

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

October 21, 2011

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on October 5, 2011, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated January 24, 2011, the Department of the Corporation Counsel requested consideration of the possible settlement of Elmer Stephen Wereb, et al. v. County of Maui, et al., Civil 09-00198 JMS LEK. Attached to the request is a copy of the First Amended Complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF ELMER STEPHEN WEREB, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. CV 09-00198 JMS LEK". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges damages for the death of Plaintiffs' son, Dennis Wereb, while in custody at the Lahaina Police Station on or about September 26, 2008. Your Committee further notes that the ten individual defendants named in the lawsuit have been dismissed from the case, and the County is the only remaining defendant.

A Deputy Corporation Counsel provided a brief overview of the case and requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes ("HRS"); and to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order, pursuant to Section 92-5(a)(8), HRS.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 9-0 to recommend adoption of the proposed

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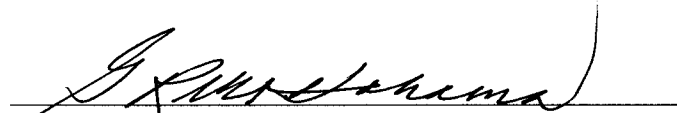
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resolution to authorize the settlement of the matter under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White voted "aye".

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF ELMER STEPHEN WEREB, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. CV 09-00198 JMS LEK" be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



R. RIKI HOKAMA, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF ELMER STEPHEN WEREB, ET AL. VS.
COUNTY OF MAUI, ET AL., CIVIL NO. CV 09-00198 JMS LEK

WHEREAS, Plaintiffs Elmer Stephen Wereb and Betty Jean Wereb filed a lawsuit against the County of Maui and others in the United States District Court for the District of Hawaii on May 4, 2009, Civil No. CV 09-00198 JMS LEK, claiming damages for the death of their son Dennis Wereb while incarcerated for a felony at the Lahaina Police Station on or about September 26, 2008; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Policy Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

Resolution No. _____

BE IT RESOLVED by the Council of the County of Maui:

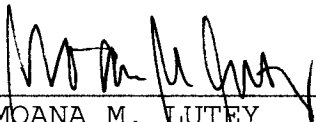
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Chief of Police, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui