

COUNCIL OF THE COUNTY OF MAUI

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

February 15, 2013

**Committee
Report No.** _____

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

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on January 28, 2013, makes reference to County Communication 13-41, from the Council Chair, regarding litigation matters.

By correspondence dated January 18, 2013, the Department of the Corporation Counsel requested consideration of the possible settlement of Tracy Motelewski v. Maui County Police Department, et al., Civil 11-00778 BMK. Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF TRACY MOTELEWSKI V. MAUI POLICE DEPARTMENT, ETAL., CIVIL NO. 11-00778 BMK". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

Your Committee further notes that the complaint alleges Ms. Motelewski was unlawfully arrested and suffered severe emotional distress, economic losses, and loss of enjoyment of life as a result of her arrest on August 17, 2008.

According to a Deputy Corporation Counsel, the Council previously authorized settlement of the case by Resolution 11-26; however, the case did not settle. The Deputy Corporation Counsel noted that Ms. Motelewski has submitted a new demand letter, and provided a brief overview of the case. She indicated that the Department is representing the County only, and not the individual defendants. She assured your Committee that the employment of each individual defendant was terminated as a result of the incident. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

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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 6-0 to recommend adoption of the proposed resolution. Committee Chair Hokama, Vice-Chair Couch, and members Carroll, Cochran, Crivello, and Guzman voted “aye”. Committee members Baisa, Victorino, and White were excused.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled “AUTHORIZING SETTLEMENT OF TRACY MOTELEWSKI V. MAUI POLICE DEPARTMENT, ET AL., CIVIL NO. 11-00778 BMK”, be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
TRACY MOTELEWSKI V. MAUI POLICE DEPARTMENT,
ET AL., CIVIL NO. 11-00778 BMK

WHEREAS, Plaintiff Tracy Motelewski filed a lawsuit in the Second Circuit Court on March 8, 2010, Civil No. 10-1-0162(3), against the Maui Police Department, County of Maui, Kris Galon, and Steven Gunderson, claiming she was unlawfully arrested and suffered severe emotional distress, economic losses, and loss of enjoyment of life as a result of her arrest on August 17, 2008; and

WHEREAS, on December 21, 2011, the County of Maui removed this case to the United States District Court for the District of Hawaii, Civil No. 11-00778 BMK; and

WHEREAS, by Resolution No. 11-026, the Council approved settlement of the case; 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

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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 and Intergovernmental Affairs 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,

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 and Intergovernmental Affairs Committee; and


2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County of Maui and Maui Police Department 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

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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

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