TOWN OF FAIRFAX

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Mayor
Larry Bragman

Vice Mayor
Pam Hartwell-Herrero

Town Council
John Reed
Lew Tremaine
David Weinsoff

Town Manager
Michael Rock

March 24, 2011

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

BY FACSIMILE AND U.S. MAIL: (415) 703-1758

Re: SmartMeter Opt Out Orders

Dear Commissioners:

I am writing as a follow-up to my open time comments of March 24, 2011.

The Town of Fairfax unanimously passed an emergency ordinance on August 4, 2010 which established a one year moratorium on the installation of wireless smart meters within our jurisdiction. In the intervening months, the Fairfax Town Council held numerous public meetings in which it received scores of public comments describing health, safety and other concerns.

While I am extremely gratified that the California Public Utilities Commission has begun to recognize these concerns through its opt-out orders, it is imperative that the orders are fair and effective. Fairness dictates that ratepayers who elect to opt out should not be forced to pay a higher price in order to protect their health and safety. A blended grid will be safer and more secure and its costs, as well as its benefits, should be borne by all ratepayers equally.

Secondly, in order for our communities to provide effective protection to those residents who do suffer electromagnetic sensitivity, the Commission should consider permitting municipal entities to opt out as a whole. In other words, incorporated municipal entities like the Town of Fairfax should be permitted to opt out by majority vote of their elected representatives.

There will undoubtedly be a host of other issues that arise upon deeper analysis of a consumer opt out program. Fairfax is ready willing and able to assist the Commission's consideration of the program in any way it can.

Respectfully yours,

LARRY BRAGMAN
Mayor of Fairfax

LB:ja

This letter represents the personal viewpoint of the Council member who signs it and does not necessarily represent an official position of the Town of Fairfax.

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AGENDA ITEM #20

ORDINANCE NO. 752

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE TOWN OF FAIRFAX OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE TOWN OF FAIRFAX, AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Fairfax, California does ordain as follows:

Section I. Findings:

A. The Town of Fairfax (the "Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.

B. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."

C. Further, Public Utilities Code section 2902 reserves the Town's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

D. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in Fairfax in the very near future. PG&E has already installed antennae to support the SmartMeter system at four sites within the public rights of way in the Town without obtaining permits from the Town as required by Section19.04 of the Town Code. Further, PG&G did not comply with Section XIV of General Order 131-D of the California Public Utilities Commission (the "CPUC"), which requires a utility to consult with the local jurisdiction on land use matters prior to locating its facilities.

E. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of

SmartMeters until the questions about their accuracy can be evaluated.

F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Fairfax Town Council, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.

H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.

I. FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc.. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.

J. The primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use time-shifting. Further, some engineers and energy conservation experts believe that the SmartMeters program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint.

K. Because the potential risks to the health, safety and welfare of Fairfax residents are so great, the Fairfax Town Council wishes to adopt a twelve month moratorium on the installation of SmartMeters and related equipment within the Fairfax Town Limits. The twelve month

period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

L. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the Town without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the Town's Code requirements, and subjecting residents of Fairfax to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

M. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section II. Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Fairfax, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the Town for twelve months from the date of this Ordinance, at which time the Fairfax Town Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.08.010 of the Town Code or as administrative citations as set forth in Chapter 1.10 of the Town Code, in the discretion of the Town. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Fairfax Town Manager is hereby authorized to direct all Town Departments, including the Town Attorney, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

Section III. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the Town Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

Section V. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building; which places are designated for that purpose.

The foregoing ordinance was duly adopted on the 4th day of August, 2010, by the following vote, to wit:

AYES: Bragman, Hartwell-Herrero, Tremaine, Weinsoff

NOES: None

ABSENT: Reed

LEW TREMAINE, MAYOR

Attest:

Town Clerk