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July 17, 2025

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**Re: July 22, 2025 City Council Hearing, Agenda Item 5.1: (a) Ballot Measure to consider a change to the General Plan enacted by Initiative Resolution 88-1 (b) enforcement of zoning ordinance requirements for an Open Space Easement for Preservation Area O in Planning Area 12; and (c) an existing inconsistency within and between the General Plan and zoning ordinance created with the enactment of Ordinance No. 24-13 on September 10, 2024; and (d) the City must comply with CEQA prior to ballot measure approval**

Honorable Mayor Agran and City Council Members:

We write on behalf of Orange Tree Master Homeowners Association and Save Irvine Open Space (SIOS) concerning the upcoming discussion regarding a measure to be placed on the ballot for voter approval and also other issues of consequence to these parties.

Orange Tree Master Homeowners Association represents a community of over 1000 homes located on Irvine Center Drive immediately adjacent to the Oak Creek Golf Club. SIOS is a recently formed organization made up of area residents concerned about the preservation of existing designated open space areas in Irvine.

**A. *Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4<sup>th</sup> 565 Controls Application of Initiative Resolution 88-1.**

We understand from an Orange County Register story on July 3, 2025 that the City may be placing a measure on the ballot to reaffirm the effectiveness of Initiative Measure 88-1 or to remove Preservation Area O from the ambit of Measure 88-1. Should the Irvine City Council continue to consider a change to remove the Preservation Area O in Planning Area 12 originally enacted by Initiative Resolution 88-1, it must first return to the Irvine voters to seek approval for such a change. It is not an option but a requirement to maintain consistency with the electorate's decision on June 7, 1988 to overwhelmingly approve Initiative Resolution 88-1.

A ballot measure that excludes Oak Creek Golf Club would be disingenuous and would be against the intent and letter of Initiative 88-1. The paramount consideration in interpreting an initiative is to achieve the intent of the voters. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212, 1229-1230; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 549.) Contrary to this bedrock principle of initiative construction, a memo that was prepared for a Recommended Action at the July 22, 2025 City Council hearing indicates the proposed ballot measure would provide that the voter approval requirement would not extend to the privately-owned Oak Creek Golf Course. Voter approval requirements as implemented in Initiative 88-1 cannot be counteracted by misleading or incomplete ballot measure language. The Orange Tree Master Association, Save Irvine Open Space, and others take this matter very seriously and reserve all legal rights in responding to it.

We understand that Irvine's City Attorney has based an opinion that the City Council need not return to the voters for approval of a change on *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504, suggesting that Initiative Resolution 88-1 was an "indirect" measure only directing the City Council to make changes in the General Plan and Zoning Ordinance while not actually legislating the changes. However, that ruling in *Marblehead* was distinguished in the subsequent case *Pala Band of Mission Indians v. Board of Supervisors of San Diego County* (1997) 54 Cal.App.4<sup>th</sup> 565, 575-577.

In *Pala Band*, the Court of Appeal rejected the assertion by the Pala Band of Mission Indians that Proposition C in San Diego County was invalid using the same argument as *Marblehead*, i.e., that it was allegedly "indirect" legislation. (*Id.* at 575.) In rejecting the plaintiff's indirect legislation argument, the Court of Appeal in *Pala Band* reasoned:

the voters said precisely how the General Plan is to be amended—Section 7A changes the land use element to designate the Gregory Canyon site for use as a solid waste facility. Sections 7C and 7D merely tell the County to enact any necessary amendments to ensure the General Plan amendment will take place. Such enabling legislation promotes, rather than violates, the requirement that a general plan reflect an integrated and consistent document.

(*Pala Band*, *supra*, 54 Cal.App.4th at 577.)

The facts of the *Pala Band* case and the present matter involving Initiative Resolution 88-1 are squarely analogous, thus rendering *Marblehead* inapposite. In the *Pala Band* case the voters were presented, in the form of Measure C, specific instructions on how to amend the General Plan and Zoning Ordinance including an attached map exhibit showing the location of designated land use changes in the General Plan. In the *Pala Band* case the voters were asked to approve the location of a landfill and recycling center. Similarly, in Initiative Resolution 88-1, Irvine voters were asked to approve specific open space preservation areas and development areas specifically designated as such on an attached map. Initiative Resolution 88-1 Section 2 entitled “Conservation and Open Space and Land Use Map Changes” could not be more clear. It reads: “***The City’s General Plan shall be amended to reflect the changes shown on the Conservation and Land Use Map attached hereto as Exhibit ‘A.’***” Because the changes were attached to the initiative measure itself, Irvine Initiative Resolution 88-1 is unlike the indirect measure in *Marblehead*, *supra*, 226 Cal.App.3d 1504, and instead is analogous to Measure C in *Pala Band*.

The City Council must submit any proposed change in the General Plan to the voters if it will effectively replace Open Space Preservation Area O in Planning Area 12 with housing. The submittal to the voters must be done in a manner that is true and impartial. The language of the measure must be neither argumentative nor likely to create prejudice for or against the measure consistent with California Elections Code section 13119 subdivision (c).

**B. The City Must Enforce the Zoning Ordinance Requirement for An Irrevocable Offer of an Open Space Easement for Preservation Area O in Planning Area 12.**

City of Irvine Zoning Ordinance Chapter 9-12-7 (Oak Creek) Section B.2.a states that Parcels B1 and B2 (the Oak Creek Golf Course) “shall total 176 gross acres and shall be retained in ownership by the existing landowner or its successor in interest and operated as a public golf course.” (Irvine Mun. Code section 9-12-7.B.2.a.) It further states: “An open space easement, limiting its use to a golf course and customary and appurtenant facilities, ***will be conveyed to the City.***” (*Ibid.*, emphasis added.)

Section 2.c of the zoning ordinance further describes the timing and required content of the open space easement to be conveyed. It says “Concurrent with the recordation of the first final tract map for the newly zoned residential areas within Planning Area 12, an irrevocable offer of an open space easement for Preservation Area O [the Oak Creek Golf Course] of the Irvine General Plan shall be recorded. The offer shall be accepted no sooner than 90 days following issuance of building permits for 75 percent of the development for Planning Area 12 or the completion of development in Planning Area 12, whichever occurs first.” (Irvine Mun. Code section 9-12-7.B.2.c.)

Section 2.d.1 describes the content of the Preservation Area O offer of conveyance stating in pertinent part that the offer of open space easements shall provide conveyance ***“assuring that the conveyed land shall be used in perpetuity consistent with the intent of the dedication and the purposes to be served by open space spines and preservation areas, with corresponding means of enforcement.”*** (Irvine Mun. Code section 9-12-7.B.2.d.1, emphasis added.)

The recordation of the first final tract map, Tract No. 15177, for residential areas within Planning Area 12, occurred on May 31, 1995. The development of the Oak Creek Community is now complete meaning that the City is now well past the threshold dates for the offer of the open easement to have occurred. The landowner has received all of the compensating development within the corresponding development area that triggers the transfer of public ownership rights of the open space preservation area. The granting of the easement with appropriate restrictions on the use of the land is the critical tenet of Initiative Resolution 88-1. Section 4 of that Initiative instructs the City Council to adopt a phased dedication and compensating development opportunities program using the mandatory term “shall adopt.” (Initiative Resolution 88-1, Section 4.)

That section describes the purpose of the program as follows: ***“The purpose of the Phased Dedication Program is to provide permanent protection of open space by means of public ownership.”*** (Initiative Resolution 88-1, Section 4, paragraph (a).)

The easement in the case of Preservation Area O is the form of the ownership right granted to the City to protect this public asset on behalf of the residents of Irvine. There is reason to question whether or not this easement was actually conveyed which, if it was not, raises serious concerns about this deficiency and calls for prompt action by the City to correct this and require that this easement now be conveyed immediately. The Irvine Company is in breach of its duty to convey an easement to the City as required by Initiative 88-1, the Irvine Municipal Code, and the Memorandum of Understanding Implementing Initiative Resolution 88-1 signed on September 26, 1988 by Irvine Mayor Agran and Senior Vice President Gary Hunt of the Irvine Company. The 1988 Memorandum stated “The specified Preservation Area in Planning Area 12 shall be dedicated to the

City for public open space purposes in accordance with the Implementation Action Program. See Exhibit 5).” (Memorandum of Understanding dated September 26, 1988, Attachment A, p. A-5.) The Irvine Company must honor its commitment and the City must exercise its authority to obtain this easement before any further processing of Irvine Company’s applications to replace Preservation Area O with housing development. It is paramount that this occur to protect this public resource before the further disposition of this land area is decided.

**C. General Plan and Zoning Ordinance Inconsistency Issue caused by adoption of City Council Ordinance No. 24-13.**

When City Council Ordinance No. 24-13 was adopted on September 10, 2024 it included an exhibit, Figure 1, which is clearly inconsistent with the description of the Residential and Residential Mixed-Use (RRMU) Overlay District for Focus Area 2 found on page 1 of the Ordinance. (See Ordinance No. 24-13, p. 29.) The fourth Whereas paragraph of the Ordinance describes Focus Area 2 as the Greater Spectrum Area (Spectrum 7 portion of Planning Area 12 (Oak Creek) and then the other spectrum planning areas outside of Planning Area 12. (See Ordinance No. 24-13, p. 1.) Figure 1 mistakenly depicts the RRMU Overlay District over a much larger area within Planning Area 12 including the driving range area of the golf course currently zoned Recreation. The Spectrum 7 boundary is clearly defined by Exhibit F of the Planning Area 12 zoning found in Chapter 9-12 of the Irvine Zoning Ordinance. Furthermore, Figure 1 in Ordinance No. 24-13 is also inconsistent with Regulatory Table A-1-1 and Table 3 of the Land Use Element (Land Use Element p. 66) which clearly show an allocation of 4,907 units to *only* the Spectrum 7 portion of Planning Area 12.

This mistakenly depicted Figure 1 in Ordinance No. 24-13 is apparently the basis for claims by the landowner that it currently has entitlement rights to build up to 5000 units on land adjacent to Irvine Center Drive. It is being used as a threat to foster support for the landowner’s desire to replace the Open Space Preservation Area (Oak Creek Golf Course) with housing.

We call upon the City to correct this obvious scrivener’s error in Ordinance No. 24-13 immediately. This inconsistency has existed well over six months exceeding the statutory limits to resolve the inconsistency.

**D. The City Must Comply with CEQA Prior to Placing a Measure on the Ballot to Redesignate Open Space Designated in Initiative 88-1.**

If the City Council seeks to place a measure on the ballot that has the effect of redesignating open space at the Oak Creek Golf Club as residential or some other use, its

decision to place that measure on the ballot is subject to compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165, 188.) The City may not place a measure which will have the effect of depriving the electorate of extensive open space designated in Initiative 88-1 on the ballot without proper prior compliance with CEQA, including preparation of an environmental impact report as necessary.

**Conclusion.**

The City must obtain voter approval of any redesignation of the Oak Creek Golf Club to uses other than open space. Prior to placing a measure on the ballot to seek that voter approval for redesignation, the City must comply with the California Environmental Quality Act.

Thank you for your consideration of these views. We look forward to your response.

Sincerely,



Douglas P. Carstens