

## **Oil & Gas Onshore Support Facilities Model Ordinance**

### ***Introduction***

This model ordinance is intended to be a blueprint for coastal counties and cities who wish to control the development of onshore facilities within their borders that support offshore oil and gas drilling on the Outer Continental Shelf. Onshore support facilities, such as transportation, storage, processing, and waste disposal facilities, can have numerous adverse effects on the health, safety, welfare, and environment of communities. Localities can exercise their police powers to enact ordinances that limit these effects.

This model ordinance seeks to give the people in coastal communities a voice in the process of developing future facilities by requiring voter approval before any legislative changes that would allow new onshore support facilities. The model ordinance is not a ban and does not affect existing onshore support facilities.

The authors chose not to implement a total ban on all future onshore support facility development for several reasons. A total ban would be more susceptible to a facial (versus as applied) challenge, which means it would be more vulnerable to challenge as soon as it was enacted, instead of a challenger having to wait until an actual legislative approval for a project was voted on by the electorate. A ban is also more likely to raise constitutional issues, such as preemption and takings challenges. If a locality wishes to ensure that onshore support facilities will not be developed within its borders notwithstanding the increased legal vulnerability, then this model ordinance can be adapted to be a total prohibition by removing or editing language related to the voter approval mechanism and changing the mechanism in Section 4 (see *Comments on Section 4* for more details).

The Stanford Environmental Law Clinic has also prepared a memo explaining the reasoning behind the design of the model ordinance, and how it complies with relevant federal and California law (e.g., the California Coastal Act, federal preemption doctrine, and dormant commerce clause doctrine).

Throughout the ordinance, comments are provided in text boxes to explain our language choices. Text in [brackets] within the provisions themselves denotes text that needs to be amended/inserted in the final version.

- If the bracketed text is in ALL CAPS, it should be replaced with the appropriate name. (e.g., replace [LEGISLATIVE BODY] with “Board of Supervisors”).
- If the bracketed text is underlined, the appropriate option should be selected out of the choices (e.g., replace [City/County] with “City”).
- If the bracketed text is *italicized*, it needs to be entirely replaced with language matching its description (e.g., replace [*types of crops*] with “lettuce, strawberries, and tomatoes”).

## Oil & Gas Onshore Support Facilities Model Ordinance

WHEREAS, the California coastline within the boundaries of the [City/County] of [LOCALITY] is a precious natural resource which is valuable to the People of this [City/County], the State of California, and the Nation; and

WHEREAS, the [City/County] of [LOCALITY] has authority under the U.S. Constitution, the California Constitution, and State law, through its [LEGISLATIVE BODY], to use its police powers to enact legislative measures regulating land use in the interest of public health, safety, environment, and general welfare; and

➔ [Only include if being adopted through the initiative process: “WHEREAS, the voters of the [City/County] are empowered by the California Constitution and State law to enact such measures by a direct initiative process; and”]

WHEREAS, the [City/County] of [LOCALITY] bases its coastal management decisions on the policies and priorities in the California Coastal Act, and conflicts are resolved in a manner which on balance is the most protective of significant coastal resources; and

WHEREAS, the health, safety, environment, and general welfare of the coastline and community of the [City/County] of [LOCALITY] is currently threatened by proposals for onshore support facilities intended to support development of oil and gas resources located off the coast of the [City/County] of [LOCALITY]; and

WHEREAS, the voters of the [City/County] of [LOCALITY] wish to retain the final authority on whether to allow onshore support facilities for offshore oil and gas development following any legislative approvals granted by the [LEGISLATIVE BODY] or other [City/County] entity.

NOW, THEREFORE, the [City/County] of [LOCALITY] does ordain as follows:

### ***Comment on Preamble***

These clauses will not be codified or compiled but will remain available as part of the legislative history for the ordinance.

This model ordinance was drafted with the intention of it being adopted by the local legislative body. If instead it is adopted through the initiative process, the authors recommend including the indented clause above and seeking the advice of counsel regarding initiative format and substance.

### **Section 1. Purpose.**

The purpose of this ordinance is to protect the [City/County] of [LOCALITY’s] coastline, water, agricultural lands, tourism, air quality, recreation, biodiversity, and quality of life, and to further the [City/County] of [LOCALITY’s] transition to renewable energy. The ordinance does so by ensuring that zoning changes or other legislative acts that allow onshore support facilities will only be allowed if they are approved by the majority of the voters in the [City/County] of [LOCALITY].

***Comment on Section 1***

The purpose section connects the text of the ordinance to its broad policy goals. This section may help when interpreting possible ambiguity in the ordinance but in most cases has no direct legal impact.

**Section 2. Findings.**

It is hereby found and determined as follows:

- (a) This ordinance provides an opportunity for the people of the [City/County] of [LOCALITY] to consider the information in section 2(b)-(e) when deciding whether the development of an onshore support facility is in the best interest of the public health, safety, environment, and general welfare of the [City/County]. This ordinance does not apply to existing facilities or operations that support offshore oil development. This ordinance also does not apply to facilities or operations relating to onshore oil development.
- (b) Onshore support facilities for offshore oil and gas development could substantially adversely affect the many significant coastal resources located within the [City/County] of [LOCALITY]:
  - (1) The [City/County] of [LOCALITY's] coastline is highly scenic. The [City/County] has protected the scenic and visual qualities of its coastal areas by siting development to be visually compatible with the character of surrounding areas and to minimize the alteration of natural land forms; for example, [*example of potential developments that were moved away from the coast, or not given permission to be built on the coast*]. Siting an onshore facility in the [City/County's] coastal zone could disrupt the scenic and visual qualities the [City/County] has worked hard to protect.
  - (2) The [City/County] is home to numerous tourist destinations, including [*examples of tourist destinations*], and relies on tourism as a significant part of its economy. Onshore support facilities could detract from the tourist experience in the [County/City], both visually and by limiting the available coastal areas for tourists to visit.
  - (3) The construction and operation of onshore support facilities in the [City/County] could impede public access to the coastline, and oil spills from onshore support facilities could cut off public access to the beach and ocean for months.
  - (4) There are valuable marine resources in the [City/County] that are required by the California Coastal Act to be maintained and enhanced. These marine resources could be impaired by the construction or operation of onshore support facilities.
  - (5) An onshore facility could disrupt the biological productivity of coastal waters and conditions required to sustain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. Operations from onshore facilities

could also impair any [*wildlife sanctuary/refuge/other protected space, etc.*] created by [City/County].

- (6) The [City/County] is home to large populations of [*type of animal*], [an endangered/threatened species OR a species of special biological and/or economic significance]. A significant portion of [*animal's*] habitat is found along the [City/County's] coastline; new onshore facilities on the coast could destroy that habitat and threaten the existence of the species.
- (7) Acres of environmentally sensitive habitat – [*type(s) of habitat*] – are found along the [City/County] of [LOCALITY's] coastline; building an onshore facility could directly destroy the habitat, as well as indirectly affect its long-term health.
- (8) Much of the [City/County's] coast contains land suitable for agricultural use. The [City/County] maintains significant amounts of prime agricultural land for production of [*types of crops*] and ensures that nonagricultural development does not impair agricultural viability. An onshore support facility could disrupt agricultural viability by using up acres of prime agricultural land, increasing assessment costs, or degrading air and water quality.
- (9) The [City/County] of [LOCALITY's] coast contains coastal commercial timberlands, located in [*locations where coastal commercial timberlands are found*]. Onshore facilities could use up acres of valuable timberlands.
- (10) The [City/County] has large coastal-dependent [*fishing/shellfish/other aquaculture industries*] and has devoted significant space to serving those industries; onshore facilities such as pipelines and tankers located within the coastal zone could take up valuable harbor space and substantially interfere with those industries.
- (11) The [City/County] has devoted significant harbor space to serve recreational boating industries. For example, the [City/County] has constructed public launching facilities and provided additional berthing space in existing harbors to encourage increased recreational boating use of its coastal waters. The [City/County] prioritizes limiting non-water-dependent land uses – such as onshore support facilities – that could congest access corridors and preclude boating support facilities.
- (12) The [City/County's] coast supports [*a type of water-oriented recreational activity*], a water-oriented recreational activity that cannot readily be provided at inland water areas. The [City/County's] residents, as well as tourists who travel to participate, may be deprived of this activity if an onshore support facility is built.
- (13) There are archaeological or paleontological resources as identified by the State Historic Preservation Officer located on the [City/County's] coast: [*examples of specific resources*]. These resources are culturally and historically valuable and could be irreparably harmed if onshore support facilities were constructed in their vicinity.

- (14) The [City/County] existing municipal infrastructure is inadequate to support onshore facilities. For example, State Highway Route 1 services the [City/County]. Per the California Legislature's wishes, the [City/County] has preserved it as a scenic two-lane road, and sections of it are extremely narrow and winding. Additionally, the [City/County] does not have oil spill containment technologies in the event of a pipeline leak; the current [wharf/port structure/space] cannot handle tankers; and [other examples of how City/County's existing municipal infrastructure cannot support onshore facilities].

**Comment on Section 2(b)**

The substance of these findings track Chapter 3 of the Coastal Act (Pub. Res. Code §§ 30200-30265.5), which identifies significant coastal resources. Not all findings will be appropriate for every locality; they should be tailored and modified to reflect a locality's current situation. Other types of coastal resources that would be potentially impacted by onshore facilities and operations within the locality's jurisdiction can also be included. Since localities do not have jurisdiction over offshore oil operations and cannot legislate to try to control offshore facilities, the ordinance and findings should focus on regulating development within their jurisdiction. The purpose of the findings is to demonstrate the rational reasoning behind the ordinance, so the more information about why a particular locality's resources would be damaged by onshore facilities that can be added, the better.

- (c) The [City/County] of [LOCALITY] has unique characteristics that could make it particularly unsuitable for siting onshore support facilities for offshore oil and gas development:
- (1) The [City/County] of [LOCALITY] experiences [*unique weather conditions, e.g., storms*] that may make onshore operations hazardous and too risky.
  - (2) The [City/County] is a seismically hazardous area, meaning it is at a higher risk for earthquakes, which have the potential to rupture pipelines or disrupt other onshore facilities.
  - (3) The coastline of the [City/County] has suffered from high erosion rates; [*example of facility or area that had particularly bad effects from erosion*]. This would put an onshore facility located on the coast at great risk.

**Comment on Section 2(c)**

Not all findings will be appropriate for every locality; they should be tailored and modified to reflect a locality's current situation. Other types of unique characteristics that make a locality particularly unsuitable for onshore facilities should also be included.

- (d) The construction and operation of onshore support facilities could create many hazards and risks threatening the public health, safety, environment, and general welfare of the [City/County] of [LOCALITY]:

- (1) Onshore support facilities can create the risk of spills or leaks, such as the spill experienced on Refugio State Beach in 2015, in which 140,000 gallons of oil spilled and spread over 150 miles of the California coast.<sup>1</sup> The spill led to the closure of miles of beaches and 130 square miles of fishing grounds and killed hundreds of birds, fish, and marine mammals.<sup>2</sup> Oil spills can have numerous adverse effects, including: degradation of sensitive marine environments; contamination of beaches and other recreational areas; reduction in property values; decrease in tourism; long-term impairment of water-dependent industries, such as fishing; and acute human health effects, such as skin and eye irritation, breathing problems, nausea and vomiting, and others.
- (2) Onshore support facilities can emit and transport hazardous and toxic air pollutants, such as:
  - i. Benzene, toluene, ethylbenzene, and xylene. Short-term exposure to these chemicals can cause drowsiness, dizziness, nausea, depression, fatigue, and eye, skin, and respiratory tract irritation; long-term exposure can result in respiratory effects, damage to the central nervous system, kidneys, and liver, and developmental effects (such as birth defects). Benzene is also a known human carcinogen and has been linked to leukemia.<sup>3</sup>
  - ii. Particulate matter (PM). Exposure can result in heart attacks, irregular heartbeats asthma, decreased lung function, increased respiratory symptoms, and premature death in people with heart or lung disease. PM can also stain and damage stone and other materials, including culturally or historically valuable objects such as statues and monuments, as well as harm sensitive ecosystems by contributing to acid rain and nutrient depletion.<sup>4</sup>
  - iii. Hydrogen sulfide (H<sub>2</sub>S). Short-term exposure can result in irritation of the eyes, nose, and throat, headache, dizziness, nausea, vomiting, coughing, difficulty breathing, and permanent damage to the central nervous system.<sup>5</sup>
  - iv. Carbon monoxide (CO). Short-term exposure can result in headache, dizziness, vomiting, nausea, unconsciousness, and death.<sup>6</sup>

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<sup>1</sup> [https://www.environmentaldefensecenter.org/wp-content/uploads/2016/03/NRDA-Guide\\_compressed.pdf](https://www.environmentaldefensecenter.org/wp-content/uploads/2016/03/NRDA-Guide_compressed.pdf)

<sup>2</sup> [https://www.environmentaldefensecenter.org/wp-content/uploads/2016/03/NRDA-Guide\\_compressed.pdf](https://www.environmentaldefensecenter.org/wp-content/uploads/2016/03/NRDA-Guide_compressed.pdf)

<sup>3</sup> <https://www.epa.gov/haps/health-effects-notebook-hazardous-air-pollutants>

<sup>4</sup> <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>

<sup>5</sup> <https://www.osha.gov/SLTC/hydrogensulfide/hazards.html>

<sup>6</sup> <https://www.epa.gov/co-pollution/basic-information-about-carbon-monoxide-co-outdoor-air-pollution>

- v. Nitrogen oxides (NOx) and sulfur oxides (SOx). Short-term exposure can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms such as coughing, wheezing or difficulty breathing. Long-term exposure may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. NOx and SOx also contributes to acid rain, and NOx contributes to nutrient pollution in coastal waters.<sup>7</sup>
- (3) Onshore support facilities are also potential contributors to groundwater and surface water pollution. For example, some facilities use deep-injection wells to dispose of wastewater that may contain oil residuals, chemicals, and other hazardous wastes, which can contaminate aquifers and groundwater.
  - (4) Noisy helicopter traffic and [*other nuisances associated with onshore facilities*] could be significant irritants to the [City/County's] residents.

**Comment on Section 2(d)**

The focus of this section is on the harmful effects that onshore facilities themselves can cause. These are likely consistent across localities, but if not they should be tailored/adopted to a locality's situation. Other negative health, safety, welfare, or environmental effects of pipelines, processing facilities, storage facilities, or waste facilities can also be added. Additionally, if a locality already has one of these types of facilities and has examples of how the facility has adversely impacted its surroundings, that should be included.

- (e) The [City/County] of [LOCALITY] has considered the national energy interest and found that it already significantly supports national energy needs:
  - (1) The [City/County] is [a net exporter of energy/energy-neutral]; [*facts/statistics/data about the type and quantity of energy produced; how LOCALITY exports more or at least does not import more than it exports*].
  - (2) The [City/County] of [LOCALITY] has fully committed to California's prioritization of renewable energy. For example, [*X% of citizens have solar panels; LOCALITY has built a wind farm; many of its buildings are energy-neutral or LEED certified; or other examples of how LOCALITY has contributed to renewable energy development, such as renewable portfolio standards or procurement standards*].

**Comment on Section 2(e)**

This section is intended to ensure the locality remains in compliance with the requirements of the Coastal Zone Management Act, which requires governments to consider the national energy interest when deciding where to site energy facilities. Once again, these findings should be tailored and adopted to the locality.

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<sup>7</sup> <https://www.epa.gov/no2-pollution/basic-information-about-no2>; <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics>

**Section 3. Definitions.**

- (a) For the purposes of this ordinance, the term “onshore support facility” means any new or expanded facilities within the [City/County] of [LOCALITY’s] jurisdiction that support the exploration, development, production, storage, processing, or other activities related to offshore energy resources development. “Onshore support facilities” include but are not limited to:
  - (1) Transportation facilities: Onshore facilities and equipment for the purpose of transporting crude offshore oil and gas to and from processing and storage facilities, including pipelines, pipeline landfalls, pump stations, tankers, rail spurs, and trucking terminals;
  - (2) Storage facilities: Onshore facilities and equipment for the purpose of storing crude offshore oil and gas, including tank farms, or storing chemicals, drilling muds, cuttings, produced waters, and/or other materials used in the course of drilling offshore oil and gas wells, production, or in the processing of crude offshore oil and gas;
  - (3) Processing facilities: Onshore facilities and equipment for the purpose of processing, distilling, converting, treating, blending, purifying, and/or refining crude offshore oil and gas, including refineries, gas plants, treatment tanks, and distillation units;
  - (4) Waste disposal facilities: Onshore facilities and equipment for the purpose of disposing of chemicals, drilling muds, cuttings, produced waters, and other toxic materials generated in the course of drilling offshore oil and gas wells, production, or in the processing of offshore oil and gas products.
- (b) Exceptions. The term “onshore support facilities” does not refer to:
  - a. Transportation, storage, processing, or waste disposal facilities or equipment that are not being used to support offshore oil and gas development.
  - b. Existing facilities that support onshore or offshore oil and gas development.
  - c. Gas stations or power plants.

***Comment on Section 3***

These categories are intended to capture almost all “midstream” and “downstream” components of the oil and gas industry that would be located onshore and have an innate ability to cause harm to their surroundings. It is not intended to capture gas stations or power plants. It is also not intended to capture any facilities or equipment that may match the description (i.e., a storage tank containing chemicals) that are not being used to support offshore oil and gas.

**Section 4. Voter Approval for Onshore Support Facilities.**

Any legislative approvals (e.g., zoning amendment, General Plan amendment, Local Coastal Program amendment, Development Plan, Specific Plan, or other legislative action) authorizing or allowing the development, construction, installation, or expansion of any onshore support facility within the [City/County] of [LOCALITY] shall not be effective unless such authorization is approved by a majority of the voters in [City/County] in a general election.



#### ***Comment on Section 4***

This ordinance can only prevent future zoning changes/expansions or other legislative acts to accommodate onshore facilities. If a locality currently has industrial zoning that could allow onshore facilities, this voter approval mechanism is not triggered and the ordinance will not prevent facilities from being built there.

If a locality currently allows these types of facilities in the coastal zone and would like to prohibit them, the authors recommend seeking advice of counsel. For example, it may be necessary to add a provision at the beginning of Section 4 that amends the General Plan/Zoning Plan/Local Coastal Program/etc. to accomplish that (e.g., removing energy facilities from the list of approved uses in industrial zoning, re-zoning an area from heavy to light industrial use, etc.). The locality should use whatever procedure and language it usually would to accomplish this.

If a locality would like to adopt a total ban on the development of onshore support facilities within its borders, instead of the voter approval mechanism, this section should include a provision like the following: “The development, construction, installation, or expansion of any onshore support facility within the [City/County] of [LOCALITY] is hereby prohibited.”

Localities should note that both the provision to prevent existing industrial zoning from being used to build onshore facilities and the total ban may make the ordinance more vulnerable to a facial constitutional challenge. Each locality should weigh the risks and benefits of adopting one of these provisions.

In accordance with California case law, this ordinance intentionally does not apply the voter approval mechanism to the granting of a permit or license (or any other non-legislative action) to construct an onshore support facility.

The authors recommend seeking advice of counsel to determine which planning document will need to be amended to implement Section 4.

#### **Section 5. Exemptions for Certain Projects.**

- (a) Nothing in this ordinance shall apply to prohibit any person or entity from exercising a vested right, obtained pursuant to State or local law, as of the effective date of this ordinance.
- (b) The provisions of this ordinance shall not be applicable to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California.

#### ***Comment on Section 5***

The purpose of this section is avoiding infringing on valid existing rights or vested rights so as to avoid takings challenges. This ordinance is not intended to apply to onshore support facilities that have already been constructed or are in the process of being constructed.

If a locality has existing industrial zoning that would allow for the development of an onshore support facility without any zoning changes and has chosen to take the initial step of amending the zoning plan to prevent that from happening in section 4, the authors recommend considering including an additional clause in this section that explicitly grandfathers in existing uses in the areas being rezoned. Additionally, localities should follow their typical procedure for handling non-conforming uses.

**Section 6. Compatibility with State and Federal Law.**

This ordinance is intended to apply only to those legislative acts which may be validly exercised by the [LOCAL LEGISLATIVE BODY] in connection with the amendment or enactment of the [City/County] of [LOCALITY's] General Plan, Local Coastal Program, Development Plan, zoning, Specific Plan, or any other legislative action to provide for the development of onshore support facilities.

**Section 7. Local Government Responsibilities.**

The [LOCAL LEGISLATIVE BODY] shall submit any amendments to the Local Coastal Program by this ordinance that require approval to the California Coastal Commission for certification not later than 60 days after the ordinance becomes effective, in an appropriate manner with necessary supporting documents and information. If the three amendments to the [LOCALITY] [City/County] Local Coastal Program permitted by State law for any given calendar year have already been used in the year in which the ordinance becomes effective, this amendment to the [LOCALITY] [City/County] Local Coastal Program shall be the first amendment submitted to the California Coastal Commission for certification on January 1 of the following year.

***Comment on Section 7***

This section should only be included if the locality has a Local Coastal Program. Localities should alter this section to be in conformity with its general process for getting Local Coastal Program amendments certified by the Coastal Commission.

**Section 8. Severability.**

If any section, sentence, clause, phrase, or part of this ordinance is held unconstitutional or invalid, the remainder of this ordinance shall be given full effect consistent with the intent and purpose of the ordinance.

**Section 9. Modification.**

This ordinance may be amended, repealed, or otherwise modified only by a majority vote of the electorate of the [City/County] of [LOCALITY] in a valid election.

***Comment on Section 9***

This section would not apply if the ordinance is adopted by the Board of Supervisors or City Council.

**Section 10. Effective Date.**

- (a) This ordinance will take effect in accordance with California law.
- (b) The ordinance's amendment to the Local Coastal Program will take effect automatically upon the California Coastal Commission's approval.

***Comment on Section 10***

Section 10(b) should only be included if the locality has a Local Coastal Program. Localities should alter this section to be in conformity with its general process for getting Local Coastal Program amendments certified by the Coastal Commission.