

ORDINANCE NO. 3552
AN UNCODIFIED ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
MARIN ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY
MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT
IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER
PLACES WITHIN THE UNINCORPORATED AREA OF MARIN COUNTY

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN FIND AS FOLLOWS:

WHEREAS, the County of Marin (the "County"), 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

WHEREAS, the County of Marin has a franchise agreement with PG&E that has been in effect since the early 1950's; and

WHEREAS, in addition, the County 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;" and

WHEREAS, Public Utilities Code section 2902 reserves the County'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;" and

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the County of Marin; and

WHEREAS, 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 recently had before it a petition from the City and County of San Francisco, and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated; and

WHEREAS, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Board of Supervisors of the County of Marin, 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; and

WHEREAS, 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; and

WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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 timeshifting. 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; and

WHEREAS, Assembly member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the Federal Communications Commission's standards for SmartMeters are sufficiently protective and assess whether additional technology-specific standards are needed for SmartMeters; and

WHEREAS, a response to Assembly member Huffman from the Council on Science and Technology is expected in the near future; and

WHEREAS, Assembly Member Huffman has also recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

WHEREAS, this Board of Supervisors has sent letters to the President of the CPUC on July 20, 2010 and again on October 26, 2010 asking that the CPUC suspend PG&E's authority to deploy SmartMeters or related equipment in Marin County until certain reports now in process have been completed and reviewed and considered, and certain other conditions have been met; and

WHEREAS, there has been no response to either of these letters; and

WHEREAS, because the potential risks to the health, safety and welfare of County residents are so great, the Board of Supervisors wishes to adopt a moratorium on the installation of SmartMeters and related equipment within the unincorporated area of the County of Marin. The moratorium period will allow the Council on Science and Technology and legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters; and

WHEREAS, 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 County without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the County's Code requirements, and subjecting residents of Marin County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

WHEREAS, the Board of Supervisors 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; and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption until December 31, 2011, unless your Board acts to repeal it prior to that date.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Marin as follows:

SECTION I

Moratorium. From and after the effective date of this Ordinance, no SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Marin, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way within the unincorporated area of the County of Marin.

SECTION II

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1.04.270 of the Marin County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

SECTION III

This Board of Supervisors finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) the moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of Marin County by preserving and improving the aesthetic and economic conditions of the County.

SECTION IV

If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the Board of Supervisors that such portions of such ordinance be severable from the remainder and the remainder be given full force and effect.

SECTION V

This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (2) — the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c) (3) — the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION VI

Effective Dates. This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the Board of Supervisors until December 31, 2011, at which time its terms and provisions shall expire and no longer remain in effect.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 4th day of January 2011 by the following vote:

AYES: SUPERVISORS Judy Arnold, Charles McGlashan, Steve Kinsey, Susan Adams
NOES: NONE
ABSENT: SUPERVISOR Harold C. Brown, Jr.



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:



CLERK