



Memorandum

TO: Mayor and City Council

**FROM: Councilmembers
Nora Campos, Nancy Pyle**

**SUBJECT: Evergreen East Hills Vision
Strategy Task Force**

DATE: May 9, 2006

Approved:

Nora Campos

Date:

5/9/2006

RECOMMENDATION

We call for an investigation to determine if material facts were withheld from the City Council and the public by Councilmember Dave Cortese in regard to the Evergreen East Hills Vision Strategy (EEHVS), and if the Council and the public were misled by Councilmember Cortese's denial of meeting with lobbyists and/or developers regarding EEHVS. We recommend the City Manager and City Attorney conduct the investigation and to report their findings to the full Council in 14 days on whether the City Charter, Section 411 was violated, and as to the truthfulness of Councilmember Cortese's public comments made at the May 17, 2005 City Council meeting.

BACKGROUND

There have been significant conflicting statements made by Councilmember Cortese and stakeholders in the Evergreen East Hills Vision Strategy (EEHVS) process in the media. We are concerned about the effect this may have not only publicly, but also legally as it relates to successfully completing this vital land use plan. Therefore, the following questions need to be answered as soon as reasonably possible to ensure that the EEHVS process has not been tainted or endangered by Councilmember Cortese.

- Has Councilmember Cortese made any commitments on behalf of the City of San Jose to developers or their representatives? (Only a majority vote of the City Council can commit the City on a land use issue.)
- After meeting with developers and/or their lobbyists, did Councilmember Cortese directed or attempted to direct Staff either in writing or verbally to a particular action in regard to the EVP/EEHVS? (A member of the City Council directing Staff is a violation of City Charter Section 411.)

On April 4, 2006 and April 25, 2006 the San José City Council reviewed its Council-Staff Interaction Policy, during which the Council re-affirmed the directive in the City Charter which states Council members may not give any directive to any member of city staff. Section 411 of the City Charter further states that a Council member of the City Council as a whole may not

attempt to require or coerce City Staff to make any particular recommendation or to adopt any particular position as the staff position on any matter.

It appears to us that Councilmember David Cortese violated this section of the charter in a memo dated March 1, 2005 to the Evergreen East Hills Vision Strategy (EEHVS) whereby he directed city staff on the number of housing units on this \$1B+ land use development application.

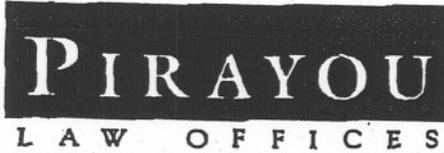
Further, we are disturbed by Councilmember Cortese's misleading public statements during a City Council meeting that he has not "met with developer's lobbyists, property owner's lobbyists at all on this issue." Yet, according to lobbyist reports he has met with registered lobbyists to discuss the Evergreen Smart Growth Strategy dozens of times within a five-month period that includes the period the above memo was written directing city staff. Additionally, Councilmember Cortese stated to *The Mercury News* that the lobbyists who listed contacts with him may have been referring to task force meetings attended by lobbyists, Cortese and others. However, in an effort to clear the air, these same lobbyists dispute Councilmember Cortese's statement and issued a statement [see attachment]:

- "Robert Freed, Regional Manager, northern California, KB Home had several conversations with Councilmember Dave Cortese with regard to the EVP Task Force and [their] development proposal prior to the May 17, 2005 City Council meeting."
- "...registered San Jose lobbyist Tom Armstrong also had several conversations with Councilmember Dave Cortese prior to the May 17, 2005 City Council vote that expanded the EVP Task Force. *These conversations included a private meeting and phone calls outside of the formal Task Force meetings.*"
- "...registered San Jose lobbyist Gerry DeYoung also met with Councilmember Dave Cortese along with City Staff and selected EVP Task Force members *to negotiate unit counts* to be studied in the EIR, Mr. Armstrong was also in attendance at some of these meetings. *Some of these meetings were outside the regularly scheduled meetings of the formal EVP Task Force.*"

As representatives on the Task Forces for the City's two largest land development applications, we are alarmed by the fact that Councilmember Cortese has denied these meetings, despite lobbyist reports filed under penalty of perjury with the City Clerk's office, and recent, written statements issued by the developers and their lobbyists detailing the nature of their interactions with Councilmember Cortese.

Attachments:

- *Statement issued on May 5, 2006 by Yerba Buena OPCO, the EEHVS project sponsors, clearing the record regarding their interactions, negotiations and private meetings with Councilmember Cortese.*
- *Letter to the City Clerk issued on May 4, 2006 by registered San Jose lobbyist Ash Pirayou clarifying the record stating he indeed met with Councilmember Cortese.*
- *City of San Jose memo authored by Councilmember Dave Cortese dated March 1, 2005 in which he directs staff on unit counts to be studied for the Environmental Impact Report (EIR).*
- *Transcript of public comments made by Councilmember Dave Cortese from the dais at the May 17, 2005 City Council meeting.*



VIA U.S. MAIL AND FACSIMILE (408-292-6207)

May 4, 2006

Lee Price
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Dear Ms. Price:

I write this letter because questions have been raised as to the veracity of my First Quarter 2005 Lobbying Report filed under the penalty of perjury with the San Jose City Clerk's office on April 15, 2005.

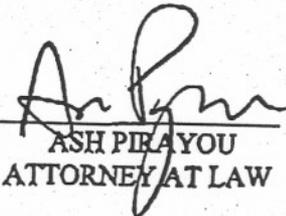
I respectfully request that this letter be filed with my Lobbying Reports on file with the City Clerk and in the minutes of the San Jose City Council meeting taking place on May 9, 2006.

On February 1, 2005, at the Wyndham Hotel, I advised Councilmember Cortese that I was to be involved in the Evergreen Smart Growth Strategy on behalf of Yerba Buena O.P.C.O. LLC, and pursuant to the City of San Jose Lobbying Ordinance, I listed this contact on my First Quarter 2005 Lobbying Report.

In addition, pursuant to the City of San Jose Lobbying Ordinance, I listed emails to Councilmember Cortese relating to the 265 Lewis Road project as contacts on my First Quarter 2005 Lobbying Report.

Very truly yours,

PIRAYOU LAW OFFICES

By: 
ASH PIRAYOU
ATTORNEY AT LAW

By: BPL

Statement of Clarification in Regard to the Evergreen East Hills Visioning Strategy

“Yerba Buena OPCO, the Evergreen East Hills Visioning Strategy project sponsors, value their relationship with the citizens of San Jose and that is why we want to make the record absolutely clear in regard to recent news reports surrounding our lobbyist and our developer communications with Councilmember Dave Cortese,” says project spokesperson Bo Radanovich.

- Robert Freed, Regional Manager, Northern California, KB Home had several conversations with Councilmember Dave Cortese with regard to the EVP Task Force and our development proposal prior to the May 17, 2005 City Council meeting. With regard to the specific issue of creating the new Task Force, which was the topic of discussion at the May 17, 2005 City Council meeting, Mr. Freed did have conversations with Councilmember Cortese on this specific issue. Mr. Freed also had conversations with other members of the Council and in some cases their staff with regards to this issue as well.

Mr. Freed’s conversations served the primary purpose of educating officials on the project and communicating ideas about the process. Mr. Freed is not a lobbyist and does not qualify to be registered as one under the current San Jose Lobbying Ordinance.

- A member of our development team, registered San Jose lobbyist Tom Armstrong also had several conversations with Councilmember Dave Cortese prior to the May 17, 2005 City Council vote that expanded the EVP Task Force. These conversations included a private meeting and phone calls outside the formal Task Force meetings. The focus of these conversations were to protect the body of work conducted by the EVP Task Force and to keep the project on its timeline, as summarized in Mr. Armstrong’s quarterly registration filings.
- A member of our development team, registered San Jose lobbyist Gerry DeYoung also met with Councilmember Dave Cortese along with City Staff and selected EVP Task Force members to negotiate unit counts to be studied in the EIR, Mr. Armstrong was also in attendance at some of these meetings. Some of these meetings were outside the regularly scheduled meetings of the formal EVP Task Force.
- A member of our development team, registered San Jose lobbyist Ash Pirayou, also met with Councilmember Dave Cortese on an unrelated issue and disclosed to Councilmember Cortese that he would be working on the EVP project for Yerba Buena OPCO.

“It is important to note that the leadership of the current Task Force has done an exemplary job ensuring that the process has been open and constructive. Task Force leaders and members along with the professionalism of the City of San Jose Planning staff have created a collaborative process that we believe will bring forward a plan we can all be proud of. We look forward to continuing to work toward a successful conclusion,” says project spokesperson Bo Radanovich.

San José City Council Meeting- Evening Session
Council Agenda: 05-17-05 Item: 4.3
Subject: Evergreen Visioning Strategy

I, Dave Cortese met with developers in private is absolutely false..

These are the kinds of things we should get out before the public. I'll open up my calendar and you open up your calendar and the calendar of your staff and let's see who has been meeting with developers in private, let's see which Councilmembers have been meeting...

I may be the only one on this dais, I don't know, because I don't see everyone else's calendar, but I think with fair certainty, that hasn't met with developers lobbyists in recent weeks I haven't met with developers lobbyists, property owners lobbyists at all on this issue but I know the Mayor's office and other Councilmembers Office's have. If we're going to get the facts out these let's make sure the facts are accurate.