

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

June 17, 2016

Committee
Report No. _____

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

Chair and Members:

Your Committee of the Whole, having met on May 31, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated May 20, 2016, the Department of the Corporation Counsel transmitted the following:

1. A proposed resolution entitled "INDEMNIFYING KYLE GINOZA IN TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC." The purpose of the proposed resolution is to indemnify Kyle K. Ginoza, former Director of Environmental Management, who has been named in his individual capacity as a defendant in the case.
2. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC." The purpose of the proposed resolution is to authorize settlement of the case.

A copy of the complaint in the case accompanied the proposed resolutions. The complaint alleges, among other things, Constitutional violations, defamation, and intentional infliction of emotional distress arising out of Tracy N. Takamine's March 2014 termination as the Solid Waste Division Chief for the County's Department of Environmental Management.

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

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A Deputy Corporation Counsel provided a brief overview of the case. He noted Mr. Takamine filed a lawsuit in the United States District Court for the District of Hawaii alleging, among other things, a violation of the First Amendment of the United States Constitution based on his speaking as a private citizen about matters of public concern. Other claims asserted against the Department of Environmental Management involve the issue of whether he was terminated appropriately.

Because the case involves ongoing litigation, the Deputy 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.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of the proposed resolutions. Committee Chair Guzman, Vice-Chair Crivello, and members Cochran, Couch, and Hokama voted "aye." Committee members Baisa, Carroll, Victorino, and White were excused.

Your Committee of the Whole **RECOMMENDS** the following:

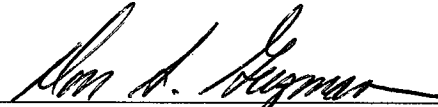
1. That Resolution _____, attached hereto, entitled "INDEMNIFYING KYLE GINOZA IN TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC," be ADOPTED; and
2. That Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00335 JMS-KSC," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

INDEMNIFYING KYLE GINOZA IN
TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL.,
CIVIL NO. 14-00335 JMS-KSC

WHEREAS, Kyle K. Ginoza, who was the Director of Environmental Management at all times relevant to the allegations in the case, has been named in his individual capacity as a defendant in Tracy N. Takamine v. County of Maui, et al., Civil No. 14-00335 JMS-KSC, filed in the United States District Court for the District of Hawaii on July 25, 2014; and

WHEREAS, Plaintiff alleges that his civil rights were violated and that he suffered damages and injuries as a result of the actions of Defendants, culminating in his March 2014 termination; 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 Defendant Ginoza for any damages that may be assessed against him in the above-referenced lawsuit; and

WHEREAS, Plaintiff seeks general, special, compensatory, and punitive damages, interest, and costs of suit; 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

Resolution No. _____

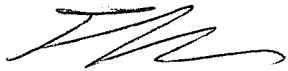
of the County of Maui to indemnify Defendant Ginoza in the above-referenced lawsuit; now, therefore,

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

1. That Kyle K. Ginoza is indemnified by the County of Maui for any damages that may be assessed against him in the above-referenced lawsuit; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Environmental Management, the Director of Finance, and Kyle K. Ginoza.

APPROVED AS TO FORM AND LEGALITY:



THOMAS W. KOLBE
Deputy Corporation Counsel
County of Maui

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
TRACY N. TAKAMINE V. COUNTY OF MAUI, ET AL.,
CIVIL NO. 14-00335 JMS-KSC

WHEREAS, Plaintiff Tracy N. Takamine filed a lawsuit in the United States District Court for the District of Hawaii, Civil No. 14-00335 JMS-KSC, against the County of Maui on July 25, 2014, alleging among other things constitutional violations, defamation, and intentional infliction of emotional distress arising out of his March 2014 termination as the Solid Waste Division Chief for the County of Maui's Department of Environmental Management; and

WHEREAS, Plaintiff seeks declaratory and injunctive relief as well as general, special, compensatory, and punitive damages, interest, and costs of suit; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, seeks to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of a proposed settlement by the Department of the Corporation Counsel, the Council wishes to authorize the settlement of the case under the terms and conditions proposed in an executive meeting before the Committee of the Whole; now therefore,

Resolution No. _____

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

1. That it hereby approves settlement of Tracy N. Takamine v. County of Maui, et al., Civil No. 14-00335 JMS-KSC, United States District Court for the District of Hawaii, under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Stipulation and Settlement Agreement on behalf of the County in this case; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of the case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

4. That payment is authorized to satisfy this settlement following full execution of the Stipulation and Settlement Agreement by all parties; and

5. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



THOMAS W. KOLBE
Deputy Corporation Counsel
County of Maui