

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

August 4, 2015

Council Chamber, 8th Floor

CONVENE: 3:11 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Mike White (in 3:29 p.m.)

EXCUSED: Councilmember Gladys C. Baisa
Councilmember Riki Hokama
Councilmember Michael P. Victorino

STAFF: Carla Nakata, Legislative Attorney
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone Conference Bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone Conference Bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone Conference Bridge)

ADMIN.: Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
David Goode, Director, Department of Public Works

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR GUZMAN: . . .*(gavel)*. . . The Committee of the Whole shall now come to order. I'm Don Guzman, the Chair of the Committee. Before we begin may I ask everyone to put their cell phones in silence mode. I'd like to introduce our Members for the Committee. Our Vice-Chair of the Committee is Stacy Crivello.

VICE-CHAIR CRIVELLO: Good afternoon.

CHAIR GUZMAN: Good afternoon. We also have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon.

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CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: And Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR GUZMAN: And excused is Gladys Baisa, Riki Hokama, Mike Victorino, and I believe Mike White will join us later. For the Corporation Counsel, we have Deputy Corporation Counsel Moana Lutey here --

MS. LUTEY: Good afternoon.

CHAIR GUZMAN: --as well as Mr. Caleb Rowe. And from the Administration, we will have David Goode, Director of Public Works. For our Committee, we have for our Secretary we have Clarita Balala, as well as our Legislative Attorney Carla Nakata. Are there any testifiers for today in the Chambers? None. Okay. I'm going to go ahead and check in with our District offices. In Hana Office, is there anyone wishing to testify?

MS. LONO: Good afternoon, this is Dawn in Hana and I have no one waiting to testify.

CHAIR GUZMAN: Very good. What about in Lanai District Office, is there anyone wishing to testify?

MS. FERNANDEZ: Good afternoon, Chair, this is Denise Fernandez and there is no one waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Fernandez. On Molokai, is there anyone wishing to testify?

MS. ALCON: Good afternoon, Chair, this is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Alcon. Thank you, ladies. At this time, Members, I'm going to close public testimony without objections.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. Public testimony is now closed.

COW-1(4): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF ELEANOR KONDO; CLAIM 1843115) (CC 15-6)

CHAIR GUZMAN: Turning to Committee of the Whole Item 1(4), Litigation Matters: Settlement Authorization – Claim of Eleanor Kondo, Claim 1843115. The Committee is in receipt of correspondence dated February 2, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution, entitled "AUTHORIZING

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SETTLEMENT OF CLAIM NO. 1843115 OF ELEANOR KONDO,” and transmitting a copy of the claim. The claim alleges bodily injuries, vehicular damage, and rental car reimbursement costs as a result of a motor vehicle incident that happened on Haleakala Highway on April 13, 2011, involving a County of Maui vehicle. The purpose of the proposed resolution is to authorize settlement of the claim for \$10,500. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider other related actions. Today, we have Deputy Corporation Counsel Moana Lutey. If you can please provide the Committee with any comments of the claim and whatever you can state in open session so the public as well as the Committee can fully understand the claim.

MS. LUTEY: Thank you, Chair. Good afternoon. This accident occurred on April 13, 2011, and basically what was happening is that Ms. Kondo was heading Upcountry on Haleakala Highway and in a sharp turn one of our County vehicles was coming down towing a low boy trailer. And due to the sharpness of the turn they were not, the driver was not able to negotiate it without crossing into the other lane. Ms. Kondo hadn't stopped for the vehicle. She was already in mid-stream of that turn and as a result of them sort of being in the same area at the same time her vehicle was damaged significantly by our trailer. And according to the driver, it's something that he could not avoid. Now this claimant currently does have legal counsel and what I'm here to discuss settlement of is actually her bodily injury claim. We have previously resolved, by resolution, her damages to the vehicle that was just over \$8,000. And today I'm seeking settlement authority at \$10,500 for her bodily injury sustained during this accident. So if you want to discuss her medical injuries I would need to go into executive session. I do have a short memo on that but otherwise I'm open to questions not related to that in open session.

CHAIR GUZMAN: Can we ask Mr. Goode, Director Goode to come down if he'd like to make any opening statements in open session?

MR. GOODE: Good afternoon, Chair. I don't have a whole lot more to add than what Ms. Lutey said other than it appeared to be fairly unavoidable for the driver. We have made some adjustments to the way we transport that particular vehicle and load going forward though.

CHAIR GUZMAN: Okay. Members, do you have any questions that you'd like to pose in open session? Seeing none. We have a request to go into executive session from Corporation Counsel, Deputy Corporation Counsel. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities and liabilities of the County, Council, and this Committee. And Section 92-5(a)(8) of the HRS to deliberate or make a decision upon a matter that requires consideration of information that is to be kept confidential pursuant to the State or Federal law or the court.

VICE-CHAIR CRIVELLO: I so move, Chair.

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CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Seconded by Mr. Couch. Any further discussion? Seeing none. All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have five ayes, four excused, no noes. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, and Couch.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Hokama, Victorino, and White.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR GUZMAN: Members, moving on to the next item.

COW-1(14): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: KYOKO ARMSTRONG-NISHIOKA V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE 7-11-01318) (CC 15-6)

CHAIR GUZMAN: We have Committee of the Whole 1(14), Litigation Matters: Settlement Authorization for Kyoko Armstrong-Nishioka v. County of Maui, Disability Compensation Division Case 7-11-01318. The Committee is in receipt of the following – correspondence dated June 19, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution to authorize settlement of the Armstrong-Nishioka v. County of Maui, Disability Compensation Division Case 7-11-01318. The claim alleges that Kyoko Armstrong-Nishioka sustained work-related injuries on July 13, 2011. Correspondence dated June 24, 2015, from the Department of the Corporation Counsel, requesting consideration of a revised proposed resolution. The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions. And the Committee may also consider other related action. The

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Deputy Corporation Counsel that we have today is Caleb Rowe and he will present in open session the case.

MR. ROWE: Thank you, Chair. So Kyoko Armstrong-Nishioka was a 61-year old nutritional program assistant with the Department of Housing and Human Concerns. In July of 2011 she was helping to prepare food for delivery when she was hit on the side of the head by a falling cooler and she suffered some injuries as a result of it. There was an independent medical examination done in which she was given a rating and we were able to settle this case but it is outside of the Corporation Counsel's authority. So we would like to further discuss this issue in open court because it, oh, sorry, in executive session because it involves ongoing litigation matters as well as medical injuries.

CHAIR GUZMAN: Members, do you have any questions that you'd like to pose in open session? Seeing none. At this time, I would like to entertain a motion to enter into executive session pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities and liabilities of the County, Council, and this Committee. And Section 92-5(a)(8) of the HRS to deliberate or make decisions upon a matter that requires consideration of information that is to be kept confidential pursuant to the State or Federal law or the court . . . court orders.

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion? Seeing none. All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We got five ayes, no noes. We have four excused. Motion carries.

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VOTE: **AYES:** **Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, and Couch.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Baisa, Hokama, Victorino, and White.**

MOTION CARRIED.

ACTION: **APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Thank you, Members. Moving on to the next item.

COW-1(15): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JOHN M. NEWELL V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE 7-13-01509) (CC 15-6)

CHAIR GUZMAN: We have COW-1(15), Litigation Matters: Settlement Authorization of John M. Newell v. County of Maui, Disability Compensation Division Case 7-13-01509. The Committee is in receipt of the following - correspondence dated June 19, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution authorizing settlement of John M. Newell v. County of Maui, Disability Compensation Division Case 7-13-01509. The claim alleges that Mr. Newell sustained work-related injuries on August 15, 2013. Correspondence dated June 24, 2015, from the Department of the Corporation Counsel, requesting consideration of a revised proposed resolution. The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions. And the Committee may also consider other related actions. Today, we also have Deputy Corporation Counsel Mr. Rowe please if you could please present the case in open session.

MR. ROWE: Thank you, Chair. Employee John Newell was a former 64-year old Housing Quality Standards Inspector with the Department of Housing and Human Concerns. In August of 2013 while he was inspecting a unit at the Haleakala Gardens, he landed or he fell on a wet part of a sidewalk and slipped and ended up hitting his arm. He left the County in 2014 in unrelated matters to this. He did end up having an independent medical examination where he was given a permanent partial disability rating. We have been able to settle this but it is outside the authority of the Department of the Corporation Counsel. Because this does involve ongoing litigation and medical records, we ask that this be done in executive session.

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RECESS: 3:25 p.m.

RECONVENE: 4:05 p.m.

CHAIR GUZMAN: . . .(gavel). . . Committee of the Old [sic] shall...Committee of Old
. . .(laughter). . . Committee of the Whole shall now reconvene in open session.

COW-1(4): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF ELEANOR KONDO; CLAIM 1843115) (CC 15-6)

CHAIR GUZMAN: Members, in regards to Item Committee of the Whole 1(4), Litigation Matters and Settlement Authorization claim of Eleanor Kondo, Claim 1843115, as Chair will entertain a motion to recommend adoption of the entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 1843115, --

MS. LUTEY: Right.

CHAIR GUZMAN: --pursuant to our discussions in executive session.

VICE-CHAIR CRIVELLO: I so move on your motion.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Motion by Ms. Crivello, seconded by Mr. Couch. Any further discussion? Seeing none. All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have five ayes, no...six, sorry, six ayes, no noes, and four excused or three, sorry, three excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Hokama, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to the next item.

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COW-1(14): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: KYOKO ARMSTRONG-NISHIOKA V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE 7-11-01318) (CC 15-6)

CHAIR GUZMAN: Members, we have the COW-1(14), Settlement Authorization of Kyoko Armstrong-Nishioka v. County of Maui, Disability Compensation Division Case 7-11-01318. Pursuant to our discussions in executive session, the Chair will entertain a motion to recommend the adoption of the revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF KYOKO ARMSTRONG-NISHIOKA V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-11-01318."

VICE-CHAIR CRIVELLO: Chair, so move.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: So moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion?

COUNCILMEMBER COUCH: We're not filing this? Do we file this or no?

CHAIR GUZMAN: No.

COUNCILMEMBER COUCH: Okay.

CHAIR GUZMAN: All those in favor say "aye".

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". We got six ayes, no noes, three excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Hokama, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution.

CHAIR GUZMAN: Moving on to the next item.

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COW-1(15): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JOHN M. NEWELL V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE 7-13-01509) (CC 15-6)

CHAIR GUZMAN: Members, we have Litigation Matters – Settlement Authorization in John M. Newell v. County of Maui, Disability Compensation Division Case 7-13-01509, COW-1(15). Pursuant to our discussions in executive session, the Chair will entertain a motion to recommend adoption of the proposed resolution entitled “AUTHORIZING SETTLEMENT OF JOHN M. NEWELL V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-13-01509.”

VICE-CHAIR CRIVELLO: So move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion?

MS. NAKATA: Mr. Chair, just wanted to clarify that would be the revised version.

CHAIR GUZMAN: I believe I did say revised. Did I not say revised? Okay, I will repeat. The Chair will entertain a motion to recommend adoption of the revised proposed resolution entitled “AUTHORIZING SETTLEMENT OF JOHN M. NEWELL V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-13-01509.” Motion by Ms. Crivello, seconded by Mr. White. Any further discussions? Seeing none. All those in favor say “aye”.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: Six ayes, no noes, three excused. Motion carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Hokama, and Victorino.

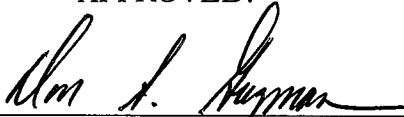
MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution.

CHAIR GUZMAN: That concludes our items on today's agenda. Members, thank you very much for your patience. And Mr. Rowe and Ms. Lutey, thank you very much for all your hard work in the cases. Thank you. . . . *(Gavel)*. . .

ADJOURN: 4:09 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

Cow: min: 150804

Transcribed by: Jo-Ann Sato