BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

ORDINANCE NO. 2942

AN ORDINANCE ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMART METERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE UNINCORPORATED AREA OF LAKE COUNTY

WHEREAS, the County of Lake (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 has a franchise agreement with Pacific Gas and Electric ("PG&E") that has been in effect since the 1950s; 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 6023, "...may in such a franchise impose such other and additional terms and conditions not in conflict with this chapter, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest"; and

WHEREAS, California 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, "including matters 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, PG&E is now installing Smart Meters in central and northern California and is installing these meters in the County of Lake; and

WHEREAS, concerns about the impact and accuracy of Smart Meters have been raised nationwide, leading the Maryland Public Service Commission to deny permission of June 21,
2010 for the deployment of Smart Meters in that state. The State of Hawaii Public Utility
Commission also recently declined to adopt a smart grid system in that state. The California
Public Utilities Commission ("CPUC") recently had before it a petition from the City and County
of San Francisco and other municipalities seeking to delay the implementation of Smart Meters
until questions about their accuracy can be evaluated; and

WHEREAS, major problems and deficiencies with Smart Meters in California have been
brought to the attention of the Board of Supervisors of the County of Lake, including the
significant concerns of many County residents as to the potential negative impacts to health and
privacy. Additionally, this Board is aware of PG&E’s confirmation that Smart Meters have
provided incorrect readings costing taxpayers untold thousands of dollars in overcharges and that
PG&E’s records outlined “risks” and “issues” including an ongoing ability to recover real-time
data because of faulty hardware from PG&E vendors; and

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed
information about the private details of daily life. Energy usage data, measured moment by
moment, allows the reconstruction of a household’s activities: when people awake, when they
come home, when they are 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 electric power without adequately protecting that
data from being accessed by unauthorized persons or entities and, as such, these meters pose an
unreasonable intrusion of utility customers’ privacy rights and security interests. The fact the
CPUC has not established safeguards for privacy in its regulatory approvals may violate the
principles set forth by the United States Supreme Court in *Kyllo v. United States* (2001), 533
U.S. 27; and

WHEREAS, there is now evidence showing that problems with Smart Meters 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

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WHEREAS, 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 more man-made EMF to our environment on a continuous basis; and

WHEREAS, Federal Communications Commission ("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 Smart Meters 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 the, 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 Smart Meter program could, in totality, actually increase total energy 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 FCC’s standards for Smart Meters are sufficiently protective and to assess whether additional technology-specific standards are needed for Smart Meters; 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 (Assembly Bill 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 Smart Meter

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installed and to allow customers to opt out of wireless Smart Meter installation, including removal of existing Smart Meters when requested by the customer. Most importantly, the legislation would suspend deployment of Smart Meters until the CPUC meets the above requirements; 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 Smart Meters and related equipment within the unincorporated area of the County of Lake. The moratorium period will allow the Council on Science and Technology and the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with Smart Meters; and

WHEREAS, 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 County without PG&E’s compliance with the CPUC process for consultation with the local jurisdiction, the County’s Code requirements, and will subject residents of Lake County to the privacy, security, health, accuracy, and consumer fraud risks of this unproven Smart Meter technology; and

WHEREAS, the Board of Supervisors hereby finds that it can 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 the 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 Smart Meter technology and it is, therefore, appropriate to adopt a temporary moratorium which would remain in effect from the date of adoption until December 31, 2011, unless your Board acts to repeal it prior to that date.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF LAKE, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1: Moratorium. From and after the effective date of this Ordinance, no Smart Meter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Lake and no equipment related to Smart Meters may be installed in, on, under, or above any public street or public right-of-way within the unincorporated area of the County of Lake.

Section 2: Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1.04.160 of the Lake County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

Section 3: 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 was well as to protect all citizens of Lake County by preserving and improving the aesthetic and economic conditions of the County.

Section 4: All ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict and no further.

Section 5: This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) in that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) in

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that 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 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 and which time its terms and provisions shall expire and no longer remain in effect.

The foregoing ordinance was passed and adopted by the Lake County Board of Supervisors on March 8, 2011.

AYES: Supervisors Smith, Farrington, Brown and Comstock

NOES: None

ABSENT OR NOT VOTING: Supervisor Rushing Absent

Chair, Board of Supervisors

ATTEST: KELLY F. COX  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

By:  

By: 

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