

COUNCIL OF THE COUNTY OF MAUI
PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE

August 24, 2018

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, and July 24, 2018, 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 30153916459-0001 by Lexington Insurance Company, on behalf of its insured, Kihei Sands Association of Apartment Owners (“AOAO”). Attached to the request is a proposed resolution, entitled “AUTHORIZING SETTLEMENT OF CLAIM NO. 30153916459-0001 OF LEXINGTON INSURANCE COMPANY, ON BEHALF OF ITS INSURED, KIHEI SANDS AOAO,” and a copy of the claim (“Lexington Insurance claim”). The purpose of the proposed resolution is to authorize the Department to settle the Lexington Insurance claim.

By correspondence dated July 16, 2018, the Department requested consideration of the possible settlement of Claim 30177587502-0001 of the Association of Apartment Owners of Kihei Sands. Attached to the request is a proposed resolution, entitled “AUTHORIZING SETTLEMENT OF CLAIM NO. 30177587502-0001 OF ASSOCIATION OF APARTMENT OWNERS OF KIHEI SANDS,” and a copy of the claim (“AOAO claim”) and related documents. The purpose of the proposed resolution is to authorize the Department to settle the AOAO claim for \$50,000.

By correspondence dated July 17, 2018, the Department transmitted a revised proposed resolution relating to the Lexington Insurance claim and documents relating to damages associated with the claim. The revised proposed resolution seeks authority to settle the Lexington Insurance claim for \$320,000.

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Your Committee notes both claims allege property damage to the Kihei Sands Condominium resulting from a broken water pipe on March 26, 2015.

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 \$7,500.

A Deputy Corporation Counsel provided a brief overview of the claims. She said on March 26, 2015, a fire hydrant on South Kihei Road fronting the Kihei Sands Condominium leaked. She referred to copies of photographs of the property that were transmitted to your Committee, showing the amount of water that flooded the property.

The Deputy said the water flooded 15 ground-floor units, the laundry area, storage, and office at the property. The insurer, Lexington Insurance Company, submitted a claim to the County for damages the insurer had paid to the property owners amounting to over \$420,000. The County hired an adjuster to evaluate the damages and the adjuster valued them at approximately \$323,000.

The Deputy said the AOA claim is for items the insurer did not cover, including the property owners' insurance deductible amounts. She said Lexington Insurance Company and the AOA are willing to accept \$320,000 and \$50,000, respectively, to resolve their claims.

Your Committee discussed the reasons for the fire hydrant leak, and the Department of Water Supply's maintenance of fire hydrants.

Your Committee voted 8-0 to recommend adoption of the revised proposed resolution relating to the Lexington Insurance claim and the proposed resolution relating to the AOA claim. Committee Chair Guzman, Vice-Chair King, and members Atay, Carroll, Cochran, Crivello, Hokama, and Sugimura voted "aye." Committee member White was excused.

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Your Parks, Recreation, Energy, and Legal Affairs Committee
RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled
"AUTHORIZING SETTLEMENT OF CLAIM NO. 30153916459-
0001 OF LEXINGTON INSURANCE COMPANY, ON BEHALF
OF ITS INSURED, KIHEI SANDS AOA," be ADOPTED; and

2. That Resolution _____, attached hereto, entitled
"AUTHORIZING SETTLEMENT OF CLAIM NO. 30177587502-
0001 OF ASSOCIATION OF APARTMENT OWNERS OF KIHEI
SANDS," 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. 30153916459-0001
OF LEXINGTON INSURANCE COMPANY,
ON BEHALF OF ITS INSURED, KIHEI SANDS AOA

WHEREAS, Lexington Insurance Company filed Claim No. 30153916459-0001 on April 29, 2015, against the County of Maui for property damage to the Kihei Sands Condominium resulting from a broken water pipe on March 26, 2015; and

WHEREAS, Kihei Sands AOA is insured for such damage by Lexington Insurance Company; and

WHEREAS, Lexington Insurance Company, as subrogee of this claim, has alleged that the County of Maui is liable for the expenses paid by Lexington Insurance Company; and

WHEREAS, the County of Maui and Lexington Insurance Company, 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 of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to discuss the settlement offer; now, therefore,

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

Resolution No. _____

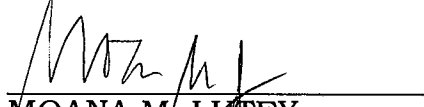
1. That it hereby approves settlement of Claim No. 30153916459-0001 by Lexington Insurance Company in the amount of THREE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$320,000); and

2. That payment is authorized to satisfy settlement of this claim following the execution of the "Release of Claim" by Lexington Insurance Company; 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, the Director of Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

RISK 2015-0233

Resolution

No. _____

AUTHORIZING SETTLEMENT OF CLAIM NO. 30177587502-0001 OF ASSOCIATION OF APARTMENT OWNERS OF KIHEI SANDS

WHEREAS, the Association of Apartment Owners of Kihei Sands filed Claim No. 30177587502-0001, on March 23, 2017, against the County of Maui for property damage to the Kihei Sands Condominium resulting from a broken water pipe on March 26, 2015; and

WHEREAS, the Association of Apartment Owners of Kihei Sands has alleged that the County of Maui is liable for the damage caused to its property not covered by its insurer, Lexington Insurance Company; 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; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of attempts to reach resolution of this claim by way of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to discuss the settlement offer; now, therefore,

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

1. That it hereby approves settlement of Claim No. 30177587502-0001 by the Association of Apartment Owners of Kihei Sands in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000); and

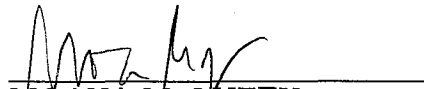
Resolution No. _____

2. That payment is authorized to satisfy settlement of this claim following the execution of the "Release of Claim" by the Association of Apartment Owners of Kihei Sands; and

3. That it hereby authorizes the Director of the 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, the Director of Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



MOANA M. DUTEY
Deputy Corporation Counsel
County of Maui

RISK 2017-0244