



TOWN OF FAIRFAX

STAFF REPORT

February 1, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Second reading by title only and adoption of an Ordinance of the Town Council of the Town of Fairfax prohibiting 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 three years

RECOMMENDATION

Waive second reading and read by title only and adopt an Ordinance of the Town Council of the Town of Fairfax prohibiting 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 three years.

DISCUSSION

On January 18, 2017, the Council held the first reading of the attached ordinance. Tonight is the second reading. If the Council adopts the ordinance tonight, it will take effect in 30 days, just prior to the expiration of Ordinance No. 775, which currently prohibits the installation of SmartMeters and related equipment.

The Town has received approximately 10 letters in support of the ordinance.

FISCAL IMPACT

n/a

ATTACHMENT

Ordinance

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
EXTENDING THE PROHIBITION 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 THREE YEARS**

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

SECTION I. Findings.

A. On August 4, 2010, the Town Council adopted Ordinance No. 752, an urgency ordinance temporarily prohibiting 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. On February 5, 2014, the Town Council adopted Ordinance No. 775, effective March 5, 2014, prohibiting the installation of any “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 for three years;

C. The Council, Town staff and members of the public 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 financial, security, 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 and approved by CPUC Decision 14-12-078) 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 Opt Out plan 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. The California Public Utilities Commission has failed to consider evidence regarding the health and safety concerns related to SmartMeters (CPUC Decision 14-12-078, pp. 7);

G. The Opt Out plan infringes upon those local 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;

H. On January 22, 2015, applications for rehearing were filed by several parties requesting that the CPUC rehear Decision 14-12-078;

I. Those requests for rehearing are still pending before the CPUC and unless the Town of Fairfax acts to protect and preserve the rights of its residents during the pendency of those proceedings, the CPUC review process will effectively be rendered moot; and

J. 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 is necessary and proper to allow further legal, regulatory and legislative activities to proceed for three years unless sooner terminated if the Town Council determines that the financial, legal, privacy, safety, accuracy and health effects of SmartMeters have been adequately addressed.

SECTION II. Extension and Sunset. Ordinance No. 775 is hereby extended for an additional three years from its effective date.

SECTION III. Amend Statement of Intent. Subsection (H) is hereby added to Fairfax Town Code, Section 8.68.010, which shall read as follows:

“(H) The Town Council has determined that the prohibition on the installation of SmartMeters and related equipment for an additional three years is necessary and proper to allow further legal, regulatory and legislative activities to proceed.”

SECTION IV. CEQA Finding. The Town Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, because the ordinance 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 V. 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 VI. 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 meeting of the Town Council or the Town of Fairfax on the 18th day of January, 2017, and duly adopted at the next regular meeting of the Town Council on the 1st day of February, 2017, by the following vote, to wit:

AYES:
NOES:
ABSENT:

John Reed, Mayor

Attest:

Michele Gardner, Town Clerk

Date