

COUNCIL OF THE COUNTY OF MAUI

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

May 6, 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 April 16, 2014, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated April 3, 2014, the Department of the Corporation Counsel requested consideration of the possible settlement of Neldon Mamuad v. County of Maui, Civil CV14-00102 JMS BMK. Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF NELDON MAMUAD V. COUNTY OF MAUI, CIVIL NO. CV14-00102 JMS BMK" and a copy of the complaint. The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes the complaint alleges the County violated Mr. Mamuad's civil rights and liberties, including his right to freedom of speech, arising from its investigation and finding that Mr. Mamuad had violated the County's Violence in the Workplace Action Plan. Your Committee further notes the underlying investigation related to Mr. Mamuad's administration of a Facebook page previously known as "TAGUMAWatch" and now known as "MAUIWatch".

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

A Deputy Corporation Counsel and special counsel Richard Rand, Esq. of Marr Jones & Wang A Limited Liability Law Partnership explained a settlement demand had been made. They requested the opportunity to discuss the proposed settlement in an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on

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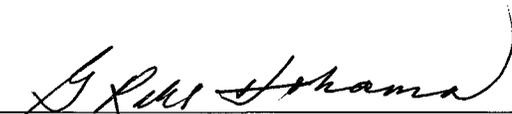
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questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(2), Hawaii Revised Statutes, to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held.

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 6-1 to recommend adoption of the proposed resolution to authorize the settlement of the matter under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Couch, and members Baisa, Cochran, Crivello, and White voted "aye". Committee member Victorino voted "no". Committee members Carroll and Guzman were excused.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF NELDON MAMUAD V. COUNTY OF MAUI, CIVIL NO. CV14-00102 JMS BMK", 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 NELDON MAMUAD
V. COUNTY OF MAUI, CIVIL NO. CV14-00102 JMS BMK

WHEREAS, Plaintiff Neldon Mamuad filed a lawsuit in the United States District Court for the District of Hawaii on March 3, 2014, Civil No. CV 14-00102 JMS BMK, against the County of Maui, claiming his First Amendment rights to the U.S. Constitution were violated; 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 of this case by way of a negotiated settlement or Offer

Resolution No. _____

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:

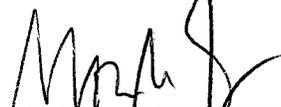
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

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

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui