

**COUNCIL OF THE COUNTY OF MAUI**

**PARKS, RECREATION, ENERGY, AND  
LEGAL AFFAIRS COMMITTEE**

March 10, 2017

**Committee  
Report No. \_\_\_\_\_**

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

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on February 14, 2017, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated February 7, 2017, the Department of the Corporation Counsel requested consideration of the possible settlement of Claim 30155001226-0001 by Morgan Mello dba Paradise Grill. Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 30155001226-0001 BY FIREMAN'S FUND INSURANCE CO., A COMPANY OF ALLIANZ, ON BEHALF OF ITS INSURED, MORGAN MELLO DBA PARADISE GRILL." The purpose of the proposed resolution is to authorize the Department to settle the case.

Your Committee notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of the authority granted by that provision.

A Deputy Corporation Counsel provided a brief overview of the case. She said on June 25, 2015, there was a sewer back up in Kaanapali, while repair work was being done to the sewer system. The Deputy said the repair work caused raw sewage to flood the basement area of Paradise Grill, and all items touched by raw sewage required disposal.

The claimant provided documentation to the County detailing loss of inventory, cleaning, and loss of business for two days. The Deputy requested settlement authority in the amount of \$21,593.10, the amount the claimant signed a release for contingent upon Council approval.

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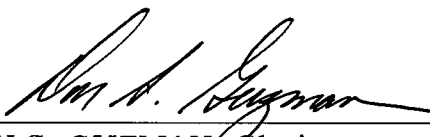
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Responding to concerns raised by your Committee, the Deputy said measures have been put into place to prevent this type of sewer back up from happening again.

Your Committee voted 7-0 to recommend adoption of the proposed resolution to authorize settlement of the case. Committee Chair Guzman, Vice-Chair King, and members Atay, Carroll, Cochran, Sugimura, and White voted "aye." Committee members Crivello and Hokama were excused.

Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 30155001226-0001 BY FIREMAN'S FUND INSURANCE CO., A COMPANY OF ALLIANZ, ON BEHALF OF ITS INSURED, MORGAN MELLO DBA PARADISE GRILL," be ADOPTED.

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

  
\_\_\_\_\_  
DON S. GUZMAN, Chair

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF CLAIM NO. 30155001226-0001  
BY FIREMAN'S FUND INSURANCE CO., A COMPANY OF ALLIANZ,  
ON BEHALF OF ITS INSURED, MORGAN MELLO DBA PARADISE GRILL

WHEREAS, Fireman's Fund Insurance Co., filed Claim No. 30155001226-0001 on December 3, 2015, against the County of Maui for damages to Morgan Mello dba Paradise Grill resulting from a black water back up and overflow of a manhole on Honopiilani Highway which flooded the ground-floor of the Paradise Grill restaurant, resulting in the interruption of business and loss of property; and

WHEREAS, Morgan Mello dba Paradise Grill is insured for such damage by Fireman's Fund Insurance Co.; and

WHEREAS, Fireman's Fund Insurance Co., as subrogee of this claim, has alleged that the County of Maui is liable for the expenses paid by Fireman's Fund Insurance Co.; and

WHEREAS, the County of Maui and Fireman's Fund Insurance Co., to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, have reached a proposed resolution of this claim by way of a negotiated settlement; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of attempts to reach resolution of this claim by way

**Resolution No. \_\_\_\_\_**

of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to authorize settlement; now, therefore,

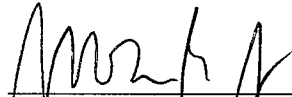
BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of Claim No. 30155001226-0001 in the amount of TWENTY-ONE THOUSAND FIVE HUNDRED NINETY-THREE AND 10/100 DOLLARS (\$21,593.10); and

2. That payment is authorized to satisfy settlement of this claim following the execution of the "Release of Claim" by Fireman's Fund Insurance Co.; and

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

APPROVED AS TO FORM  
AND LEGALITY:

  
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MOANA M. LUTEY  
Deputy Corporation Counsel  
County of Maui  
RISK 2015-0472