

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 July 24, 2018, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated June 15, 2018, the Department of the Corporation Counsel requested consideration of the possible settlement of Lesli Lyn Otani v. County of Maui, et al., Civil 17-00281 DKW-KJM. Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 17-00281 DKW-KJM," and a copy of the Complaint. The purpose of the proposed resolution is to authorize the Department to settle the case.

Your Committee notes the Complaint alleges violations of the First Amendment to the United States Constitution, the Constitutional right to privacy, public policy, the Constitutional right to due process, and Hawaii's Whistleblower Statute, arising from Lesli Lyn Otani's non-retention as Chief of Field Operations and Maintenance for the Department of Public Works at the expiration of her probationary appointment to the position.

Your Committee notes it previously reported on this matter through Committee Report 17-147, which recommended that the correspondence dated September 21, 2017, transmitting a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI V. COUNTY OF MAUI, ET AL., CIVIL NO. 17-00281 DKW-KJM," be filed. At its meeting of October 20, 2017, the Council adopted the recommendation in Committee Report 17-147.

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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 case and said the Department is seeking settlement authority. 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 of the Corporation Counsel, your Committee voted 9-0 to recommend adoption of the proposed resolution. Committee Chair Guzman, Vice-Chair King, and members Atay, Carroll, Cochran, Crivello, Hokama, Sugimura, and White voted "aye."

Your Parks, Recreation, Energy, and Legal Affairs Committee **RECOMMENDS** that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 17-00281 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
LESLI LYN OTANI vs. COUNTY OF MAUI, ET AL.,
USDC CIVIL NO. 17-00281 DWK-KJM

WHEREAS, Plaintiff Lesli Lyn Otani filed a lawsuit in the United States District Court for the District of Hawaii on June 13, 2017, Civil No. 17-00281 DWK-KJM, against the County of Maui, et al., claiming violations of her constitutional rights made actionable pursuant to 42 United States Code Section 1983, among other violations, including constitutional invasion of privacy and employment retaliation in violation of public policy and under Section 378-62, Hawaii Revised Statutes; and

WHEREAS, Defendants County of Maui, Department of Public Works, and David Goode filed their Answers on September 18, 2017; 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 or Offer of Judgment; 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

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WHEREAS, having reviewed the facts and circumstances regarding this case and being advised 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 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 further 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, the Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



SHINKEN NAITOH
Deputy Corporation Counsel
County of Maui
Lit 5750 - Otani v COM