September 2021

Proposed Working Family Ordinance: Staff Impact Report

On July 13, 2021, the County of San Diego's (County) Board of Supervisors (referred to as the Board) considered Agenda Item 21, titled "ESTABLISHING FAIR EMPLOYMENT STANDARDS ON COUNTY CONSTRUCTION PROJECTS AND COUNTY-OWNED LEASED PROPERTY." At that meeting, the Board directed the County's Chief Administrative Officer to return to the Board in 90 days with a draft Working Families Ordinance based on a Draft Ordinance attached to Agenda Item 21, pre-qualification policy, proposed amendments to existing policies, and a report on the estimated impact of implementing the Working Families Ordinance on County construction projects and County-owned leased property.

The Draft Working Families ordinance has three main components:

- **County Construction Projects** – would require construction completed via a County-awarded contract (> $500K) to utilize a skilled and trained workforce, pay the higher of prevailing/minimum/living or similar wage, and provide paid sick leave.
- **Real Estate Agreements** – would require employees and contractors working on or from County-owned property being paid the higher of any wage rate (such as prevailing wage, minimum wage, living wage, or similar local, State or federal wage rates) and to accumulate 56 hours of paid sick leave per year.
- **Exceptions to the Ordinance** – for example, single craft projects of less than $25K (such as tenant improvements) or housing projects where the County received the underlying proposal or entered into an agreement for the project before the effective date of the ordinance.

The County is leading implementation of the draft Working Families Ordinance on County-owned property. Staff reached out to industry associations to begin a comparative analysis of potential impacts where readily available and received no responses from or examples of jurisdictions that have implemented a similar ordinance to use as a benchmark. Staff acknowledges that the potential impacts of and proposed alternative ordinance language for the draft ordinance could be limited, as it is solely based on stakeholder feedback. If the Board desires a more comprehensive regional economic analysis of the draft ordinance, staff recommends hiring a consultant to identify more specific impacts with regards to jobs, small versus large businesses, skilled and trained workforce feasibility, and advancing equity to this workforce.

To provide the Board with an estimate of the potential impacts of implementing the draft ordinance, County staff invited stakeholders from construction projects, lessees of County-owned property and the public, including labor organizations, to participate in virtual forums or provide feedback through written correspondence to be summarized in this report. This report starts with the **Demographic Summary,** which identifies the parties affected by the ordinance. The **Stakeholder Outreach** section explains how information was gathered for this report. The **Impact Summary** section describes stakeholder feedback regarding ordinance implementation and alternative ordinance options to address concerns. Finally, the report includes Exhibits A-1 and A-2 with **Contractor and Lessee Survey Results**, as well as all **Official Communications** received from contractors, lessees, and the public (as of 9 AM September 24, 2021).

Demographic Summary: This section identifies parties affected by the ordinance

The proposed ordinance includes employment standards for two distinct categories **construction projects** and **County-owned property**. Therefore, external stakeholders have been identified as contractors that have been awarded a public works contract greater than $500,000 within the past two years, current lessees on County property, and other interested parties including local cities, chambers of commerce, business and contractor associations, and labor and trade unions. There are 166 contractors who meet the contract threshold.

Total County Revenue Leases: 525
Total Annual Revenue: $17M
DGS: 137 (26%), $3.6M
DPW/Airports: 388 (74%), $13.4M

There are 525 leases on County-owned property that are administered by the Department of General Services (DGS) and Department of Public Works, Airports (DPW/Airports). DPW/Airports has 74% (388) of the leases and DGS has 26% (137). The Department of Parks and Recreation (DPR) has 44% (67) of DGS leases. The largest DGS lease category is Communications 31% (47), such as wireless facilities.

DPW/Airports operates and maintains a system of eight airports in the County at no cost to the General Fund and relies on lease revenues to sustain its daily maintenance operations. Lease revenues account for 95.5% of the total Airport

Enterprise Fund (AEF) non-grant revenues annually. Over 600 businesses operate on leased land at County-owned airports, ranging from small sole proprietorships to organizations with hundreds of employees. These businesses include aeronautical uses as well as non-aeronautical uses, such as commercial and industrial/manufacturing. For example, approximately 50% of the industrial/manufacturing businesses within the municipal limits of the City of El Cajon are on County-owned leased property. DPW/Airports also lease to businesses in the City of Carlsbad and the unincorporated communities of Borrego Springs, Fallbrook, Jacumba, and Ramona.

In addition, other County properties such as the Encinitas Burn Site location, are leased to a car dealership, which may impact lease revenue for the County but also revenue and other economic impacts for the City of Encinitas.

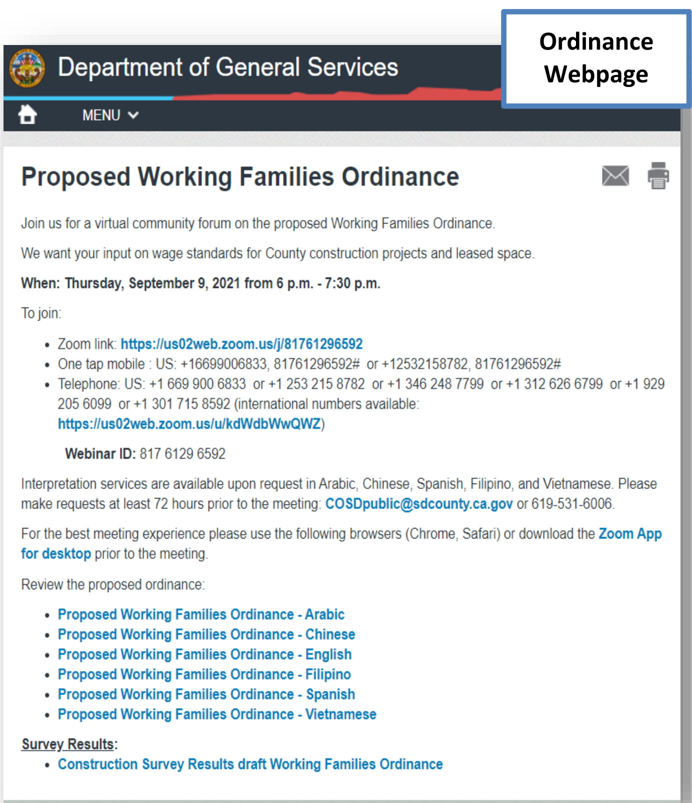
Stakeholder Outreach: Identifies how information was gathered for this report

Internal Outreach

The Office of Equity and Racial Justice, Office of Ethics and Compliance, Office of Strategy and Intergovernmental Affairs, DGS, Purchasing and Contracting, DPR, DPW, Land Use and Environment Group, Public Safety Group, and Health and Human Services Agency collaborated on compiling demographic and fiscal data for contractors/lessees and requesting program-specific impact input from controlling departments with active leases. Input has been received from eight departments and incorporated into this report. This information will inform the October 5th Staff Report to the Board.

External Outreach

Outreach to external stakeholders includes a webpage[1], direct emails, surveys, and four eForums to capture business impacts. Additionally, staff emailed and called more than 500 lessees / sublessees and reached out to over 170 organizations and labor groups for input.



1. *Ordinance Webpage*: DGS established a webpage (see screen grab) for public access of ordinance-specific information, such as the ordinance translated into the five threshold languages, survey results, and eForum meeting access.

2. *Direct Emails*: DPW/Airports and DGS directly emailed all 525 lessees the:
   - ✓ Proposed Ordinance Impact Request (8/9/21)
   - ✓ Roundtable Virtual Meeting Invitation (8/19/21)
   - ✓ Lessee Impact Survey (8/24/21)
   - ✓ Public Forum Meeting Invitation (9/3/21)

   Similarly, e-mail outreach was completed for 166 County construction contractors.

3. *Surveys*: Surveys (Exhibit A-1) were sent to current lessees and recent contractors in August 2021. Survey responses were analyzed by the Chief Data Officer and are reflected in Exhibit A-1. The response rate is not statistically significant.

Lease Survey Notifications: 612
Responses: 54 (9%)

Construction Survey Notifications: 166
Responses: 22 (13%)

4. *Virtual Meetings*: Four eForums were held to inform and obtain input from external stakeholders, including:

- ✓ Lessee Virtual Roundtable Meeting (8/23/21) – approximately 71 attendees

[1] https://www.sandiegocounty.gov/content/sdc/general_services/Real_Estate/Proposed_Ordinance.html

- ✓ Contractor Virtual Roundtable Meeting (8/27/21) – approximately 70 attendees
- ✓ Farm Bureau Board Meeting Briefing (9/2/21) – approximately 50+ attendees
- ✓ Public Forum Virtual Meeting (9/9/21) – approximately 82 attendees

The eForum Zoom meetings were recorded and posted on the ordinance webpage for public viewing. Official communications (Exhibit A-2) are captured in a consolidated comment table for reference. The Office of Equity and Racial Justice actively participated in the preparation for these public meetings.

Impact Summary

To estimate the potential impact of implementing the draft Working Families Ordinance, staff conducted research and outreach with the local public works contractor community, with businesses that have current real property leases, licenses, or other agreements on County-owned property, and with the public, including interested labor organizations and contractor associations. The potential impacts are outlined below and include proposed alternate ordinance language to mitigate raised concerns.

Leases on County-Owned Property

Contracted service providers required to co-locate in County facilities who are paying less than minimum wage, living wage, or prevailing wage would be required to increase the wages paid to employees and provide sick leave to adequately care for themselves and their families according to the draft Working Families Ordinance. In so doing, the County is taking steps to remove obstacles to quality employment opportunities for area residents. There may be a period of turn-over as current lease holders who do not want to adhere to the requirements of the draft ordinance leave and new lease holders move into County space. The net effect would be jobs that meet the intention of the draft ordinance. Seventy percent of lessees indicated that they lease with the County due to location and 30% due to price. To align sick leave accruals with State requirements and change references from sick leave to paid time off, allowing employers more flexibility in implementation, the following draft alternative ordinance language may be considered: *"provide Workers with the paid time off" and that shall accumulate at the rate of one hour for every 30 hours worked, up to a minimum of 48 hours per year."* It is important to mention that this provision would also apply to construction contracts.

The draft ordinance will apply to Government entities, utilities, and other industries paying wages that as a norm exceed minimum wage. For these agencies and public utilities who lease space from the County, such as the FBI or SDG&E, wage requirements will likely be an issue. These entities generally do not have the ability to pay varying wages and benefits to employees in a given class based on location, as a condition of their lease. To address this sector, the following draft alternative ordinance language may be considered: *"to agreements with other government agencies or public utilities."* The impact to public utilities will be studied more closely in the regional economic analysis and impact report, conducted by a consultant, to determine if they should be exempted with government entities.

DGS real estate revenue generates approximately $3.6M annually, which is paid into the General Fund or special funds and informs the annual administration of staff rates. The largest lease category in DGS (31%) is communications, such as wireless facilities. Similarly, the County leases space for the placement of equipment like ATMs or recycling drop-off bins on closed landfill property. If there is a reduction in DGS leases, impacts could range from $360K for a 10% reduction; $720K for a 20% reduction; to $1.8M for a 50% reduction. As no lessees would be occupying these locations, equipment-only lease agreements could be excluded from the draft ordinance. The following draft alternative ordinance language may be considered: *"to leases for the placement of equipment or for other purposes for which no tenant occupancy is involved."* Additionally, potential reductions in revenue will be studied in the economic study.

There is another area of ancillary service contract leases that do not have employees based at leased locations, such as contractors who fuel gas tanks and do occasional on-site maintenance. Staff proposes that the regional economic analysis and impact report study what other service contracts may be impacted to draft an alternative ordinance language that ensures like businesses are not subjected to inequitable costs of business based on their lease status. For example: *"to service contracts ancillary to Lessee Parties' business purposes."*

The meeting and special events industry is an essential economic driver for the San Diego region and brought in 2.7 million visitors and \$3.5B in spending in 2019. According to the San Diego Association of Governments (SANDAG), there have been 77,000 jobs lost in the events industry locally, which is among the worst of any business sector. On April 6, 2021, the Board took a proactive step to facilitate economic recovery for the events industry and approved waiving permit fees for Fiscal Year 2021-2022 from the Department of Environmental Health and Quality, DPR, the Sheriff's Department, and San Diego County Fire. Special events are conducted on County-owned property under a license or a permit that is essentially a license. Annually, DPR receives approximately \$1.2M in revenue from event organizers that contract with the County under a license to host over 50 events (over \$1.1M from Waterfront Park events).

The draft ordinance would apply to licenses and could put an additional burden on the event industry unless an exemption is included in the draft ordinance. A possible option to mitigate includes narrowing the scope of impact to lessees on County-owned land and exempting licensees, concessionaires, and permittees, which would mitigate the impact to most Waterfront Park vendors. The following draft alternative ordinance language may be considered for the special events industry: *"Lessees making use of County-owned property pursuant to a lease, and the sublessees (at any level), of such persons in furtherance of the purposes for which such County property is leased shall;"*.

Event organizers hire many temporary employees (e.g., stagehands, bartenders, cleaning crews) and contractors (e.g., food vendors and party suppliers). Staff proposes that the regional economic analysis and impact report study the effect of the draft ordinance on part-time employees or contractors to mitigate any potential vulnerabilities.

Non-Governmental Organizations (NGOs) perform essential mandated fire suppression and environmental stewardship (e.g., Escondido Creek Conservancy) for the County. Potential loss of grazing lease agreements on County property would impact the ability for the County to perform proper resource management of open space preserves (e.g., Ramona Grasslands, Santa Ysabel, and Boulder Oak Preserves). The draft ordinance could also impact independent contractors that perform recreation classes and programs at County facilities (e.g., fitness, art, health and wellness, sports). Many NGOs operate on County property through grant funds. The potential impact could be the loss of services at these County locations with a direct impact on community enrichment activities unless an exemption is included in the ordinance. Staff proposes that the regional economic analysis and impact report study the number of NGOs affected by this ordinance and how best to determine appropriate thresholds for exemption (e.g. size or operating revenue).

The County owns properties across the region including areas that are considered Disadvantaged Communities as determined by SB535 analysis. The County has worked to ensure its procurement procedures promote the participation of small businesses and Disadvantaged Business Enterprises (DBE) in leasing opportunities and contracts. These entities are provided with an opportunity to grow their businesses and accommodate added expenses after they are more established. If those businesses were to close or move their operations due to higher operating expenses, larger businesses may occupy the premises, and the commitment to DBE and small business may not be the same.

County lessees may invest in tenant improvements to their leased property during the contract term. If they do not renew the lease, the County retains those improvements. County lessees have advised that ordinance implementation, as written, may limit the likelihood of them making future capital investments. In recent years these investments have included more sustainable improvements, such as solar energy, electric vehicle charging stations, and xeriscaping. The following draft alternative ordinance option may be considered to align requirements for lessee construction projects with the thresholds set for County construction projects. The proposed alternative ordinance language would be: *"improvements to County-owned property by Lessee Parties of less than \$1,000,000."*

County lessees have advised that ordinance implementation, as written, may result in businesses being relocated out of urbanized settings to more remote settings and/or to other states or countries. There could be a potential impact to sustainability associated with these actions, including an increase in vehicle miles traveled, as employees and shipping trips move outside of city centers. Additionally, increased environmental impacts outside of the region may occur if businesses relocate to states/countries with less stringent environmental regulatory settings (e.g., agricultural and manufacturing uses being replaced by, or moving to Mexico).

Construction Projects

Design-Build or Construction Manager at Risk contracts represent most County construction expenditures, at $314M over the past two years. The draft ordinance will have minimal to no impact on this community since they are already required to pay prevailing wage on their projects, implement a skilled and trained workforce, and they also participate in a pre-qualification process.

Labor indicated that the draft ordinance would improve the quality of public works projects and protect workers by providing a fair wage for the work performed and paid sick leave.

The draft ordinance would have the greatest impact on Design-Bid-Build (low bid) contracts representing an estimated $130M in the County and an expected total of 30 contracts per year across DPW, DPR, and DGS. The local contractor community stated that the draft ordinance requirement to implement a "skilled and trained workforce" would present a hardship due to the limited availability of trained personnel. This would require apprentices to be enrolled in a state-certified apprenticeship program or to be journey-persons with either a certificate of completion from a certified apprenticeship program or have a record of sufficient hours in their trade. Small construction firms may also not have the administrative staff to support the implementation of skilled-and-trained workforce, possibly limiting their ability to become the prime or subcontractors on County projects. This requirement may result in reduced competition in procurement as fewer firms may not have the ability to respond to County opportunities.

Staff estimate an increased cost of between 3% and 5% ($3.9M - $6.5M) for Design-Bid-Build contracts, plus two additional full time staff positions to implement the draft ordinance. Additionally, the requirement to accrue sick leave up to 56 hours (versus 48 hours currently required by the State of California) may increase project costs by an additional estimated 0.5%-1%, based on the size and complexity of a project (the greater the number of contractor employees and subcontractors, the greater the impact). The following two draft alternative ordinance language options may be considered to align with State Public Contracting Code for the definition of "skilled and trained workforce" and increase the contract threshold to align with regional entities including SANDAG and MTS: *"utilize a skilled and trained workforce in the completion of the project as that term is defined in Public Contract Code section 2601(d);"* and *"construction contracts of less than $1,000,000;"*.

Clarifications

The community virtual roundtables identified a few overarching concerns with the draft Working Families Ordinance that staff believe could be mitigated with clarifying language in the draft alternative ordinance.

- Stakeholders shared that the draft ordinance language regarding prevailing wage was confusing – who it applies to and its limits. The intent is to clarify that the prevailing wage standard applies to contractor's construction projects and construction on leaseholds.
  - Construction contractors currently use prevailing wage standards as defined by the California Department of Industrial Relations (DIR). Prevailing wage only applies to where a DIR job classification exists.
    - The following draft alternative ordinance language may be considered: *"pay employees working on the County-awarded contract, regardless of whether such persons are classified as employees or independent contractors ("Workers"), the higher of (i) prevailing wage rates, if any, set by the California Department of Industrial Relations…"*
  - Staff recommends that the regional economic study and impact report assess an appropriate wage floor for lessee employees, ensuring that alternative forms of lessee employee compensation (e.g. stock options, deferred compensation, bonus pay, etc.) are considered.
- The effective date (e.g., immediately upon adoption by the Board) of the draft ordinance was raised. The draft ordinance will clarify that it is for prospective (e.g., applying to the future) agreements, unless otherwise required by County ordinance or policy.
- There was a concern that the draft ordinance may lead to the County entering Project Labor Agreements (PLAs) for future projects. A claim was made that historically PLAs negatively impact communities underrepresented in the construction trades. Staff communicated that the proposed ordinance does not discuss PLAs or the potential for the County to enter PLAs in the future.

EXHIBIT A-1:

CONSTRUCTION AND LEASE SURVEYS AND SURVEY DATA ANALYSIS

Construction Survey Results and Data Analysis

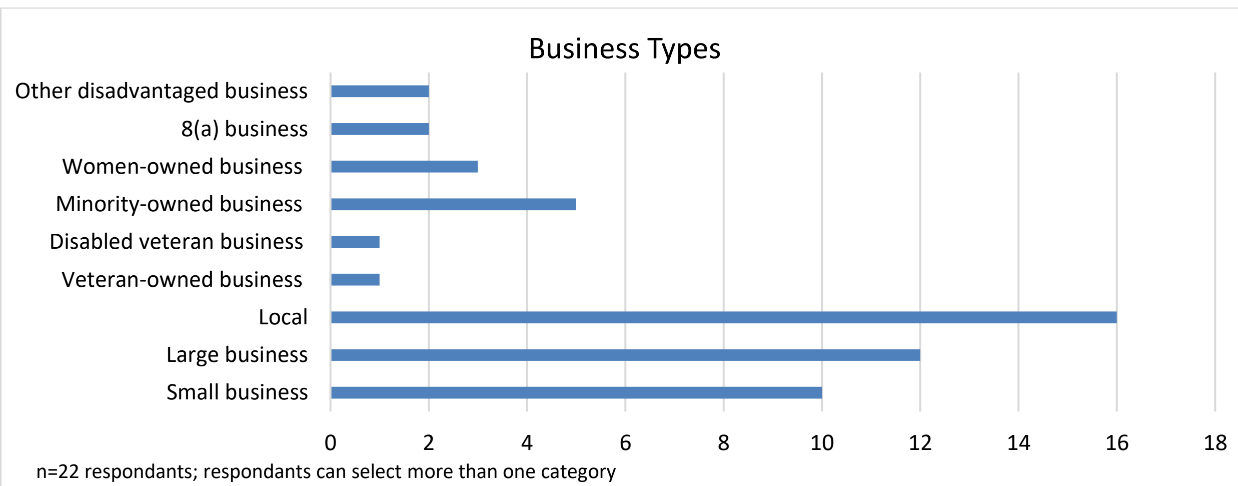
The Department of General Services construction survey was opened to the public on August 20, 2021 and closed on August 27, 2021. It was made available in Arabic, English, Chinese, Spanish, Filipino, and Vietnamese. The following three charts describe the responses to the categorical questions. Out of 166 surveys sent there were 22 (13%) respondents, and all responses were in English.

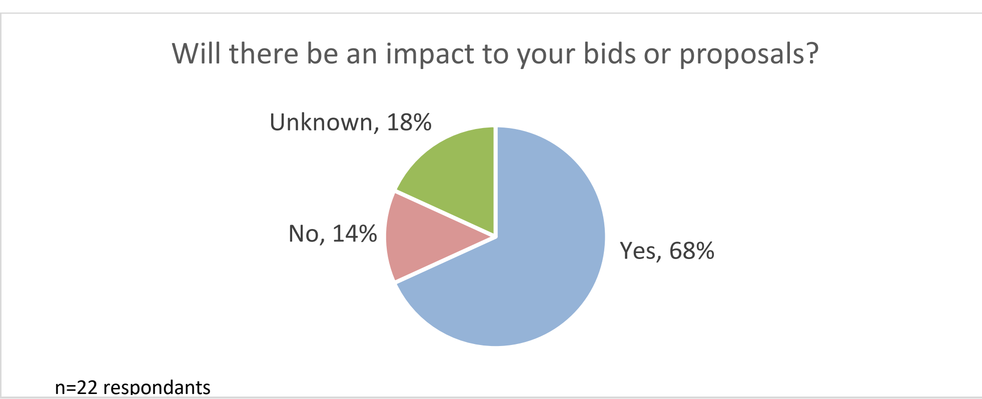
Of the 22 respondents, 16 (73%) represented local businesses that are located within San Diego County, 12 (55%) represented large businesses while 10 (45%) represented small businesses. There were 14 (64%) who represented businesses that are at least 51% minority/disadvantaged owned/operated.

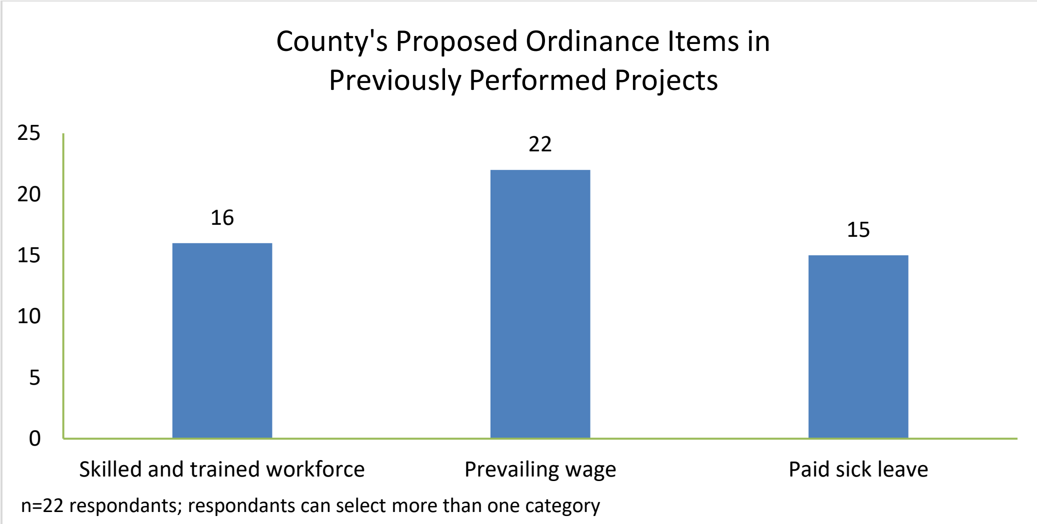
The majority (68%) responded that the Working Families Ordinance will impact their construction bids or proposals. The rest of the respondents replied that it will not impact (14%) or its impact is unknown at this time (18%).

The County's proposed ordinance includes three items of interest. The 22 respondents reported previously performing work on projects that included one or more of these items. These items were skilled and trained workforce (n=16, 73%), prevailing wage (n=22, 100%) and paid sick leave (n=15, 68%).

The following three charts describe the responses to the categorical questions of the Construction Survey.







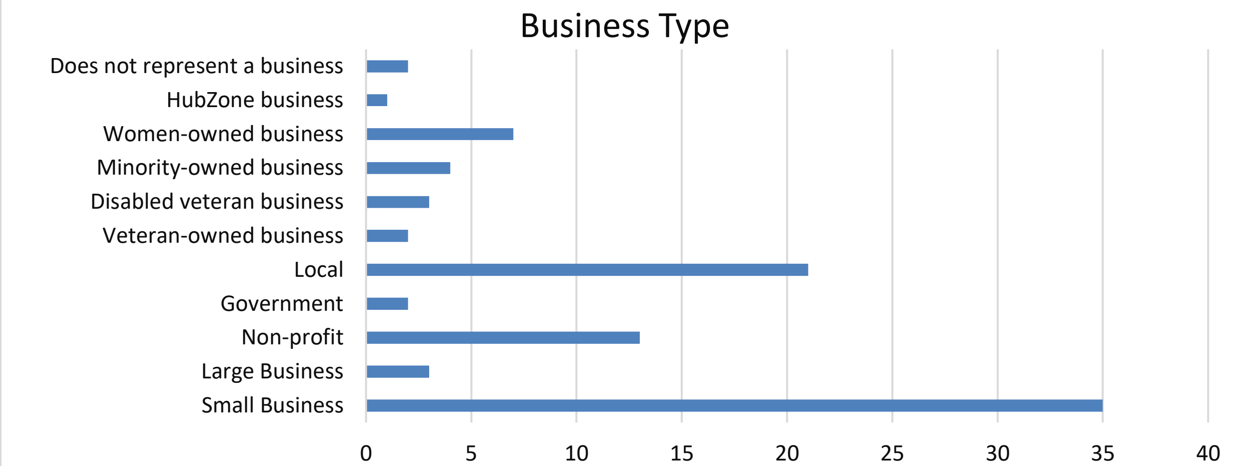
Lease Survey Results and Data Analysis

The Department of General Services Lease Survey was opened on August 24, 2021 and closed on August 31, 2021. It was made available in Arabic, English, Chinese, Spanish, Filipino, and Vietnamese. The survey was sent to people who have businesses on County-owned property. The following three charts describe the responses to the categorical questions. Out of 612 survey sent, there were 54 (9%) respondents, and all responses were in English.

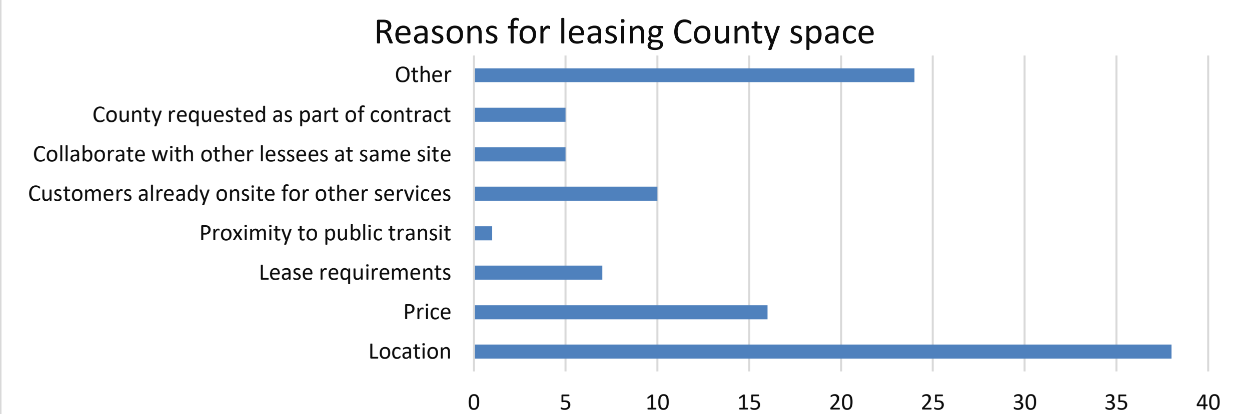
Of the 54 respondents, 21 (39%) represented local businesses that are located within San Diego County. 3 (6%) represented large businesses while 35 (65%) represented small businesses. There were 17 (31%) who represented businesses that are at least 51% minority/disadvantaged owned/operated or are a HubZone. Two (4%) respondents reported not representing a business.

The respondents reported various reasons for leasing County space. These included location (n=38, 70%), price (n=16, 30%), customers/clients are already at the location for other services/businesses (n=10, 19%), lease requirements (n=7, 13%), ability to collaborate with other businesses/organizations/services at same site (n=5, 9%), County requested use of County space as part of a contract for program services (n=5, 9%) and other reasons not already listed (n=24, 44%).

The majority (63%) responded that the Working Families Ordinance will impact their lease on County property. The rest of the respondents replied that it will not impact (9%) or its impact is unknown at this time (28%).



n=54; respondents can select more than one category



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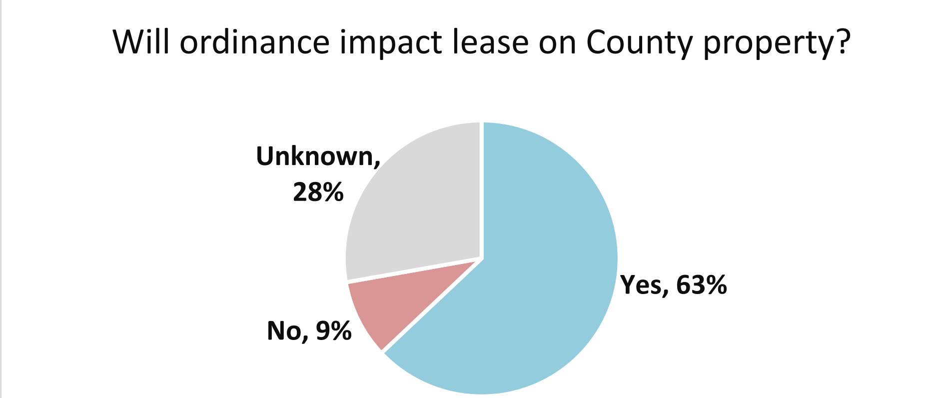

n=54

EXHIBIT A-2:

Official Communication Received

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