

COUNCIL OF THE COUNTY OF MAUI

**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

April 5, 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 March 15, 2013, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated February 22, 2013, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING JUN HATTORI, RUSSELL KAPAHULEHUA, ERIK LOSVAR, AND HARRY MATSUURA IN JOSHUA NAKAGAWA V. COUNTY OF MAUI, ET AL., CIV. NO. 11-00130 LEK BMK AND ANTHONY LUM-JOHN V. COUNTY OF MAUI, CIVIL NO. 12-00569 JMS RLP (CONSOLIDATED)", and transmitted copies of the complaints. The purpose of the proposed resolution is to indemnify Jun Hattori, Russell Kapahulehua, Erik Losvar, and Harry Matsuura in the cases.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "INDEMNIFYING JUN HATTORI, RUSSELL KAPAHULEHUA, ERIK LOSVAR, AND HARRY MATSUURA IN JOSHUA NAKAGAWA V. COUNTY OF MAUI, ET AL., CIVIL NO. 11-00130 LEK BMK AND ANTHONY LUM-JOHN V. COUNTY OF MAUI, ET AL., CIVIL NO. 12-00569 JMS RLP (CONSOLIDATED)", approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee notes the complaints allege that Mr. Nakagawa and Mr. Lum-John suffered injury and damages when police officers shot them during an incident that occurred on or about July 18, 2010, along Honoapiilani Highway near Punalau Beach.

Your Committee further notes that the Police Commission reviewed the matter pursuant to Section 52D-8, Hawaii Revised Statutes ("HRS"), and determined the Defendants are entitled to legal representation.

COUNCIL OF THE COUNTY OF MAUI
**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

Page 2

**Committee
Report No.** _____

A Deputy Corporation Counsel gave a brief overview of the cases and recommended that the Committee consider the matter in an executive meeting.

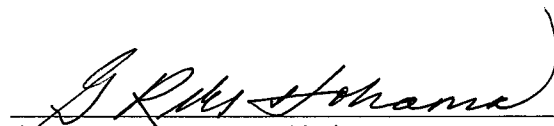
Your Committee voted to convene an executive meeting, closed to the public, pursuant to Section 92-5(a)(4), HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, and Section 92-5(a)(8), HRS, 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.

Following the executive meeting, your Committee reconvened in regular session.

Your Committee voted 5-0 to recommend adoption of the revised proposed resolution. Committee Chair Hokama and members Carroll, Cochran, Crivello, and Guzman voted "aye". Committee Vice-Chair Couch and members Baisa, Victorino, and White were excused.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "INDEMNIFYING JUN HATTORI, RUSSELL KAPAHULEHUA, ERIK LOSVAR, AND HARRY MATSUURA IN JOSHUA NAKAGAWA V. COUNTY OF MAUI, ET AL., CIVIL NO. 11-00130 LEK BMK AND ANTHONY LUM-JOHN V. COUNTY OF MAUI, ET AL., CIVIL NO. 12-00569 JMS RLP (CONSOLIDATED)", be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

INDEMNIFYING JUN HATTORI, RUSSELL KAPAHULEHUA,
ERIK LOSVAR, AND HARRY MATSUURA IN
JOSHUA NAKAGAWA V. COUNTY OF MAUI, ET AL., CIVIL NO.
11-00130 LEK BMK AND ANTHONY LUM-JOHN V. COUNTY OF MAUI,
ET AL., CIVIL NO. 12-00569 JMS RLP (CONSOLIDATED)

WHEREAS, Officers Jun Hattori, Russell Kapahulehua, Erik Losvar, and Harry Matsuura, who were employees of the Department of Police on July 18, 2010, have been named as defendants in their individual capacities, in the consolidated cases of Joshua Nakagawa v. County of Maui, et al., Civil No. 11-00130 LEK BMK, and Anthony Lum-John v. County of Maui, et al., Civil No. 12-00569 JMS RLP; and

WHEREAS, the County of Maui removed the complaint filed by Joshua Nakagawa in the Circuit Court of the Second Circuit in Civil 11-1-0028(1) to the United States District Court for the District of Hawaii on March 2, 2011, where it was assigned Civil No. 11-00130 LEK BMK; said complaint was subsequently amended on October 28, 2011; and

WHEREAS, the County of Maui removed the complaint filed by Anthony Lum-John in the Circuit Court of the Second Circuit in Civil 12-1-0703(3) to the United States District Court for the District of Hawaii on October 22, 2012, where it was assigned Civil 12-00569 JMS RLP; and

Resolution No. _____

WHEREAS, Plaintiffs allege that their civil rights were violated and that they suffered damages and injuries as a result of an incident on July 18, 2010, involving Jun Hattori, Russell Kapahulehua, Erik Losvar, and Harry Matsuura ("these Defendants"); and

WHEREAS, the Police Commission has reviewed this matter under its statutory authority and determined that these Defendants are entitled to legal representation in the consolidated cases; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify these Defendants for any damages that may be assessed against them in the consolidated cases; and

WHEREAS, Plaintiffs seek general, special, and punitive damages, and interest and costs of suit in their Complaints; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify these Defendants in the consolidated cases; now, therefore,

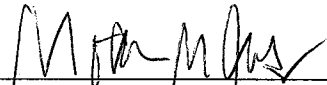
BE IT RESOLVED by the Council of the County of Maui:

Resolution No. _____

1. That Jun Hattori, Russell Kapahulehua, Erik Losvar, and Harry Matsuura are indemnified by the County of Maui for any damages that may be assessed against them in the consolidated cases; and

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

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui