

**COUNCIL OF THE COUNTY OF MAUI**  
**GOVERNANCE, ETHICS, AND**  
**TRANSPARENCY COMMITTEE**

July 5, 2019

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

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

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on June 21, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated May 24, 2019, the Department of the Corporation Counsel requested consideration of the possible settlement of County of Maui v. Rick Markham, et al., Civil 17-1-0393(2). Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI vs. RICK MARKHAM, ET AL., CIVIL NO. 17-1-0393(2)," along with 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 seeks declaratory and injunctive relief related to alleged violations of the Building Code for the construction of an unpermitted dwelling and deck in Paia, Maui, Hawaii.

By correspondence May 28, 2019, the Department of the Corporation Counsel transmitted a revised proposed resolution to authorize the Department to settle the case as it relates to the claims against the County of Maui. The revised proposed resolution incorporates nonsubstantive revisions.

A Deputy Corporation Counsel provided a brief overview of the case. The Deputy Corporation Counsel and Director of Public Works answered factual and technical questions from your Committee in regular session.

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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 8-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye." Committee member Hokama was excused.

Your Governance, Ethics, and Transparency Committee **RECOMMENDS** that Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI vs. RICK MARKHAM, ET AL., CIVIL NO. 17-1-0393(2)," be **ADOPTED**.

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



\_\_\_\_\_  
MICHAEL J. MOLINA, Chair

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# Resolution

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

AUTHORIZING SETTLEMENT OF  
COUNTY OF MAUI vs. RICK MARKHAM, ET AL.,  
CIVIL NO. 17-1-0393(2)

WHEREAS, Plaintiff County of Maui filed a Complaint in the Circuit Court of the Second Circuit, State of Hawaii, on September 15, 2018, Civil No. 17-1-0393(2), against Defendant Rick Markham, to obtain an injunction to enforce compliance with the Maui County Code building code and permitting provisions which the Defendant Rick Markham was violating, and to enforce payment of civil fines for said County Code violations;

WHEREAS, Defendant filed his Answer on August 13, 2018; 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 stipulated dismissal; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle and stipulate to dismiss this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

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

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 settlement and stipulated dismissal of this lawsuit; now, therefore,

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

1. That it approves settlement and stipulated dismissal of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

2. That it further authorizes the Mayor to execute a Stipulation for Dismissal 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 as necessary said stipulated dismissal 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, Director of Public Works, and the Corporation Counsel.

APPROVED AS TO FORM

AND LEGALITY:

  
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BRIAN A. BILBERRY  
Deputy Corporation Counsel  
County of Maui