


City of Irvine

Office of the City Clerk

**10-Day Public Examination Period of Direct Arguments and
Impartial Analysis
August 9, 2008 through August 18, 2008**

**For Measure S, "City of Irvine Personal Information
Privacy Act" to appear on the November 4, 2008 General
Municipal Election Ballot**

I, Sharie Apodaca, City Clerk, hereby certify that the direct arguments (Exhibit A), Impartial Analysis (Exhibit B), and Resolution No. 08-85 and Measure Text (Exhibit C) were on file in the Office of the City Clerk, One Civic Center Plaza, Irvine, CA 92606, and available for public review during the 10-day period of August 9, 2008 through August 18, 2008 during normal business hours.



Sharie Apodaca, City Clerk

Argument in Favor of Measure S

"City of Irvine Personal Information Privacy Act" ALL 9:40

The City of Irvine Personal Information Privacy Act will respect the California Public Records Act while protecting your privacy. If passed, Measure S will allow the City, on a case-by-case basis, to determine whether e-mail addresses and other personal information provided to the City by private citizens — when signing up for classes, joining volunteer groups or participating in youth sports, senior activities, or other community service programs — should be released to others when a public records request for such information has been made.

The City of Irvine complies fully with the California Public Records Act, allowing access by members of the press, the public or any agency, institution or elected official to information related to the operation of government. The issue at hand is protecting the privacy rights of citizens while preserving transparency in how the people's business is conducted.

Measure S is intended to facilitate the protection of privacy rights for citizens who provide personal data to the City when they participate in community events and activities.

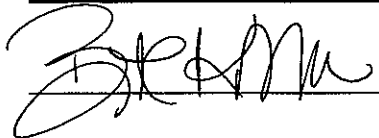
A considerable amount of data is managed by the City of Irvine, much of it stored electronically. In an era in which information and data have become highly marketable commodities, this measure will provide greater assurance to citizens that their names, addresses, phone numbers and emails will not be easily accessed for use by outside marketing companies, for distribution of political materials, or perhaps for more nefarious purposes.

The City of Irvine Personal Information Privacy Act will protect the privacy rights of individual citizens while preserving the right of the press, the public or any interested party to access information through a California Public Records Act request. Please vote "yes" on Measure S, The City of Irvine Personal Information Privacy Act.

"The undersigned proponent(s) or author(s) of the Direct Argument in favor of the ballot measure S, named the "City of Irvine Personal Information Privacy Act," at the General Municipal Election for the City of Irvine, California to be held on November 4, 2008 hereby state that such argument is true and correct to the best of her knowledge and belief."

Sign Name (exactly as printed) Print Name (exactly as signed)

Date



Beth Krom

8/7/08

Argument Against Measure S, named
"City of Irvine Personal Information Privacy Act"

2008 AUG -6 PM 5:18

This proposal should have been named the SECRECY ORDINANCE. It's crafted so that Irvine elected officials can deny you access to documents guaranteed public scrutiny by the California Public Records Act. VOTE NO TO ASSURE OPEN, HONEST AND TRANSPARENT GOVERNMENT AT CITY HALL.

Councilman Larry Agran proposed this Secrecy Ordinance after newspapers reported that he tried to hire a longtime friend from Chicago to be the new CEO at the Great Park. Council members Steven Choi and Christina Shea demanded to see the résumés of other candidates, but Mr. Agran withheld them, claiming the documents were personal information. Mr. Choi and Ms. Shea filed a lawsuit to enforce their right under state law to view the résumés, and said they found far more qualified candidates than Mr. Agran's friend.

This Secrecy Ordinance, if enacted by voters, could be used by City Hall to deny the public and the press access to important documents such as these that keep elected officials and City employees accountable to us.

The proposal states that city officials will decide "on a case-by-case basis" what is "personal information" that can be withheld from your scrutiny. Nothing in the ordinance requires City Hall to tell you what has been withheld or why. And there is no means of appeal.

Mr. Agran said during the July 22 City Council meeting that if Irvine is sued all the way to the state Supreme Court because this ordinance may be illegal, "so be it."

The California Public Records Act already protects your personal information, so there is no reason for this Secrecy Ordinance other than to circumvent state law.

VOTE NO TO STOP SECRECY AT CITY HALL. VOTE NO TO STOP THE SECRECY ORDINANCE.

For more information, visit www.nosecrecyordinance.com.

"The undersigned proponent(s) or author(s) of the Direct Argument against the ballot measure S, named the "City of Irvine Personal Information Privacy Act," at the General Municipal Election for the City of Irvine, California to be held on November 4, 2008 hereby state that such argument is true and correct to the best of his knowledge and belief."

Sign Name (exactly as printed)

Print Name (exactly as signed)

Date

Steve Choi

STEVEN C. CHOI

8/6/08

Allan Bartlett

Allan Bartlett

8/6/08

Jeffrey Lalloway

Jeffrey Lalloway

8/6/08

IMPARTIAL ANALYSIS BY CITY ATTORNEY

CITY OF IRVINE
CITY CLERK DEPT
2002 AUG -8 AM 10:28

MEASURE S

City of Irvine

Irvine Personal Information Privacy Act

This ballot measure would enact voter-adopted regulations to protect individual privacy interests through the establishment of guidelines to assist the City in its determinations whether to disclose or withhold individuals' personal information – for example, names, home addresses, e-mail addresses and telephone numbers – upon a public request for such information.

This ballot measure provides that consistent with all applicable laws and regulations, including the United States and the California Constitutions and the California Public Records Act, the City shall attempt to preserve the privacy of individuals' personal information to the fullest extent possible and permissible. The measure would not authorize or allow the City to violate any applicable laws and regulations.

Currently, the City's responses to public requests for information are determined on a case-by-case basis. This ballot measure would not change the procedures already followed by the City. Existing law permits the City to withhold information in response to a request for disclosure where, on the basis of the facts and circumstances relating to the request, the City determines that the public interest in disclosure is outweighed by the public interest in nondisclosure.

This ballot measure recites the position of the people of the City of Irvine that individuals have a reasonable expectation of privacy as to certain personal information they provide to the City when that information is specifically requested by the City, when the City expressly states that it will use the information for a specific, limited purpose, and when the City also expressly states that the information will be maintained in confidence, and where the information is unrelated to the conduct of the City's official business and does not shed light on the City's actions or the performance of its duties and responsibilities. The ballot measure recites the further position of the people of Irvine that without the protection of privacy, individuals would be less willing to participate in City programs and services when the City requests that personal information be provided.

Finally, this ballot measure would limit the ability to amend or repeal the policy statement or the guidelines. If adopted, the provisions contained in the ballot measure could be subsequently amended by a four-fifths vote of the City Council, but only to the extent such amendments further or expand the intent and objectives of the measure. Otherwise, all other amendments or any proposed repeal of the measure must be approved by the voters to be effective.

/s/ Philip D. Kohn
City Attorney

STATEMENT OF AUTHOR

The undersigned author of the impartial analysis of Ballot Measure _ at the General Municipal Election in the City of Irvine, California, to be held on November 4, 2008, hereby states that such analysis is true and correct to the best of his knowledge and belief.

Philip D. Kohn, City Attorney, City of Irvine

AUTHOR'S NAME, ADDRESS, DATE AND PHONE NUMBER:

Printed Name Philip D. Kohn Date August 8, 2008

Title City Attorney, City of Irvine, California

Address 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626
(street, city and zip)

SIGNATURE  Phone No. (714) 641-5100

CITY COUNCIL RESOLUTION NO. 08-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE SUBMITTING TO THE QUALIFIED VOTERS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008 A PROPOSAL TO ADOPT AN ORDINANCE GUIDING THE CITY IN ITS DETERMINATIONS ON A CASE-BY-CASE BASIS WHETHER TO DISCLOSE OR TO WITHHOLD INDIVIDUALS' PERSONAL INFORMATION UPON A PUBLIC REQUEST FOR SUCH INFORMATION; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND AUTHORIZING AND SETTING DEADLINES FOR THE FILING OF ARGUMENTS FOR OR AGAINST THE BALLOT MEASURE

WHEREAS, on June 24, 2008, the City Council of the City of Irvine adopted Resolution No. 08-72, calling and giving notice of the holding of a General Municipal Election to be held in the City on Tuesday, November 4, 2008; and

WHEREAS, on June 24, 2008, the City Council of the City of Irvine adopted Resolution No. 08-73, requesting that the Board of Supervisors of the County of Orange consolidate the General Municipal Election to be held in the City on Tuesday, November 4, 2008 with the Statewide General Election to be held in the City on Tuesday, November 4, 2008; and

WHEREAS, the City Council of the City of Irvine desires to submit to the voters a proposed ordinance that, if adopted, would guide the City in its determinations on a case-by-case basis whether to disclose or to withhold individuals' personal information upon a public request for such information where the information is requested by the City for a limited specific purpose and with the representation that the information will be maintained in confidence;

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby submits the following ballot measure to the registered voters of the City of Irvine for their adoption or rejection in a General Municipal Election to be held in the City of Irvine on Tuesday, November 4, 2008:

Measure ____: City of Irvine Personal Information Privacy Act

| | |
|--|-----|
| "Shall an ordinance be adopted to protect individual privacy interests and guide the City in its determinations on a case-by-case basis whether to disclose or to withhold individuals' personal information upon a public request for such information where the information is | YES |
|--|-----|

| | |
|--|----|
| requested by the City for a limited specific purpose and with the representation that the information will be maintained in confidence?" | NO |
|--|----|

Section 2. The text of the proposed Ordinance for the ballot measure submitted to the City's voters is set forth in full in Exhibit A attached hereto and incorporated herein by this reference.

Section 3. The City Council hereby orders and directs the City Clerk to cause the proposed Ordinance and notice of the General Municipal Election to be published in the time, form and manner as required by law. The suggested form of notice of the election is as follows:

CITY OF IRVINE
GENERAL ELECTION NOTICE

NOTICE IS HEREBY GIVEN to the qualified electors of the City of Irvine that in accordance with law, at the General Municipal Election to be held on Tuesday, November 4, 2008 in the City, there will be submitted to the voters a proposed Ordinance that, if adopted, would protect individual privacy interests and guide the City in its determinations on a case-by-case basis whether to disclose or to withhold individuals' personal information upon a public request for such information where the information is requested by the City for a limited specific purpose and with the representation that the information will be maintained in confidence.

Any person wishing to submit a direct argument for or against the ballot measure shall file such argument with the City Clerk, 1 Civic Center Plaza, Irvine, California, on or before August 8, 2008, which argument shall not exceed 300 words in length. Any rebuttal arguments for or against the ballot measure shall be filed with the City Clerk on or before August 18, 2008, and shall not exceed 250 words in length. Arguments that are selected for printing and distribution to the voters shall be selected in accordance with section 9287 of the Elections Code.

Section 4. In all particulars not expressly recited in this Resolution, the General Municipal Election shall be held and conducted as provided by law for holding general municipal elections.

Section 5. The City Council hereby authorizes, instructs, and directs the City Attorney to prepare an impartial analysis of the ballot measure, in accordance with the

provisions of Elections Code section 9280, showing the effect of the measure on existing law and the operation of the measure. The impartial analysis, not exceeding 500 words in length, shall be filed with the City Clerk on or before August 8, 2008.

Section 6. Pursuant to Elections Code section 9282, the City Council, or any member or members of the City Council, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against the measure. Pursuant to Elections Code section 9283, any argument filed by the City Council, or any member or members of the City Council, shall be accompanied by the printed name(s) and signature(s) of the authors(s) submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The argument may not be signed by more than five persons, otherwise the signatures of the first five shall be printed in the sample ballot. Any direct arguments for or against the ballot measure, not exceeding 300 words in length, shall be filed with the City Clerk on or before August 8, 2008. Any direct argument shall be accompanied by a signed Form of Statement and in accordance with guidelines for the filing of arguments which are available in the Office of the City Clerk. Direct arguments shall be subject to a 10-calendar-day public examination period in accordance with the provisions of Elections Code section 9295.

Section 7. Pursuant to Elections Code sections 9220 and 9285, when the City Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the City Clerk shall send a copy of the argument in favor of the measure to the authors of the argument against, and a copy of the argument against the measure to the authors of the argument in favor. The author or a majority of the authors of an argument may prepare and submit a rebuttal argument or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. A rebuttal argument shall be filed with the City Clerk with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers. A rebuttal argument may not be signed by more than five persons and shall be printed in the same manner as a direct argument and shall immediately follow the direct argument which it seeks to rebut. Rebuttal arguments for or against the measure, not exceeding 250 words in length, shall be filed with the City Clerk on or before August 18, 2008. Any rebuttal argument shall be accompanied by a signed Form of Statement and in accordance with guidelines for the filing of arguments which are available in the Office of the City Clerk. Rebuttal arguments shall be subject to a 10-calendar-day public examination period in accordance with the provisions of Elections Code section 9295.

Section 8. If more than one argument for or more than one argument against the ballot measure is submitted, the City Clerk shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the City Clerk shall give preference and priority to the submitted arguments in accordance with the provisions of Elections Code section 9287.

Section 9. The City Clerk is hereby directed to deliver forthwith certified copies of this Resolution to the Registrar of Voters of the County of Orange and to the Clerk of the Board of Supervisors of the County of Orange.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 22nd day of July, 2008.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council of the City of Irvine on the 22nd day of July, 2008, by the following vote:

AYES: 5 COUNCILMEMBERS: Agran, Choi, Kang, Shea and Krom

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None


CITY CLERK OF THE CITY OF IRVINE

EXHIBIT A

AN ORDINANCE OF THE CITY OF IRVINE RELATING TO THE PRIVACY OF INDIVIDUALS' PERSONAL INFORMATION

The people of the City of Irvine do ordain as follows:

Section 1. Title. This Ordinance shall be known and referred to as the City of Irvine Personal Information Privacy Act.

Section 2. Purpose. This Ordinance is adopted to guide the City in its determinations on a case-by-case basis whether to disclose or to withhold individuals' personal information upon a public request for such information when the information is requested by the City for a limited specific purpose and with the representation that the information will be maintained in confidence.

Section 3. Recitals. It is found and declared that:

A. The California Constitution provides that all people in the state enjoy the right of privacy, which is a fundamental and compelling interest. All people also enjoy a right of privacy under the United States Constitution.

B The California Public Records Act recognizes the rights of individuals to information concerning the conduct of the people's business.

C. At the same time, the California Public Records Act acknowledges the rights of individuals to privacy.

D. Under the California Public Records Act, a public agency is permitted to withhold documents and information from disclosure that are exempted or prohibited pursuant to federal or state law.

E. Under the California Public Records Act, a public agency is also permitted to withhold documents and information from disclosure where, on a case-by-case basis, the public agency determines that the public interest in disclosure is outweighed by the public interest in nondisclosure.

F. Constitutional rights of privacy encompass the ability to control the circulation of individuals' personal information, including but not limited to names, home addresses, telephone numbers and e-mail addresses.

G. A principal factor in ascertaining protected rights of privacy with regard to personal information provided by an individual is whether the individual has a reasonable expectation of privacy for such information. In turn, objectively reasonable expectations of privacy are informed by broadly based and widely accepted community norms.

H. The voters of the City of Irvine have had, have and will continue to have an expectation of privacy with regard to the personal information that individuals provide to the City of Irvine at the specific request of the City where the request expressly states that the information will be used by the City only for a specific, limited purpose and that the information will be maintained in confidence and will not be shared with others, and where the information is unrelated to the conduct of the City's official business and does not shed light on the City's actions or the performance of its duties and responsibilities.

I. The voters of the City of Irvine have had, have and will continue to have an interest in preventing unsolicited and unwanted mail, telephone calls and e-mail messages.

J. There would be a chilling effect on individuals' willingness to avail themselves of or participate in City programs and services if personal information that they are requested by the City to provide in connection with such activities with a representation of confidentiality is ultimately not limited to the specific purpose for which it is requested and instead is made available to others for uncontrolled purposes.

Section 4. Guidelines for Responses to California Public Record Act Requests for Personal Information.

A. Consistent with the requirements of the United States and the California Constitutions and the California Public Records Act, and as determined on a case-by-case basis, the City of Irvine shall undertake to preserve the privacy of individuals' personal information to the fullest extent possible and permissible.

B. When evaluating the public interests in disclosure and in nondisclosure of individuals' personal information pursuant to a request under the California Public Records Act, the constitutional rights of privacy should be abridged only when there is a compelling public need to do so.

C. In assessing an individual's reasonable expectation of privacy, the City shall consider and place significant weight on the following factors, among others as relevant: whether the personal information was provided by the individual at the specific request of the City and, if so, whether the City specifically represented that the information was requested for a limited, specified purpose; whether the City specifically represented that the information would be maintained in confidence and would not be made available to other persons; and whether the information is related to the conduct of the City's official business or sheds light on the City's actions or the performance of its duties and responsibilities. On the other hand, where an individual voluntarily injects himself or herself into the public arena and prepares and transmits a written or electronic communication to a City official or employee on a topic of official City business, a pending decision or determination, or a subject otherwise within the City's jurisdiction, and the communication contains personal information, there may be no reasonable expectation of privacy in the absence of other important considerations.

Section 5. Effective date. This Ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.

Section 6. Construction. To the maximum extent authorized by law, this Ordinance shall be interpreted in a manner consistent with the right of initiative reserved to the people by the California Constitution. Without limiting the foregoing, nothing in this Ordinance is intended and shall not be construed to supersede, diminish or otherwise conflict with applicable requirements of state and federal law, including without limitation the California Public Records Act.

Section 7. Future amendments. Pursuant to article II, section 10(c) of the California Constitution, the provisions contained in this Ordinance may be amended by a four-fifths vote of the City Council only to the extent such amendments further or expand the intent and objectives set forth in this Ordinance. All other amendments or any proposed repeal of the provisions contained in this Ordinance shall become effective only when approved by the voters.

Section 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that determination of invalidity shall not affect other provisions or application of the Ordinance that can be given effect without the invalid provision, and to this end the provisions of this Ordinance are severable. The voters of the City hereby declare that they would have adopted this Ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the Ordinance.