

Senator Mark Leno
State Capitol, Room 4061
Sacramento, CA 95814

Re: Smart Meter Opt Out Legislation

Dear Senator Leno:

We are writing on behalf of a unanimous Fairfax Town Council to request your assistance in carrying legislation to provide a statutory means for individuals and municipalities to opt out of the ongoing deployment of "Smart Meters" in the State of California.

The Fairfax Town Council has received numerous written and live comments from Bay Area residents who are extremely apprehensive about the ongoing installation of these devices in our Town. Their concerns break down into five broad categories:

1. Health concerns: There is a large percentage of individuals who chose to live in Fairfax because of its pristine environment and its local government's rigorous attempts to adhere to the precautionary principal. The fact that the smart meter program will create a pervasive electromagnetic field (EMF) in our community is of great concern to many residents. Electromagnetic sensitivity has been recognized as a protected condition under the Americans with Disabilities Act and recent peer reviewed literature has suggested serious potential health risks related to chronic exposure. Because the Smart Meter system is a mesh network in which individual meters act as rebroadcast transmitters, and because of large banks of meters installed in commercial and multi-unit housing, it is impossible to predict individual levels of exposure with any consistency or certainty. Numerous residents have provided medical documentation of conditions ranging from electromagnetic sensitivity to Glioma (brain tumor) in order to opt out of the system. Perhaps most importantly there have been no independent studies on the health impact of pervasive and EMF exposure on children. Preliminary research has demonstrated some adverse impacts and there is a growing movement afoot to eliminate such exposure in public schools. PG&E's only response to these concerns has been an evasive promise that customers who expressed them would be placed at the end of the installation.

2. Security Risks: The security issues inherent in the Smart Meter program were analyzed in depth by the Maryland Public Service Commission's analysis of the AMI (Advanced Metering Initiative) program in Baltimore. At pages 35-40, the Commission stated:

"Cyber-security in the context of the "smart grid" refers to the security of the information passing over the communications of the "smart grid" as well as security of the controls over system components. AMI is an enormous complex of inter-connected networks designed to administer dynamic pricing and manage grid function. Such an extensive network is vulnerable to security risks in many different ways, including physical tampering, intercepting or blocking the wireless signals that connect the smart meters to data collection points, or obtaining customer password information used on the web portal. Unauthorized access to smart meters could allow a hacker to artificially increase energy bills or shut off power entirely." The hacking of the Smart Meter system is inevitable with consequences far beyond the occasional brown-outs of the current system.

3. Privacy Concerns: There is a growing consensus that the smart meter program does not have adequate privacy controls. The program will generate an unprecedented database of confidential

information subject to intrusion and commercial misuse. PG&E has admitted that it currently does not have the capacity to manage the data and the State of California does not have comprehensive Fair Information Practices that provide legal and regulatory guidelines sufficient to safeguard consumer privacy. The profound degree of intrusion into formerly private domestic activity raises issues of Constitutional dimension under the Supreme Court's decision in *Kyllo v. U.S.* 533 U.S. 27 (2001) .

4. Conflicts of Law and Authority: PG&E installed four "Data Collection Units" at four key points in Fairfax's public rights of way without the consultation of Town Staff. Fairfax's Wireless Telecommunications Ordinances have long required that any party seeking the installation of wireless antennae obtain a use permit from the Fairfax Planning Commission. (Fairfax Municipal Code Chapter 19.04) Further PG&E's stealthy installation flouts longstanding legal authority which compels utilities to consult with local agencies when constructing improvements under Public Utilities Code sections 6203 and 2902.

5. The Smart Meter program's energy savings are largely conjectural. The savings are premised on the contention that consumers will use less power during peak times if they are forced to pay more for that electricity. This contention ignores the far simpler and conservative approach of public education and other less intrusive means. It also ignores the social inequity of constructively raising the rates for many thousands of ratepayers, like seniors, multi-job families and others who have limited windows of opportunity in which to take care of their family's chores. For them peak time is the only time that they can take care of their domestic needs. A Toronto Hydro study looked at ten thousand households in Toronto that have been billed using so-called smart meters since 2009. The study confirmed that after a year of operation on average 80 percent of households have been paying higher rates than before smart meters were installed and there has been little if any shift in household energy consumption.

Most importantly, the Smart Meter deployment completely ignores the issue of democratic choice for the ratepayers subsidizing the program. Why should residents who have legitimate health or welfare concerns not be able to opt out of the program when it poses social, security or medical risks to them?

Given these circumstances, we are respectfully requesting your assistance in introducing legislation which would provide an "opt-out" provision for municipalities and/or individual ratepayers for whom the meters pose health, safety, or other burdens. The opt-out would be similar to the provision of AB 117 (13) which allows ratepayers to decline enrollment in Community Choice Aggregation programs. Such an opt out program may have to include some cost adjustments or other financial adjustments. Given that the entire cost of the Smart Meter deployment is borne by ratepayers anyway, it might not be particularly onerous to provide such a rate adjustment fairly.

We believe that consumer choice, informed consent and domestic privacy are indispensable elements of a healthy community. The Smart Meter deployment presents profound socio-economic, scientific and legal implications. Our deliberations have led us to conclude that the only fair way to reconcile the conflicts presented by the system is to give consumers the ability to decline installation based upon their particular circumstances. Please feel free to contact us directly if you'd like to discuss the matter further. Thank you for your time and attention.

Sincerely yours,

Lew Tremaine
Mayor, Town of Fairfax

Larry Bragman
Vice Mayor, Town of Fairfax