

RESOLUTION NO. _____ (2011)

**A RESOLUTION OF THE CITY OF LAKEPORT 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 CITY**

WHEREAS, the City has a longstanding franchise agreement with Pacific Gas and Electric (“PG&E”) and;

WHEREAS, 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 6002 “. . . 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, the California 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, “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 SmartMeters in central and northern California and is installing these meters in the City of Lakeport; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission of 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 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 SmartMeters until 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 City Council, including the significant concerns of many City residents as to the potential negative impacts to health and privacy. Additionally, this Council is aware of PG&E’s confirmation that SmartMeters 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. SmartMeters 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 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 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 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 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 SmartMeter 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 SmartMeters are sufficiently protective and to 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 (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 SmartMeter installed and to allow customers to opt-out of wireless SmartMeter installation, including removal of existing SmartMeters when requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

WHEREAS, on March 10, 2011, CPUC President directed PG&E to prepare a proposal that will allow some form of opt-out for customers who object to SmartMeters; and

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 SmartMeters and related equipment within City limits. 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 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 City without PG&E's compliance with the CPUC process for consultation with the local jurisdiction, the City's Code requirements, and will subject residents of the City to the privacy, security, health, accuracy, and consumer fraud risks of this unproven SmartMeter technology; and

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 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 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 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 the City acts to repeal it prior to that date.

NOW THEREFORE, BE IT RESOLVED THAT:

SECTION 1. 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 City of Lakeport and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right-of-way within the City of Lakeport.

SECTION 2. CEQA. The City Council hereby finds and determines, that this ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines Section 15060(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) because it has no potential for resulting in physical change to the environment.

SECTION 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

This resolution was adopted by the City Council of the City of Lakeport at a regular meeting thereof on the 17th day of May, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINING:

SUZANNE LYONS, Mayor

ATTEST:

APPROVED AS TO FORM:

JANEL M. CHAPMAN, City Clerk

STEVEN J. BROOKES, City Attorney