

**SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET**

Creation Date: 1/7/11
Source Code: BDSUP
Agenda Date: 1/11/11
INVENUM: 64719

Resolution(s):

Ordinance(s): 5084

Contract(s):

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Index: --Letter of Supervisors Leopold and Stone, dated January 7, 2011
--Proposed ordinance

Item: 34.1 CONSIDERED adoption of an urgency ordinance imposing a temporary moratorium on the installation of SmartMeters and related equipment in the unincorporated area of Santa Cruz County;
ADOPTED ORDINANCE NO. 5084, as an urgency, 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 until December 31, 2011



County of Santa Cruz

BOARD OF SUPERVISORS

701 OCEAN STREET, SUITE 500, SANTA CRUZ, CA 95060-4069
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JOHN LEOPOLD
FIRST DISTRICT

ELLEN PIRIE
SECOND DISTRICT

NEAL COONERTY
THIRD DISTRICT

GREG CAPUT
FOURTH DISTRICT

MARK W. STONE
FIFTH DISTRICT

APPROVED AND FILED
BOARD OF SUPERVISORS

AGENDA: 1/11/11

DATE: 1/11/11

COUNTY OF SANTA CRUZ

SUSANA MAURIELLO

EX-OFFICIO CLERK OF THE BOARD

BY: *[Signature]*

January 7, 2011

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: PG&E SMARTMETERS

Dear Members of the Board:

At the May 15, 2010, meeting, the Board of Supervisors first addressed the rising public concern about the installation of SmartMeter technology by the Pacific Gas & Electric Company. In response to unanswered questions about health, safety, and accuracy issues, the Board directed the Chairperson to write to the Public Utilities Commission and our State legislators urging that steps be taken to restore public confidence in SmartMeter technology.

At the Board meeting of August 24, 2010, Board members noted the PG&E report that detailed 45,000 errors in the installation of SmartMeters, and cited concerns about faulty signals, overcharging, inadequate installation, and ongoing public concern about possible health issues. The Board considered the possible circumstances for establishing a moratorium on the installation of SmartMeters and directed County Counsel to evaluate existing ordinances in the state and return to the Board with recommendations.

At the September 14, 2010, meeting, the Board considered the report and recommendations of County Counsel and took the following actions:

1. Authorized the Board Chairperson to write to PG&E to request meaningful community meetings at which the public could have their questions addressed;

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2. Authorized the Chairperson to write to the Public Utilities Commission to request a response to reports regarding SmartMeter interference with common household devices; and
3. Adopted an urgency ordinance imposing a moratorium on the installation of SmartMeters in the unincorporated area of the county until December 31, 2010.

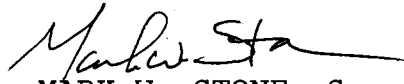
In the intervening months, PG&E has failed to meaningfully address the questions raised by the public about possible health effects and faulty technology. Repeated requests to the Public Utilities Commission and to PG&E have gone unanswered. We believe this apparent indifference to public concern leaves the Board with no alternative but to again adopt an urgency ordinance imposing a moratorium on the installation of SmartMeters in the unincorporated area of the county.

Accordingly, we recommend that the Board consider passing the attached urgency ordinance, by a four-fifths vote, 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 until December 31, 2011.

Sincerely,



JOHN LEOPOLD, Supervisor
First District



MARK W. STONE, Supervisor
Fifth District

JL/MWS:ted
Attachment

cc: County Counsel

1609N5

ORDINANCE NO. 5084

**AN UNCODIFIED ORDINANCE OF THE COUNTY OF SANTA CRUZ
ADOPTED AS AN URGENCY MEASURE 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, 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 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 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; and

WHEREAS, Assembly member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the Federal Communications Commission's standards for SmartMeters are sufficiently protective and 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 (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

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.

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, 2011, 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 shall 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 be severable from the remainder and the remainder be 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 IV

Effective Dates. 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, at which time it's terms and provision shall expire and no longer remain in effect.

PASSED AND ADOPTED THIS 11th day of January, 2011, by the Board of Supervisors of the County of Santa Cruz by the following vote:

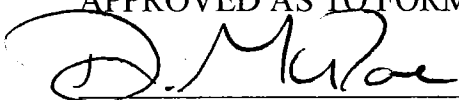
AYES: SUPERVISORS Leopold, Caput, Pirie, Coonerty and Stone
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None
ABSTAIN: SUPERVISORS None

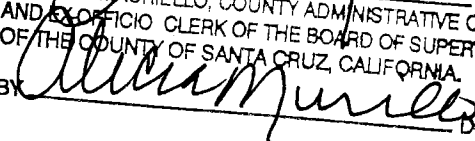
MARK W. STONE

Chairperson of the Board of Supervisors

Attest: **TESS FITZGERALD**
Clerk of the Board

APPROVED AS TO FORM:


County Counsel

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT
IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE
OFFICE ATTEST BY MY HAND AND SEAL THIS 17th DAY
OF January 20 11
SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER
AND EX OFFICIO CLERK OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.
BY  DEPUTY

LIST OF CALLERS REGARDING ITEM 34.1

BOARD AGENDA - 1/11/11

Name: Deborah Salisbury
528 38th Avenue
Santa Cruz, CA 95062

Comment: Extend the Smart Meter moratorium for eternity.

Name: Aurora Soloman
629 Townsend Drive
Aptos, CA 95003

Comment: I support the moratorium on the Smart Meters.

Name: Robby Labovitz
138 Coulson Avenue
Santa Cruz, CA 95060

Comment: Supports Smart Meter ban.

Name: Doris Burke
215 Cayuga
Santa Cruz, CA 95062

Comment: I am against the Smart Meters.

Name: Marcy Cayton
declined to leave address

Comment: Support the ban on Smart Meters.

Name: Sally Cole
"I live in Soquel"

Comment: Extend the moratorium on Smart Meters.

Name: Lisa Leong
451 York Avenue
Santa Cruz, CA 95060

Comment: Please extend the moratorium on Smart Meters.

Name: Dr. Karl Maret
Aptos resident (688-1133)

Comment: There is microwave danger in the computer modeling of the Smart Meter devices. The CPUC should study the health effects, especially on children and the elderly.

Name: Kristin Brownstone
declined to leave address

Comment: Extend the moratorium on Smart Meters

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Name: Tony Kuspa
2630 Portola Drive, Sp. 59
Santa Cruz, CA 95062

Comment: Against Smart Meters.

Name: Phyllis Greenleaf
464-9062

Comment: Support Item 34.1. Keep up the good work!

Name: Dennis Jackson
decline to leave address

Comment: Support the ban on Smart Meters.

Name: Yvonne Zannis
928 Balboa
Capitola, CA 95010

Comment: No to Smart Meters!

Name: Georgia Beardslee
475-2953

Comment: Ban the Smart Meters.

Name: Charlotte Cole
Live Oak resident

Comment: No to Smart Meters.

Name: Lee Ballen
declined to leave address

Comment: Extend the moratorium.

Name: Tom Christ
920 Balboa
Capitola, CA 95010

Comment: Ban Smart Meters.

Name: Leonardo Rimicci
144 Surfside
Santa Cruz, CA 95060

Comment: Extend the moratorium on Smart Meters.

Name: John Carmody
211 Gault Street
Santa Cruz, CA 95062

Comment: Continue moratorium on Smart Meters.

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Name: Armando Zamarripa
P.O. Box 1030
Capitola, CA 95010

Comment: No more Smart Meters!

Name: Janet Atkin
916 Balboa
Capitola, CA 95010

Comment: Stop the Smart Meters, please.

Name: Roberta Bristol
911 Balboa
Capitola, CA 95010

Comment: Extend the moratorium.

Name: Stephany Aguilar
decline to leave address

Comment: Extend the moratorium.

Name: Mary Taubman
923 Balboa
Capitola, CA 95010

Comment: Please stop the Smart Meters.

Name: Bruce Smith
213 Farr
Aptos, CA 95003

Comment: I do not want a Smart Meter on my house.

Name: Elizabeth Stiefelmaier
294 Paradise Park
Santa Cruz, CA 95060

Comment: No more Smart Meters.

Name: Charisse Bower
resident on Emerald Street in Capitola

Comment: Extend the moratorium.

Name: Barri Boone and Charles Stone
decline to leave address

Comment: We don't want Smart Meters installed in Santa Cruz Co.