained in the existing service contract by and between the Authority and TOMSA and (ii) if necessary, a service contract and/or a shared services contract with Atlantic Highlands, each to provide for treatment services and water pollution control facilities necessary to preserve and maintain the water quality of Highlands in accordance with Federal, state and local requirements for the benefit of the residents of Highlands.

**Section 8.** Approval of Local Finance Board; Filing. This ordinance shall be submitted to, and approved by, the Local Finance Board in the Division of Local Government Services, Department of Community Affairs of the State of New Jersey (the "Local Finance Board") prior to final adoption in accordance with the requirements of N.J.S.A. 40A:5A-20 and the final adoption of this ordinance by Highlands shall represent conclusive proof of the fact that this ordinance has received the approval of the Local Finance Board. Immediately upon adoption of this ordinance, this ordinance shall be filed with the Local Finance Board and with the Secretary of State of the State of New Jersey, in accordance with N.J.S.A. 40A:5A-20.

**Section 9.** Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**Section 10.** Repeal of All Inconsistent Ordinances. All ordinances of Highlands which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

**Section 11.** Effective Date. This ordinance shall take effect immediately upon adoption and shall not be subject to referendum, provided, however, that the Local Finance Board has approved this ordinance in accordance with N.J.S.A. 40A:5A-20.

Seconded by Mr. Francy and amended on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSENT:** Ms. Kane

**ABSTAIN:** None

**DATE:** December 10, 2013

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**Carolyn Cummins, Borough Clerk**

I hereby certify this to be a true copy of Ordinance O-13-32 as amended by the Governing Body of the Borough of Highlands on December 10, 2013.

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Borough Clerk/Deputy Clerk

**EXHIBIT A**

**Highlands Debt**