

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

February 21, 2014

**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 October 28, 2013, and February 7, 2014, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated October 17, 2013, the Department of the Corporation Counsel requested consideration of the possible settlement of Kay Burke v. County of Maui, et al., Civil 09-1-0127(1). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF KAY BURKE V. COUNTY OF MAUI, CIVIL NO. 09-1-0127(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case under different terms than previously authorized by Resolution 13-103.

By correspondence dated January 24, 2014, the Department of the Corporation Counsel again requested consideration of the possible settlement of the case. Attached to the request is a copy of the complaint and a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF KAY BURKE V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0127(1)". The revised proposed resolution incorporates nonsubstantive revisions.

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

Your Committee further notes the complaint alleges that on January 24, 2009, Ms. Burke suffered physical injuries when she tripped and fell on an uneven portion of the sidewalk fronting the Maui Vista Condominium along South Kihei Road, Kihei. The sidewalk is maintained by the County.

The Council previously authorized settlement of the case by Resolution 13-103; however, the case did not settle. A Deputy Corporation Counsel provided a brief

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overview of the case, noted the Department had recently received a new settlement proposal from Ms. Burke, and requested the opportunity to convene an executive meeting.

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; 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), Hawaii Revised Statutes.

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 5-2 to recommend adoption of the revised proposed resolution to authorize settlement of the matter under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Couch, and members Baisa, Cochran, and Crivello voted "aye". Committee members Guzman and White voted "no". Committee members Carroll and Victorino were excused.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF KAY BURKE V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0127(1)", be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
KAY BURKE V. COUNTY OF MAUI, ET AL.
CIVIL NO. 09-1-0127(1)

WHEREAS, Plaintiff Kay Burke filed a lawsuit in the Second Circuit Court, Civil No. 09-1-0127(1), against the County of Maui, claiming she suffered physical injuries when she tripped and fell on January 24, 2009, due to a defect in a sidewalk adjacent to South Kihei Road in Kihei, Maui, Hawaii; and

WHEREAS, by Resolution No. 13-103, the Council approved settlement of this 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

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 No. _____

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:

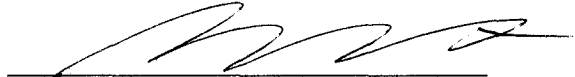
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County of Maui 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 Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RICHARD B. ROST
Deputy Corporation Counsel
County of Maui