



County of Santa Cruz

COUNTY ADMINISTRATIVE OFFICE

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SUSAN MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

January 18, 2012

AGENDA: January 24, 2012

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

SmartMeter Moratorium

Dear Members of the Board:

On December 13, 2011, your Board directed this office to return today with a report on issues associated with the current SmartMeter moratorium ordinance, and information on the possible extension of the moratorium for an additional year. Your Board also directed the Public Health Officer to return with an analysis of the research on the health effects of SmartMeters, and directed County Counsel to return with a report regarding the legality of a public utility refusing service to customers who are willing to pay for service and are willing to have an analog meter.

As your Board is aware, the California Public Utility Commission is considering PG&E's application for modification to PG&E's SmartMeter proposal to include an option for residential customers who do not wish to have a wireless SmartMeter. The item was scheduled on the January 12, 2012 agenda, but the commission anticipates that a vote on the proposal will not happen prior to February 1, 2012.

Moratorium Ordinance

Your Board has heard significant amounts of testimony regarding SmartMeters and concerns about their possible impact on health, questions about their accuracy, their inability to recover real-time data, privacy concerns, and the lack of safety standards for chronic long-term exposure to electromagnetic frequency radiation. In addition, PG&E has not presented studies to support their primary justification that the SmartMeter program will encourage customers to more effectively manage their utilization of electricity.

Given the broad concern about SmartMeter technology and your Board's desire to go on record, this office and County Counsel believe that notwithstanding the enforcement challenges, that it is in the best interest of public health, safety, and welfare for your Board to adopt the attached ordinance (Attachment A) implementing a temporary moratorium on the installation of SmartMeters in or on any home, apartment, condominium or business within the unincorporated area of the County. The purpose of the moratorium is to allow additional time to educate the CPUC about these concerns and allow time for adequate study of the impacts resulting from the SmartMeter technology.

PG&E, asserting that local governments do not have jurisdiction on the installation of the meters, has ignored the previous Santa Cruz County ordinance as well as similar ordinances adopted in other jurisdictions. PG&E believes that only the California Public Utilities Commission (CPUC) has the authority to stop installation of the meters. Elected representatives, including the Board of Supervisors of Marin County, have acknowledged the limits of their ordinances to actually stop the installation of the meters. However, jurisdictions have adopted their ordinances with statements that such ordinances play an important role by informing the CPUC of significant community concerns.

Health Officer Report

The Public Health Officer's report is provided as Attachment B. The report discusses the health risks associated with SmartMeters, the scientific reports and actions the public might take to mitigate potential harm.

PG&E Shutoff Update

At the December 13, 2011, meeting, your Board questioned the PG&E representative about the utility company's decision to shut off power to the homes of residents who removed their SmartMeters. Subsequent to that meeting, PG&E restored power to those residences with the intent of charging them based on past electrical bills.

Petition

At your January 10, 2012 meeting, your Board was presented with a petition to the California Public Utilities Commission regarding PG&E SmartMeter Opt-out Application, (Petition A.11-03-014). The petition provides the opportunity for local elected officials to urge the Commission to continue Petition A.11-03-014 for further public hearings. The petition is provided as Attachment C. It is recommended that your Board direct the Chair to sign the petition on behalf of the Board and submit it to the PUC.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

- (1) Direct the Chair to send a letter to the PUC calling for independent testing and monitoring of SmartMeters in place to determine duty cycles and frequency, especially in the following circumstances
 - Where both gas and electric meters are located closely together
 - Where there is a bank of SmartMeters such as on a multi-family residential building or apartment building
 - Where there is a collector meter on a home that serves the home, plus as many as 5000 other residential units in the area
 - Where a SmartMeter on a home acts as a relay for other local neighborhood meters

- (2) Direct the Chair to send a letter to the PUC and PG&E allowing any Santa Cruz County resident to request removal of a previously installed SmartMeter and the replacement with an analog meter
- (3) Accept and file the report from the Public Health Officer
- (4) Direct the Chair to sign the petition to the California Public Utilities Commission on behalf of the Board urging the Commission to delay consideration of a preliminary decision on PG&E's SmartMeter application until further public hearing and input are completed, and
- (5) Adopt the attached ordinance imposing a temporary moratorium on the installation of SmartMeters within the unincorporated area of Santa Cruz County and direct the Clerk of the Board to place the ordinance on the February 7, 2012 agenda for final consideration.

Very truly yours,



SUSAN A. MAURIELLO
County Administrative Officer
Attachments:

- A. Proposed Ordinance
- B. Report from Public Health Officer
- C. Petition to CPUC

cc: PG&E
California Public Utilities Commission

ORDINANCE NO. _____

**AN UNCODIFIED ORDINANCE OF THE COUNTY OF SANTA CRUZ
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 SANTA
CRUZ COUNTY**

The Board of Supervisors of the County of Santa Cruz find as follows:

WHEREAS, the County of Santa Cruz (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 Santa Cruz has a franchise agreement with PG&E that has been in effect since 1955; 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 Santa Cruz; 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 currently has pending 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 Santa Cruz, 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, 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 human-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 time shifting. 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, this Board of Supervisors sent a letter to the CPUC on September 15, 2010 expressing concern about reports that SmartMeter technology was interfering with the proper functioning of common household devices and requesting a response from the CPUC; and

WHEREAS, there has been no response by the CPUC to the letter sent by the Board of Supervisors; 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 Santa Cruz. 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 Santa Cruz 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, 2012, 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 Santa Cruz 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 Santa Cruz, 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 Santa Cruz.

SECTION II

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.12 of the Santa Cruz County Code. In addition, violations may 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 Santa Cruz 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 are severable from the remainder and the remainder is 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

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED THIS _____ day of _____, 2012, by the Board of Supervisors of the County of Santa Cruz by the following vote:

- AYES: SUPERVISORS
- NOES: SUPERVISORS
- ABSENT: SUPERVISORS
- ABSTAIN: SUPERVISORS

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:



County Counsel



County of Santa Cruz 0257

HEALTH SERVICES AGENCY

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Poki Stewart Namkung, M.D., M.P.H.
Health Officer
Public Health Division

Memorandum

Date: January 13, 2012
 To: Santa Cruz County Board of Supervisors
 From: Poki Stewart Namkung, M.D., M.P.H. *PON*
 Health Officer
 Subject: Health Risks Associated With SmartMeters

Overview

On December 13, 2011, Santa Cruz County Board of Supervisors directed the Public Health Officer to return on January 24, 2012, with an analysis of the research on the health effects of SmartMeters.

Background

In order to analyze the potential health risks associated with SmartMeters, the following questions should be asked:

- 1) What is the SmartMeter system and what is the potential radiation exposure from the system?
- 2) What scientific evidence exists about the potential health risks associated with SmartMeters?
- 3) Are there actions that the public might take to mitigate any potential harm from SmartMeters?

SmartMeters are a new type of electrical meter that will measure consumer energy usage and send the information back to the utility by a wireless signal in the form of pulsed frequencies within the 800 MHz to 2400MHz range, contained in the microwave portion of the electromagnetic spectrum. SmartMeters are considered part of 'smart grid' technology that includes: a) a mesh network or series of pole-mounted wireless antennas at the neighborhood level to collect and transmit wireless information from all SmartMeters in that area back to the utility; b) collector meters, which are a special type of SmartMeter that collects the radiofrequency or microwave radiation signals from many surrounding

