ORDINANCE NO. 761

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX EXTENDING 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 FOR AN ADDITIONAL YEAR

THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION I. Statement of Intent:

A. On August 4, 2010, the Town Council adopted Ordinance No. 752, an urgency ordinance prohibiting for a one year period the installation of any so-called "SmartMeter" in or on any home, apartment, condominium or business in the Town of Fairfax, as well as the installation of equipment related to SmartMeters in, on, under, or above any public street or public right of way in the Town;

B. Section 2 of Ordinance 752 provides that, prior to the end of the one year moratorium period, the Town Council shall consider whether to extend or terminate the prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects;

C. During the past year, the Council, Town staff and members of the public have participated in extensive meetings with PG&E representatives, as well as in legislative and regulatory hearings on SmartMeters, but there remain significant questions about the privacy, safety, accuracy and health effects, along with proposals for mitigating them or permitting consumer alternatives to SmartMeters;

D. In particular, PG&E's Opt Out plan will not protect the privacy, health and economic interests that were raised by numerous Fairfax residents in their public comments, because the plan (as set forth in CPUC Application A 11-03-014) requires a substantial upfront deposit and ongoing monthly fees, which fees are unreasonable and do not reflect any savings garnered by maintaining current analog meters and avoiding the acquisition and installation costs incurred by replacement with SmartMeters;

E. In addition, PG&E's fee proposal also effectively discriminates against those ratepayers who elect to opt out for health or safety reasons, which is in violation of the prohibition on prejudicial rates in California Public Utility Code section 453 (b);

F. Finally, the application does not address whether PG&E will honor the ordinances of the numerous jurisdictions who have passed SmartMeter moratoriums to protect and preserve the health and safety of their residents under their constitutionally delegated power to do so;

G. As a result of these deficiencies and uncertainties, the Town Council has determined that the prohibition on the installation of Smart Meters and related equipment should be extended to allow further regulatory and legislative activities to proceed for another year unless sooner

terminated if the Town Council determines that the privacy, safety, accuracy and health effects of SmartMeters have been adequately addressed.

SECTION II. Moratorium Extended.

1. The Town of Fairfax hereby extends for an additional twelve (12) months, the interim moratorium on installation of SmartMeters or related equipment initially enacted by Ordinance No. 752. Consequently, 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 (12) months from the date of this Ordinance, unless the Town Council terminates this prohibition earlier in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Ordinance 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. CEQA Finding. The Town Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance, and extension of a moratorium hereby, may have a significant effect on the environment, because the moratorium will maintain the current environmental conditions arising from the current land use regulatory structure. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION IV. Severability. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION V. This Ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

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 introduced at a regular meeting of the Town Council on the 4th day of May, 2011, and duly adopted at regular meeting of the Town Council on the ____ day of _____, 2011, by the following vote, to wit:

AYES:

NOES:

RECUSED:

ABSTENTION:

_____
LARRY BRAGMAN, MAYOR

Attest:

_____
Town Clerk, Judy Anderson