



AGENDA ITEM NUMBER: 1



City of Sebastopol Council Agenda Report

SEBASTOPOL
Local Flavor. Global Vision.

Mayor
Michael Kyes

Meeting February 21, 2013
Date:

Agenda Report Reviewed by:
City Manager *AM*

Vice Mayor
Robert Jacob

To: Honorable Mayor and City Councilmembers

City Councilmembers
John Eder
Sarah Glade Gurney
Patrick Slayter

From: City Manager-Attorney Larry McLaughlin
City Clerk Mary Gourley

City Manager/City Attorney
Larry McLaughlin

Subject: Discussion and Consideration of Adoption of Urgency Ordinance of the City Council of the City of Sebastopol Adopting Measures Establishing a Temporary Moratorium on the Installation of Smart Meters and Related Equipment Within the City of Sebastopol or in, along, across, upon, under and over the public streets and places within the City of Sebastopol, and Declaring the Urgency Thereof and Any Related Actions

City Clerk
Mary Gourley

Recommendation: That the City Council Discuss and Consider Adoption of Urgency Ordinance of the City Council of the City of Sebastopol Adopting Measures Establishing a Temporary Moratorium on the Installation of Smart Meters and Related Equipment Within the City of Sebastopol or in, along, across, upon, under and over the public streets and places within the City of Sebastopol, and Declaring the Urgency Thereof and Any Related Actions Such as a Community Opt Out Resolution

Funding Currently Budgeted: ___ Yes ___ No X N/A
Costs to be Evaluated

Net General Fund Cost:

If Cost to Other Fund(s):

Fund:

Amount:

BACKGROUND:

At the February 19, 2013 City Council Meeting, the City Council directed staff to prepare an urgency ordinance for a Temporary Moratorium on the Installation of Smart Meters and Related Equipment Within the City of Sebastopol or in, along, across, upon, under and over the public streets and places within the City of Sebastopol, and Declaring the Urgency Thereof and Any Related Actions.

DISCUSSION:

A copy of the proposed ordinance requiring a City wide moratorium and draft resolution for community opt out is attached for your review and consideration.

An email has been sent to Mr. Michael Peevey, CPUC President, and also to Katie Kerns Davis, Manager, Government Relations, North Coast Pacific Gas and Electric Company, informing them of this Special City Council Meeting and requesting if they would be in attendance at this meeting.

At the writing of this staff report, staff has not received a response back from the CPUC or PG&E.

Attachments:

City of Sebastopol Resolution

Draft City of Sebastopol Ordinance

Resolution No. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL IN SUPPORT
OF ADOPTION BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION OF
COMMUNITY OPT OUT FOR WIRELESS SMART METERS

WHEREAS, under California law, local government has a legal duty to defend and protect the health and welfare of community; and 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; and

WHEREAS, elected officials take an oath to defend and protect the Constitution of the United States and the State of California; and,

WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public; and

WHEREAS, the City of Sebastopol will consider at their special meeting of February 21, 2013, an Urgency Ordinance for a Temporary Moratorium on the Installation of Smart meters and Related Equipment within the City of Sebastopol or in, along, across, upon, under and over the public streets and places within the City of Sebastopol; and

WHEREAS, Pacific Gas and Electric Company has installed its wireless Smart Meters radio-frequency system and related wireless data transmission equipment in public rights of way without seeking the advice or consent of local government; and,

WHEREAS, as a result of the deployment of wireless Smart Meters, Pacific Gas and Electric Company will be shedding thousands of meter readers who have provided long years of loyal public safety service to the company and communities they serve as well as providing documented simple inspections (including "smell test" around gas meter for leaks, observation of meter and adjacent breaker/fuse box for obvious heating, checks for observed local illegal bypass of meters) that, reduces the safety of potentially dangerous utility supply to homes; and

WHEREAS, wireless Smart Meters are vulnerable to hacking and intrusion and will make our electrical grid more susceptible to terrorist attack and disruption; and,

WHEREAS, wireless Smart Meters do not provide real time data to customers and require massive amounts of electrical power for data collection, storage, and retrieval; and

WHEREAS, wireless Smart Meters act as data collection devices which make previously private activities inside our homes subject to unauthorized official and criminal surveillance; and,

WHEREAS, an increasing number of peer reviewed scientific studies have identified radio-frequency radiation as a health risk; and,

WHEREAS, a significant amount of Californians have health concerns about the unregulated exposure to radio-frequency radiation emitted by wireless Smart Meters; and,

WHEREAS, there are increasing concerns that some engineers and energy conservation experts believe that the Smart Meters program--in totality--could well actually increase total electricity consumption and therefore increase the carbon footprint which goes against the City of Sebastopol's goal for green house gas reductions; and

WHEREAS, under California Public Utilities Code section 453(b), it is unlawful to levy a fee upon utility customers based on a health condition; and,

WHEREAS, unless further deployment is stayed until the California Public Utilities Commission (CPUC) completes its Phase 2 hearings on community opt-out, PG&E customers will incur unnecessary expense and inconvenience; and,

WHEREAS, Community opt-out will allow local communities to decide whether to maintain analog meters or to agree to the universal deployment of wireless Smart Meters.

NOW, THEREFORE BE IT RESOLVED AND ORDERED that the City of Sebastopol City Council:

- 1) Supports adoption of a community opt-out procedure by the California Public Utilities Commission in A.11-03-014 and consolidated cases; and
- 2) Opposes the imposition of any fees or charges to customers who elect to opt-out as individuals; and
- 3) Opposes the imposition of any fees or charges to communities who elect to opt-out; and
- 4) Supports an interim order by the CPUC staying further deployment of Smart Meters until the Phase 2 hearings are final; and
- 5) Supports a moratorium on Smart Meter deployment until the CPUC has fully investigated Smart Meter health and safety complaints by holding evidentiary hearings.

The foregoing resolution was adopted at a regular meeting of the Sebastopol City Council of City of Sebastopol, County of Sonoma, and State of California, held on the 21st day of February 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Michael Kyes, Mayor

Attest

Mary Gourley, City Clerk

Approved as to Form:

Larry McLaughlin, City Attorney

ORDINANCE NO.

Chapter 8.58

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL CREATING CHAPTER 8.58 ADOPTING MEASURES ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMART METERS AND RELATED EQUIPMENT WITHIN THE CITY OF SEBASTOPOL OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF SEBASTOPOL, AND DECLARING THE URGENCY THEREOF

WHEREAS, the City of Sebastopol has the authority City authority to regulate public utilities within the City of Sebastopol; and

WHEREAS, the City Council has a franchise agreement with Pacific Gas & Electric Company (“PG&E”); and

WHEREAS, Pacific Gas & Electric Company (“PG&E”) is now installing SmartMeters in Central and Northern California and will be installing these meters in the City of Sebastopol in the very near future; and

WHEREAS, the CPUC currently has pending before it a petition from the City and County of San Francisco, and other municipalities, seeking to delay the implementation of Smart Meters; and

WHEREAS, because the potential risks to the health, safety and welfare of Sebastopol residents are so great, the City Council wishes to adopt a moratorium on the installation of SmartMeters and related equipment within the City of Sebastopol City limits; and

WHEREAS, the City 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.

Now, Therefore be it Ordained, that the City Council of the City of Sebastopol, California does enact and ordain as follows:

8.58.010		Title
8.58.020	Section I.	Purpose and Findings
8.58.030	Section II.	Moratorium On the Installation of Smart Meters and Related Equipment
8.58.040	Section III.	Immediate Threat to Health, Safety and Welfare.
8.58.050	Section IV.	Conflicting Laws.
8.58.060	Section V.	Effectiveness
8.58.070	Section VI.	Severability
8.58.080	Section VII.	Publication

8.58.010 Title

This ordinance shall be known as the Temporary Moratorium on the Installation of Smart meters and Related Equipment within the City of Sebastopol or in, along, across, upon, under and over the public streets and places within the City of Sebastopol.

8.58.020 Section I. Purpose and Findings:

A. The City of Sebastopol (the “City”), 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 and as a local government, the City of Sebastopol finds they have a legal duty to defend and protect the health and welfare of this community.

B. In addition, the City retains authority under Article XII, Section 8 of the California 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 City’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 installing Smart Meters in Central and Northern California and is installing these meters in Sebastopol, despite the City’s request for a moratorium and health and safety studies. PG&E has already installed antennae to support the Smart Meter system at several sites within the public rights of way in the City without obtaining

permits from the City as required by the City Code. Further, PG&E 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 Smart Meters, as well as the vulnerability to hacking and intrusion, which will make our electrical grid more susceptible to terrorist attack and disruption, have been raised throughout California, and nationwide leading local and state governmental organizations to call for delays, opt-in programs, or outright bans on the deployment of Smart Meters. The City of Sebastopol also has concerns regarding PG&E’s change in how meters will now be read, effectively reducing the frequency of documented simple inspections (including “smell test” around gas meter for leaks, observation of meter and adjacent breaker/fuse box for obvious heating, checks for observed local illegal bypass of meters) that, reduces the safety of potentially dangerous utility supply to homes. The City requests that all utility metering be physically on-site inspected, by adequately licensed person, every month. A written, certify-able, record should document these inspections.

F. The CPUC currently has pending before it an application evaluating a Smart Meter opt-out program, which includes a community wide opt-out possibility. PG&E’s opt-out proposal will not protect the privacy, health and economic interests that are raised by numerous Sebastopol residents, because the plan (as set forth in CPUC Application A 11-03-014) requires a substantial upfront and ongoing monthly fees, which 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 Smart Meters. 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).

G. Indeed, major problems and deficiencies with Smart Meters in California have been brought to the attention of the Sebastopol City Council, including PG&E’s confirmation that Smart Meters 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. Concerns have also been raised that the new Smart-Meter devices do not appear to have the same operating history information, extensive service history, or public-reviewed proven safety record as the older style analog meters.

H. 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. Smart Meters 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.

I. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in Smart Meters, 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.

J. 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.

K. The primary justification given for the Smart Meter 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 Smart Meter program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint.

L. Because the potential risks to the health, safety and welfare of Sebastopol residents are so great, the Sebastopol City Council wishes to adopt a moratorium on the installation of Smart Meters and related equipment within the Sebastopol City Limits until the California Public Utilities Commission (CPUC) completes its Phase 2 hearings on community opt-out. This moratorium will allow the CPUC petition process to be completed and for additional information to be collected and analyzed regarding potential problems with Smart Meters.

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

N. The City 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.

8.58.030 Section II. Moratorium On the Installation of Smart Meters and Related Equipment.

Moratorium On the Installation of Smart Meters and Related Equipment within the City of Sebastopol or in along, across, upon, under andover the public streets and streets and places within the City of Sebastopol:

1. No Smart Meter may be installed in or on any home, apartment, condominium or business in Sebastopol, and no equipment related to Smart Meters may be installed in, on, under, or above any public street or public right of way in the City until such time as the California Public Utilities Commission (CPUC) completes its Phase 2 hearings on community opt-out, at which time the Sebastopol City Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on Smart Meter privacy, safety, accuracy and health effects.
2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.04.010 of the City Code “Penalties: Except where specifically provided, any person violating any of the provisions of the Municipal Code shall be deemed guilty of an infraction and any person violating the same section or portion of an ordinance on a second or subsequent occasion shall thereafter be deemed guilty of an infraction, and any person violating the same section or portion of an ordinance on a third or subsequent occasion shall thereafter be deemed guilty of a misdemeanor and upon conviction of either an infraction or a misdemeanor shall be punishable as provided by law. Fines shall be set by bail schedule.” In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.
3. The Sebastopol City Manager is hereby authorized to direct all City Departments, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.
4. The City of Sebastopol requires that all further deployment is stayed until the California Public Utilities Commission (CPUC) completes its Phase 2 hearings on community opt-out.

8.58.040 Section III. Immediate Threat to Health, Safety and Welfare.

Based on the findings and conditions set forth and described in Section 1 of this ordinance, the City Council of the City of Sebastopol, finds and determines that (a) there is a current and immediate threat to the public health, safety and welfare; (b) the moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort, convenience and to preserve the public welfare, and (c) it is necessary to preserve the public healthy and safety of all residents or landowners adjacent to such users as are affected by this urgency ordinance as well as to protect all citizens of the City of Sebastopol by preserving and improving the aesthetic and

economic condition of the City. The City Council declares this ordinance is necessary as an urgency measure and is necessary to address existing threats to the public health, peace, property, safety and general welfare of this community and urgency for its adoption are set forth in the findings stated above.

8.58.050 Section IV. Conflicting Laws.

During the continuation of the effectiveness of this ordinance, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provision of the Sebastopol City Code, or any City ordinance, resolution or policy, the provisions of this ordinance shall control.

8.58.060 Section V. 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 City Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

8.58.070 Section VI. Severability

If any provision, section, subsection, sentence, clause, phrase or word of this ordinance or the application thereof to any person or circumstances is for any reason held to be invalid, and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any other provision or application, and to this end the provisions of this chapter are severable.

8.58.080 Section VII. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the City of Sebastopol, to wit: 1. City Hall bulletin board; 2. Sonoma West Times and News; 3. Sebastopol library bulletin board.

The foregoing ordinance was duly adopted on the 21st day of February, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Mayor Michael Kyes

ATTEST: _____
City Clerk Mary Gourley

APPROVED AS TO FORM: _____
City Attorney Larry McLaughlin