

ORDINANCE NO. 1262-10 (CM)

AN EMERGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE ESTABLISHING A MORATORIUM OF TWELVE (12) MONTHS ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF WATSONVILLE OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF WATSONVILLE, AND DELCARING THE URGENCY THEREOF

WHEREAS, the City of Watsonville (the "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

WHEREAS, Article XII of the City Charter expressly grants the City authority to regulate public utilities within the City of Watsonville; and

WHEREAS, the Council adopted a franchise agreement with PG&E's predecessor, Coast Counties Gas and Electric Company by Ordinance 435 on or about September 25, 1945; and

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 in character, as in the judgment of the legislative body are to the public interest;" and

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

WHEREAS, Pacific Gas & Electric Company ("PG&E) is now installing SmartMeters in Central and Northern California and will be installing these meters in the City of Watsonville in the very near future; 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 City of Watsonville City Council, 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, 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 man-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, because the potential risks to the health, safety and welfare of Watsonville residents are so great, the City Council wishes to adopt a twelve (12) month moratorium on the installation of SmartMeters and related equipment within the Watsonville City limits. The twelve (12) month period will allow the CPUC petition 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 complying with the CPUC process for consultation with the local jurisdiction, the City's Code requirements, and subjecting residents of Watsonville to the privacy, security, health, accuracy and consumer fraud risks of the 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 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.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. No SmartMeter may be installed in or on any home, apartment, condominium or business in the City of Watsonville, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the City for twelve (12) months from the date of this Ordinance, at which time the Watsonville City Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

Section 2. Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1-2.10 of the Watsonville Municipal Code or otherwise as set forth in Article 1 of Chapter 2 of Title 1 of the Watsonville Municipal Code in the discretion of the City. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

Section 3. The City Manager is hereby authorized on behalf of the City of Watsonville to direct all City Departments, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

Section 4. This City Council finds and determines that: (a) there is a current and immediate threat to the public health, safety and welfare; (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 Watsonville by preserving and improving the aesthetic and economic conditions of the City.

Section 5. Any provision of the Watsonville Municipal Code or other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, is hereby suspended during this interim ordinance.

Section 6. 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 be severable from the remainder and the remainder be given full force and effect.

Section 7. The interim ordinance is declared to be an emergency measure adopted pursuant to the provisions of Section 602 of the Watsonville City Charter and California Government Code Section 65858 and is necessary for preserving the public peace, health, safety, and property, and the general welfare and urgency for its adoption are set forth in the findings above.

Section 8. This interim ordinance shall take effect and be in force immediately upon its adoption and shall remain in effect until August 25, 2011, unless otherwise modified by ordinance; and on August 26, 2011, it shall be of no further force and effect.

Section 9. The City Clerk is hereby directed to cause this interim ordinance to be published once in the official newspaper within fifteen (15) days after its adoption. The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Watsonville, held on the 24th day of August , 2010, by Member Rivas , who moved its introduction and adoption, which motion being duly seconded by Member Martinez , was upon roll call carried and ordinance adopted, ordered printed and published by the following vote:

AYES: COUNCIL MEMBERS: Bersamin, Bilicich, Caput, Martinez, Petersen, Rivas, Alejo

NOES:

ABSENT:

ATTEST:

APPROVED AS TO F P M :

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