

**COPY****URGENCY ORDINANCE NO. 952**

**AN UNCODIFIED ORDINANCE OF THE CITY OF CAPITOLA  
ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY  
MORATORIUM ON THE INSTALLATION OF PG&E SMARTMETERS AND  
RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND  
OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE  
CITY OF CAPITOLA**

The City Council of the City of Capitola finds as follows:

- A. WHEREAS, the City of Capitola ("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
- B. WHEREAS, the City has a franchise agreement with PG&E that has been in effect since April 18, 1949; and
- C. WHEREAS, in addition, the City 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, as in the judgment of the legislative body are to the public interest;" and
- D. 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, "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
- E. WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the City of Capitola; and
- F. 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; and
- G. WHEREAS, major problems and deficiencies with PG&E SmartMeters in California have been brought to the attention of the City Council of the City of Capitola, including PG&E's confirmation that its SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges. In addition, PG&E records outline "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and
- H. WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private aspects 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

I. 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

J. 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

K. 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

L. 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 could well actually increase total electricity consumption and therefore the carbon footprint; and

M. WHEREAS, Assembly member Jared Huffman has 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

N. WHEREAS, the City Council of the City of Capitola on September 23, 2010 adopted a resolution demanding PG&E halt the installation of SmartMeters and related equipment within the City of Capitola until concerns regarding the accuracy and safety of the SmartMeters is addressed and demanding that PG&E implement mechanisms to allow residents to opt-out and remove SmartMeters from resident's houses who do not want them; and

O. WHEREAS, PG&E has declined to honor the City's request in this regard; and

P. WHEREAS, because the potential risks to the health, safety and welfare of City residents are so great the City Council wishes to adopt a moratorium on the installation of PG&E SmartMeters and related equipment within the City of Capitola. The moratorium period will allow the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with these SmartMeters; and



Q. WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, PG&E SmartMeters or supporting equipment will be installed or constructed or modified in the City and will subject residents of Capitola to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

R. 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. 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

S. 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

T. 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 through December 31, 2011, unless the City Council acts to repeal it prior to that date.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Capitola as follows:

Section 1. Moratorium. From and after the effective date of this Ordinance, no PG&E SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the City of Capitola, and no equipment related to PG&E SmartMeters may be installed in, on, under, or above any public street or public right of way within the City of Capitola.

Section 2. Violations of this moratorium may be charged as infractions or misdemeanors as set forth in Chapter 4.04 of the Capitola Municipal Code. In addition, violations shall be deemed public nuisances, with enforcement and abatement by injunction or any other remedy authorized by law.

Section 3. The City Council finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) this 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 the City of Capitola by preserving and improving the aesthetic and economic conditions of the City.

Section 4. If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portions of such ordinance shall be severable from the remainder and the remainder be given full force and effect.

Section 5. 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 6. Effective Dates. This ordinance shall take effect immediately based on the findings by the City Council 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 City Council through December 31, 2011, at which time its terms and provision shall expire and no longer remain in effect.

This ordinance was passed and adopted on the 10<sup>th</sup> day of February, 2011, as an Urgency Ordinance to be effective immediately, by the following vote:

AYES: Council Members Harlan, Termini, Storey, and Mayor Norton  
NOES: Council Member Nicol  
ABSENT: None  
ABSTAIN: None  
DISQUALIFIED: None

APPROVED:



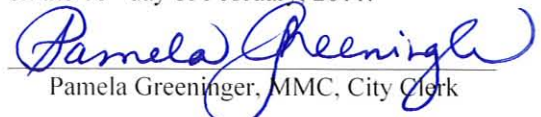
Dennis R. Norton, Mayor

ATTEST:



Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Urgency Ordinance No. 952 passed and adopted by the City Council on the 10<sup>th</sup> day of February, 2011.



Pamela Greeninger, MMC, City Clerk