

**ORDINANCE NO. 4272**

**URGENCY ORDINANCE 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 MENDOCINO COUNTY**

The Board of Supervisors of the County of Mendocino ordains as follows:

Chapter 8.300 of Title 8 is added to the Mendocino County Code to read as follows:

**CHAPTER 8.300**

**SMARTMETER MORATORIUM**

**Section 8.300.010 Purpose and Intent**

It is the purpose and intent of this Chapter to adopt a moratorium on the installation of SmartMeters and related equipment to allow time to analyze additional information regarding the potential risks and effects of SmartMeters to the health, safety and welfare of County residents.

**Section 8.300.020 Findings**

1. The County of Mendocino (hereinafter 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.

2. The County of Mendocino has a franchise agreement with PG&E that has been in effect since 1945.

3. 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."

4. 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."

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##### Section 8.300.020 Findings

1. The County of Mendocino hereinafter 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.
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5. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is preparing to install these meters within the County of Mendocino.

6. 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 City and County of San Francisco has challenged the installation and other municipalities and the cost of moratoriums, and Santa Cruz have issued moratoriums seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.

7. Major problems and deficiencies with SmartMeters in California have been brought to the attention of the Board of Supervisors of the County of Mendocino, 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.

8. 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.

9. 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.

10. 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.

11. 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

12. 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

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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.

14. Assembly Member Jared Huffman 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.

15. 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 Mendocino. The moratorium period will allow legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

16. There is a current and immediate threat to public health, safety and welfare because, without this 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 Mendocino County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

17. 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.

18. 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 urgency moratorium ordinance; and

19. 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 moratorium that would remain in effect from the date of its adoption until it sunsets in accordance with the provisions set forth in Section 8.300.080 unless your Board acts to repeal it prior to that date.

### **Section 8.300.030. 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 Mendocino, 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

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**Section 8.300.040 Violation**

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.04.110 of the Mendocino County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

**Section 8.300.050 Severability**

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

**Section 8.300.060 Compliance With CEQA**

The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

**Section 8.300.070 Effective Date**

The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect immediately.

**Section 8.300.080 Sunset Date**

This ordinance shall sunset within thirty (30) days after both of the following conditions are met:

1. At the time PG&E offers to its customers an alternative to wireless advanced metering infrastructure devices; and
2. Information about the technology and risks associated with the specific model of advanced metering infrastructure device being proposed for installation is provided to customers residing in the unincorporated areas of the County."

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino,

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PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino,

State of California, on this 25<sup>th</sup> day of January, 2011, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Pinches, Smith, and Hamburg  
NOES: None  
ABSENT: None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

*Kendall Smith*

KENDALL SMITH, Chair  
Board of Supervisors

ATTEST: CARMEL J. ANGELO  
Clerk of Said Board

By:   
Deputy

APPROVED AS TO FORM:

JEANINE B. NADEL, County Counsel

By:   
Deputy

I hereby certify that according to the provisions of Government Code sections 25103, delivery of this document has been made.

CARMEL J ANGELO  
Clerk of the Board

By:   
Deputy

State of California, on this 25th day of January, 2011, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Pinches, Smith, and Hamburg

NOES: None

ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted  
and SO ORDERED.

KENDALL SMITH, Chair

Board of Supervisors

ATTEST: CARMEL J. ANGELO

Clerk of Said Board

By: LnM~

Deputy

APPROVED AS TO FORM:

I hereby certify that according to  
the provisions of Government Code  
sections 25103, delivery of this  
document has been made.

JEANINE B. NADEL, County Counsel

CARMEL J ANGELO

Clerk of the Board

By:

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