March 6, 2019

Julia Brown, Chairperson

City of San Diego Sustainable Energy Advisory Board (SEAB)

c/o Aaron Lu, Program Manager, Department of Sustainability SENT by EMAIL

**RE: Actions Taken at February Board Meeting in Contravention to SEAB**

**General Operating Procedures and the State of California Brown Act and Open Meetings Rules and Regulations**

Dear Julia:

I am writing to follow up on our discussions last month regarding the action taken at the February 14, 2019 SEAB meeting during Action Item VII. 1. “Semi-Annual Update to Environment Committee“ to adopt a recommendation to the Mayor and City Council changing the designation in the City of San Diego Municipal Code of an At-Large Seat to a seat designated for a representative of “Cleantech San Diego”. The Motion was made by Jason Anderson, Seconded by Sean Karafin and Passed (5-1-0) with Jay Powell Opposed.

I indicated that I felt the motion was out of order and that my opposition was based on the fact that this matter had not been docketed for discussion or action and accurate background information was not provided prior to the meeting. It was stated by others in attendance during the discussion of the motion and in support of the motion that this matter had been discussed at the January 10, 2019 meeting attended by you, Jason Anderson, Sean Karafin and myself. I indicated that I did not recall that discussion.

I have reviewed the three tapes of the January 10 meeting and the only discussion of membership during that meeting concerned the number of vacancies on the Board. In addition, there is no mention of any discussion of a proposal to recommend a change in the designation of seats in the Municipal Code in the recordings of the meeting nor in the minutes for the January meeting as adopted at our February meeting.

The discussion of any action item at the January meeting would have been inappropriate, since we did not have a quorum and had decided to proceed with only information item presentations and discussions of those presentations to clarify information presented. Again, the items presented and discussed are enumerated in the adopted minutes for the January 10 meeting.

The misrepresentation made regarding previous discussion of the matter at a non-quorum meeting in support of the motion should in and of itself invalidate the motion and the action should be rescinded and the matter of recommendations for changes in the designation of seats for the Board should be docketed for further discussion with sufficient public notice and back up documents, if that is the will of the Board.

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It is of utmost importance that we conduct our business in accordance with our adopted General Operating Procedures and the State of California Brown Act and other rules provided for Open Meetings. We owe each other and the public accurate and timely information and the opportunity to participate and make input to our actions.

I offer the following additional information for you and SEA Board members consideration of this request and the more specific requests listed at the conclusion of this letter.

The Semi Annual Report letter covers the period July through December 2018; it should not cover actions or recommendations or circumstances that have been or may be considered after December 2018.

The matter of recommendations on changing designations of seats in the governing Municipal Code is not in the adopted 2018 nor the 2019 SEAB Work Plans.

The action taken providing recommendations for updating the Municipal Code on May 14, 2015 was a culmination of over four months of discussions including recommendations of a working group designated at the February 10, 2015 meeting and led by Chairman Bumgarner in which I participated along with Vice Chairman Doug Kot. We limited our recommendations and the those adopted by the Board to matters that needed clarification, correction or updating including reference to “accomplish the goals set forth in the City’s Climate Action Plan.”

It was agreed that other matters such as the constitution of the Board and the list of other duties and functions were not appropriate or necessary to the goal of updating and clarifying that governing document. The only change in designated membership seats was to update seat # 1 “San Diego Regional Energy Office (SANDAG)” to “Center for Sustainable Energy (CSE)”, since it was stated that CSE had assumed the duties of the San Diego Regional Energy Office.

The consideration of the Semi Annual Report letter and the motion regarding the changes in membership designation was further confounded by the changes indicated on documents projected on the large screen which staff was using to track the changes in versions of the draft Semi Annual Report and the Municipal Code as background and during our discussion.

At one point the proposed change indicated in the list of designated members in the draft Semi Annual Report was a re-designation of Seat #7 from “Chamber of Commerce/Business Community” to “Cleantech San Diego”. This and the later change reflected in the motion to convert an “At-Large” seat to a seat designated for “Cleantech San Diego” were justified as similar to the re-designation recommended for Seat #1 in 2015 – a false equivalency.

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It was later noted in my communications to you and staff that the listing in the draft Semi Annual Report letter was a list of the *current*, in force Municipal Code designated members and therefore the document under consideration for adoption of our Semi Annual Report by changing the designations for seat #1 and #7 were both an incorrect list of current designations.

The additional justification for the motion, that Jason Anderson, CEO of Cleantech San Diego was appointed to fill an “At Large” seat was in error. As the roster on file with the City Clerk for SEAB membership and the minutes of SEAB meetings indicate, he was appointed to the seat for “Chamber of Commerce/Business Community” and Sean Karafin, Policy Director for the Chamber of Commerce was appointed to an “At Large” seat, not to the Chamber of “Commerce/Business Community” seat held by Jason Anderson.

The background documents for the meeting were forwarded by staff in a February 6 email that indicated “Jay noticed a few corrections that needed to be made” which listed those corrections and referred to updated attachments. The email did not indicate that, in addition to the corrections I had listed, incorrect changes to the list of designated seats in the current version of the Municipal Code were included in the re-drafted Semi Annual Report forwarded. The previous staff email on February 6 forwarding documents requiring action included the following in the list: 3. Semi-Annual Update to Environment Committee (Chair), “SEAB Recommendations for Municipal Code Update Mark Up Adopted” document is referenced in the (Semi Annual) report *(no action on this document itself).* (emphasis added)

After the February 14 meeting I contacted staff and communicated my concerns to staff and spoke to you as Chairperson regarding these concerns. You informed me that you had discussed with staff who was recommending a referral to the City Attorney.

I noted that the SEAB website had posted under Board Actions various versions of the report letter and at one point a document titled “Recommended Changes to Municipal Code Adopted by SEAB on May 14, 2015 as Recommended by SEAB Task Group on May 8, 2016 and City staff recommendations.” This document was a “clean copy” (not a Mark Up Copy showing recommended deletions and additions) that changed the listing of seat #7 from “Chamber of Commerce/Business Community” to “Cleantech San Diego” and at Subitem ( c ) (8) changed the Division and Department name of the Deputy Director to “of the Sustainability Department”. This version of the Municipal Code was subsequently taken down when I noted that it was titled incorrectly and not a Mark Up copy and did not comport to either the May 14, 2015 recommendation OR the February 14, 2019 action regarding designations of seats.

Staff confirmed the following week that this matter and my emails on this issue had been forwarded to Deputy City Attorney Fritz Ortlieb.

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Subsequently I noted that a new version of the Semi Annual Report letter listed as “seab report to environment committee 02192019 final 003” had been posted to the SEAB website as a Board Action. This version of the report letter still dated as “January 10, 2019” corrected the inaccuracies regarding the list of designated seats in the current Municipal Code and included the updates on the number of vacancies (3) and the recommendation to update the Code to “Coordinate energy planning activities with the new City Sustainability Department”.

It also includes the following additional sentence: ”We recommend designating one board seat for a representative of Cleantech San Diego, an industry association focused on fostering development of the clean technology industry in San Diego. We propose that seat should substitute for one of the current at-large positions.”

The Report letter did not include as an enclosure “SEAB Recommended Updates in Mark Up Copy of Municipal Code Section 26.04” as previous drafts and back up material for the meeting had indicated.

Staff has confirmed that this was a document you authorized and was sent to the Environment Committee Chair and the Committee members and City officials listed for copies without a Mark Up Copy of the Recommended Changes to the Municipal Code.

As I have enumerated in detail, there are considerable irregularities in the noticing and procedures followed and errors in information provided to the Board and public record in advance of and at the February meeting regarding the action to recommend the change in membership designation you have stated in the letter transmitting the Semi Annual Report.

It is inaccurate in that the action recommending changes in the membership seat designation

did not occur during the period of the report and for the reasons enumerated above, it is a violation of our General Operating Procedures and in contravention to the principles, intent and public interest purposes of the State of California Brown Act and Open Meeting laws and guidelines.

**For those reasons I am making the following requests**:

1. Docket an action item for the March 14, 2019 meeting to consider rescinding the action taken at the February 14 meeting on the recommendation to convert an At-Large seat to Cleantech San Diego designated seat. Our General Operation Procedures indicate that Board meetings will be conducted in accordance with the current version of Robert’s Rules of Order to the extent that Robert’s Rules are not in conflict with the Brown Act.

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Robert’s Rules of Order specifies guidelines for reconsideration of a motion. However, since this may constitute a violation of the Brown Act, I request that the City Attorney advise the Board on the proper procedure to follow.

2. Provide a copy of this letter to all SEA Board members, Deputy City Attorney Fritz Ortlieb and the Director and Deputy Director of the City Sustainability Department and post a copy to the 2019 “Documents and Presentations” section of the SEAB website.

3. Correct, re-date, reissue and re-circulate the Semi Annual Report letter for the period July through December 2018 to addressees and public officials listed for copies indicating that it is corrected to delete the recommendation regarding converting an At-large seat to a designated seat and that the Mark Up Copy of Recommendations for updates to the Municipal Code adopted on May 14, 2015 is added as an enclosure to the corrected letter.

4. Post the corrected Semi Annual Report letter and enclosure document on the 2019 “Board Actions” section of the SEAB website.

5. Request the attendance at the March 14 meeting of the Deputy City Attorney and other City officials who are tasked with enforcing the Brown Act and/or compliance with procedures adopted for the conduct of meetings by City Boards and Commissions.

6. Please confirm your receipt of this letter and the distribution to SEA Board members and officials listed for copies.

My communications to you and to staff regarding this matter including emails prior to and subsequent to the February 14 meeting related to this issue are incorporated by reference as back up information for this letter and these requests and are authorized for release to Board members, City officials and the public.

If you have any questions regarding this letter or these requests, please contact me. .

Sincerely

s / HCJ Powell

Jay Powell, Environmental Advocate Member

Sustainable Energy Advisory Board

Cc Members of the SEA Board (via staff)

 Deputy City Attorney, Fritz Ortlieb