

COUNCIL OF THE COUNTY OF MAUI

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

October 6, 2017

**Committee
Report No. 17-130**

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 September 19, 2017, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated September 12, 2017, the Department of the Corporation Counsel requested consideration of an increase in compensation for the employment of special counsel Kobayashi Sugita & Goda, LLP in Harry Donenfeld v. County of Maui, et al., Civil 16-00381 DKW-KJM, and the possible settlement of the case. Attached to the request are two proposed resolutions, one entitled "AUTHORIZING AN INCREASE IN COMPENSATION RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP IN HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381 DKW-KJM," and another entitled, "AUTHORIZING SETTLEMENT OF HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381 DKW-KJM." The Department also attached a copy of the First Amended Complaint and related documents to the request.

The purpose of the first proposed resolution is to authorize the Department to increase the compensation limit for the employment of special counsel for Mayor Alan Arakawa in his individual capacity by \$75,000, for a total compensation not to exceed \$150,000. The purpose of the second proposed resolution is to authorize the Department to settle the case under the terms set forth in an executive meeting before your Committee.

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Your Committee notes the First Amended Complaint alleges Harry Donenfeld was terminated as the Maui County Film Commissioner in violation of his due process rights under the United States and Hawaii Constitutions, breach of contract, defamation, and violations of statutory privacy interests, among other things. Mr. Donenfeld seeks damages including punitive damages.

Your Committee notes Section 3-6(6), Revised Charter of the County of Maui (1983), as amended, authorizes the Council to retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Charter Section 3-6(6) also requires that the compensation, if any, to be paid for the services be specified. The Council (2015-2017 Council term) previously approved the employment of special counsel by Resolution 16-105, with total compensation not to exceed \$75,000.

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

A Deputy Corporation Counsel provided a brief overview of the case. He said the case is scheduled for trial on January 16, 2018, with a settlement conference to be held on September 20, 2017.

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.

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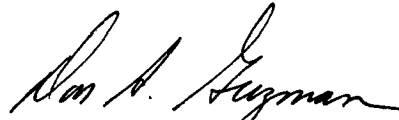
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Following the executive meeting, your Committee reconvened in regular session. Based on the information received, your Committee voted 5-0 to recommend adoption of the proposed resolution to authorize settlement of the case. Committee Chair Guzman, Vice-Chair King, and members Atay, Hokama, and Sugimura voted "aye." Committee members Carroll, Cochran, Crivello, and White were excused.

Your Committee deferred action on the proposed resolution to authorize an increase in compensation for special counsel.

Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381 DKW-KJM," 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
HARRY DONENFELD v. COUNTY OF MAUI,
ET AL., USDC CIVIL NO. 16-00381 DKW-KJM

WHEREAS, Plaintiff Harry Donenfeld filed a lawsuit in the United States District Court for the District of Hawaii, Civil No. 16-00381 DKW-KJM, against the County of Maui, et al., on July 8, 2016, asserting a wrongful termination claim, following termination from employment as film commissioner with the Office of Economic Development; 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 Settlement; 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 Parks, Recreation, Energy, and Legal 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 of Settlement 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:

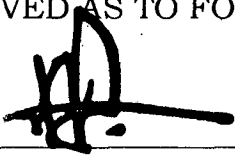
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Parks, Recreation, Energy, and Legal Affairs Committee; and

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 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:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui