

COUNCIL OF THE COUNTY OF MAUI

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

June 6, 2023

**Committee
Report No. _____**

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

Chair and Members:

Your Government Relations, Ethics, and Transparency Committee, having met on May 22, 2023, makes reference to Resolution 23-88, entitled “AUTHORIZING SETTLEMENT OF ONO GELATO OF PAIA, LLC, A HAWAII LIMITED LIABILITY COMPANY v. COUNTY OF MAUI, CIVIL 2CCV-22-0000258.”

Resolution 23-88’s purpose is to authorize settlement of Ono Gelato of Paia, LLC v. County of Maui, filed in Second Circuit Court, State of Hawai‘i, on November 4, 2022. The claim alleges negligent misrepresentation and nondisclosure, tortious interference with business relations, violation of due process and equal protection, and unequal enforcement of law. The lawsuit also seeks to recover economic losses located at 115 Hāna Highway, Unit D, Pā‘ia, Hawai‘i.

By correspondence dated February 14, 2023, the Department of the Corporation Counsel requested consideration of Resolution 23-88, with a copy of the claim.

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 an overview of the claim. He said the claim arises from the County’s allegedly inconsistent enforcement of parking and other requirements in the Maui County Code, which allegedly resulted in the plaintiff changing its business location and losing revenue. The Deputy Corporation Counsel noted that the County had been in mediation with the plaintiff. He also noted the

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plaintiff's attorney had submitted a confidential settlement proposal earlier in the day. The plaintiff's manager testified, asking your Committee to recommend approval of the settlement proposal.

The Deputy Corporation Counsel requested an executive meeting to discuss confidential information related to the claim.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel in accordance with Sections 92-5(a)(4) and 92-5(a)(8), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session.

Based on information received in executive session and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of Resolution 23-88. Committee Chair U'u-Hodgins, and members Cook, Kama, Lee, and Sugimura voted "aye." Committee Vice-Chair Paltin and members Johnson, Rawlins-Fernandez, and Sinenci were excused.

Your Committee is in receipt of Resolution 23-88, CD1, entitled "AUTHORIZING SETTLEMENT OF ONO GELATO OF PAIA, LLC V. COUNTY OF MAUI, CIVIL 2CCV-22-0000258," approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Government Relations, Ethics, and Transparency Committee RECOMMENDS that Resolution 23-88, CD1, as revised herein and attached hereto, entitled "AUTHORIZING SETTLEMENT OF ONO GELATO OF PAIA, LLC V. COUNTY OF MAUI, CIVIL 2CCV-22-0000258," be ADOPTED.

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



NOHELANI U'U-HODGINS, Chair

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Resolution

No. 23-88, CD1

AUTHORIZING SETTLEMENT OF ONO GELATO OF PAIA, LLC V.
COUNTY OF MAUI, CIVIL 2CCV-22-0000258

WHEREAS, Ono Gelato of Paia, LLC filed a lawsuit in the Second Circuit Court of the State of Hawai'i on November 4, 2022, Civil 2CCV-22-0000258, against the County of Maui for negligent misrepresentation and nondisclosure, tortious interference with business relations, violation of due process and equal protection, and unequal enforcement of law and to recover economic losses located at 115 Hāna Highway, Unit D, Pā'ia, Hawai'i; 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 stated in an executive meeting before the Government Relations, Ethics, and Transparency Committee; and

WHEREAS, Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of \$7,500; 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 Judgment 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, under Section 3.16.020(B), Maui County Code, it approves settlement of Ono Gelato of Paia, LLC v. County of Maui, Civil 2CCV-22-0000258, under the terms stated in an executive meeting before the Government Relations, Ethics, and Transparency Committee;
2. That it authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case;
3. That it authorizes the Director of Finance to satisfy settlement of this case; and

4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Planning Director, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



Victoria J. Takayesu
Corporation Counsel
County of Maui

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INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.