

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY, FEBRUARY 08, 2022**

MINUTE ORDER NO. 17

**SUBJECT: NOTICED PUBLIC HEARING:
REGIONAL ECONOMIC ANALYSIS AND IMPACT REPORT ON PROPOSED
WORKING FAMILIES ORDINANCE AND ADOPTION OF ORDINANCE AND
BID PREQUALIFICATION POLICY (DISTRICTS: ALL)**

OVERVIEW

On July 13, 2021 (21), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) return within 90 days with a draft Working Families Ordinance for consideration that will amend the County Administrative Code pertaining to employment on County construction projects and County-owned real property. Additionally, the Board also requested a prequalification policy and proposed amendments to existing policies to require prospective bidders and proposers on public works projects to prequalify prior to submitting a bid or proposal. The Board also directed the CAO to estimate the impact of the implementation of the Working Families Ordinance on County construction projects and County-owned leased property. Lastly, the Board directed the CAO to update relevant contracting and leasing processes and templates for County construction projects and County-owned leased property to implement the Working Families Ordinance.

On October 5, 2021 (24), the Board accepted a staff-developed report summarizing stakeholder feedback regarding potential impacts of the draft Working Families Ordinance and directed the CAO to engage a consultant to develop a regional economic analysis and impact report. The Board also directed the CAO to return in February 2022 with a draft ordinance for the Board's consideration. Additionally, the Board directed the CAO to bring the draft bid prequalification policy for consideration by the Board in February 2022.

Incorporating the data and analysis received from the County consultant (Consultant), DTA, and the information gathered by County staff, the draft Working Families Ordinance was revised to include creation of a threshold for skilled and trained workforce that is consistent with several other Southern California jurisdictions and agencies with similar ordinances. This threshold would require contractors and subcontractors on County construction projects valued over \$1,000,000 to utilize a skilled and trained workforce. The draft Ordinance was also revised to include sick leave for all employees and contractors working on or from County-owned leased property to match State of California law, a clarification about the application of the Ordinance, the establishment of a wage floor requiring employees and contractors working on or from County-owned real property to be paid no less than a certain hourly wage set by the County, and adding exemptions to the Ordinance aligned with jurisdictions across the state. These exemptions include other government agencies or public utilities, employees or contractors providing services ancillary to business purposes and working on County-owned property for an average of fewer than eight hours per week in the prior twelve months, tax exempt organizations under section 501(c)(3) of the Internal Revenue Code, and any firms (parent and subsidiary entities included) with 20 or fewer employees. Additionally, County staff recommend that exemptions be made for those new leases or contracts with a federally certified Disadvantaged Business Enterprise/Airport Concession Disadvantaged Business Enterprises, and when a collective bargaining agreement is in effect.

The proposed revision to the Board of Supervisors Policy F-41: Public Works Construction Projects, modifies the wording from “may” to “shall” relating to the requirement that prospective bidders prequalify for any public works project.

Today’s recommendations are that the Board of Supervisors accept the regional economic analysis and impact report developed by a consultant, select an option related to the Working Families Ordinance, and adopt amendments to Board of Supervisors Policy F-41 to implement a bid prequalification policy.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Accept the attached regional economic analysis and impact report that evaluates the cost impact to County construction projects and employment wage standards for workers on County-owned leased property.

2. Select Option 2a, 2b, or 2c:
 - 2a. Approve the introduction (first reading), read title and waive further reading of the Ordinance:
AN ORDINANCE AMENDING THE COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO EMPLOYMENT ON COUNTY CONSTRUCTION PROJECTS AND PROPERTY AND ESTABLISHING A WAGE FLOOR

OR
 - 2b. Approve the introduction (first reading), read title and waive further reading of the Ordinance:
AN ORDINANCE AMENDING THE COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO EMPLOYMENT ON COUNTY CONSTRUCTION PROJECTS AND PROPERTY

OR
 - 2c. Decline to adopt an ordinance.

3. Adopt the amendments to Board of Supervisors Policy F-41 implementing a bid prequalification policy.

If, on February 8, 2022, the Board takes the action of Recommendation 2a or 2b, then on March 1, 2022:

4. Consider and adopt the Ordinance amending the County Code of Administrative Ordinances (second reading).

EQUITY IMPACT STATEMENT

County staff and Consultant engaged stakeholders during the past five months through community outreach, including inviting stakeholders from construction projects, lessees of County-owned property and the public, including business, industry, and labor organizations, to participate in virtual forums or provide feedback through written correspondence and surveys. In total, staff and the Consultant reached more than 882 businesses and community members. Feedback in recent surveys is consistent with feedback that was reported to the Board on October 5, 2021 (24).

The Consultant's report (Attachment A, County of San Diego Impact of Working Families Ordinance (EAI Report)) details that the net effect of the proposed ordinance will depend on the relative strength of the increase in income for workers residing in San Diego County and higher labor costs impacting business operations and disincentivizing businesses to hire employees. Further information about the potential impact to workers in the region and the business community are detailed in this letter and the EAI Report.

Community input regarding the proposed Ordinance was important as a portion of the businesses on County-owned property are small businesses and in areas that have been considered SB535 Disadvantaged Communities. The burden of increased costs due to implementing a wage floor and increased benefit costs, may cause some businesses to close or relocate off County-owned property. This could result in the unintended consequence of employees being laid off, which could potentially have a disproportionate impact on low income and/or black, indigenous people of color (BIPOC). However, if the businesses were able to pay the wage floor and associated benefits, this could increase the standard of living for those same low income or BIPOC employees meeting the intended purpose of the Ordinance in helping to adequately provide for themselves and families.

In preparing the recommendations before the Board, staff analyzed community input, practices of other municipalities, and the EAI Report to provide options for the Board's consideration related to the implementation of a Working Families Ordinance.

FISCAL IMPACT

Funds for this request are partially included in the Fiscal Year 2021-22 Operational Plan in the Department of General Services (DGS), Department of Public Works (DPW), DPW Airport Enterprise Fund, and the Department of Parks and Recreation (DPR). If approved, this request will result in additional costs to implement as well as projected decreased revenue in the departments as noted below. The County's costs are \$2.0 million in projected revenue losses associated with expiring leases within the first two years of adoption and \$0.4 million to implement the Ordinance; the total ongoing County costs are projected to be \$2.4 million. The County's projected revenue loss of \$2.0 million is a part of the overall negative net economic impact of \$22.6 million as described below in the Business Impact Statement. The projected revenue loss and economic impact are based on the EAI Report, which provides an analysis using certain assumptions; while these assumptions are reasonable, there is inherent uncertainty in forward-looking studies. The actual fiscal impact resulting from actions taken today will be based on actual conditions, which will differ to some degree from the assumptions used in the EAI Report.

The County of San Diego Impact of Working Families Ordinance report (EAI Report) also noted that new personnel and benefit requirements on County construction projects could potentially result in fewer bidders and increased bid prices. The EAI Report was unable, however, to quantify the potential effect.

Department of General Services

If approved, this request may result in projected decreased revenue associated with leases administered by DGS of \$1.8 million. To mitigate these potential losses, DGS will track lease renewal trends on a quarterly basis for two years and propose a strategy to negate actual lease revenue shortfalls; this strategy will include identification of a funding source to replenish actual lost revenue due to adoption of the Ordinance. The funding source for additional costs in future fiscal years will be charges to client departments. There will be no change in net General Fund cost and no additional staff years.

Department of Public Works, Airport Enterprise Fund

If approved, this request may result in projected decreased revenue of \$0.2 million. The DPW Airport Enterprise Fund anticipates being able to absorb this decrease. DPW Airports will track lease renewal trends on a quarterly basis for two years and propose a strategy to negate actual lease revenue shortfalls; this strategy will include identification of a funding source to replenish actual lost revenue due to adoption of the Ordinance. The funding source for the additional costs in future fiscal years will be included, pending identification, in future Operational Plans.

Department of Public Works, Road Fund

If approved, this request may result in Fiscal Year 2022-23 costs of \$121,577 and 1.00 additional staff year to manage and monitor the Skilled and Trained Workforce requirements for the 12 to 18 new construction contracts valued over \$1.0 million that DPW manages annually due to the adoption of the Ordinance. The monitoring of all contract requirements is a key responsibility for the departmental Contracting Officer Representative. The funding source for the additional costs in future fiscal years will be included, pending identification, in future Operational Plans.

Department of Parks and Recreation

If approved, this request may result in Fiscal Year 2022-23 costs of \$121,577 and 1.00 additional staff year to manage and monitor the Skilled and Trained Workforce requirements for the 28 new construction contracts valued over \$1.0 million that DPR manages annually due to the adoption of the Ordinance. The monitoring of all contract requirements is a key responsibility for the departmental Contracting Officer Representative. The funding source for the additional costs in future fiscal years will be included, pending identification, in future Operational Plans.

Overall, there will be no net change in General Fund cost and 2.00 additional staff years in future fiscal years.

BUSINESS IMPACT STATEMENT

The net economic impact described in the Consultant’s report is a negative \$22.6 million by the end of 2022; it is comprised of three major components as outlined in Table 15 of Attachment A and as shown below: 1) revenue lost from expiring leases, 2) wages for employees relocated, and 3) wage increases on County property.

Regional Impact Category	End of 2022
<i>Revenue Lost from Expiring Leases</i>	(\$7.0 million)
<i>Wages for Employees Relocated</i>	(\$21.9 million)
<i>Wage Increases on County Property</i>	\$6.3 million
Net Regional Economic Impact	(\$22.6 million)

It is worthwhile to note that the anticipated revenue lost from expiring leases category includes both a business impact and a County impact. The County impact is noted above in the Fiscal Impact Statement. The business impact is on revenue projected to be received from subleases; the impact to ground lessees (agreements in which a tenant can develop a property during the lease period) and anticipated to be \$5.0 million by the end of 2022. Recognizing that this ordinance may impact the value of County leaseholds, staff will consider any such impacts during rental rate negotiations and renegotiations.

Additional details of the anticipated net regional economic impact, its major components, and its impact on businesses are outlined in Attachment A, the EAI Report. This Report uses certain assumptions that have been deemed reasonable, although there are uncertainties inherent in forward-looking economic analyses. The actual impact to business and the regional economy of today's recommendations, may differ from those in the EAI Report.

17.1 ACTION:

A motion was made by Supervisor Fletcher, seconded by Supervisor Lawson-Remer, to take the following actions:

1. Accept the attached regional economic analysis and impact report that evaluates the cost impact to County construction projects and employment wage standards for workers on County-owned leased property.

2. Select Option 2b:
 - 2b. Approve the introduction (first reading), read title and waive further reading of the Ordinance: AN ORDINANCE AMENDING THE COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO EMPLOYMENT ON COUNTY CONSTRUCTION PROJECTS AND PROPERTY, with the following changes in the proposed Ordinance.
 - i. Replace the first paragraph of section 73.10 with the following:
 - Any contractor and its subcontractors (at any level) performing construction pursuant to a contract valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601), awarded by the County in accordance with the Public Contract Code (collectively, "County Construction Contractors") shall:

 - ii. Add the following as section 73.11(b), and make conforming edits to renumber the remainder of the sections:
 - Utilize a skilled and trained workforce (as that term is defined in Public Contract Code Section 2601(d)) in the completion of any construction project on County-owned property valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601).

And, take action to further consider and adopt the Ordinance on March 1, 2022.

3. Adopt the amendments to Board of Supervisors Policy F-41 implementing a bid prequalification policy.

4. Direct the Chief Administrative Officer to prepare an annual report on the number of County lessees, the revenue generated, with an analysis looking back in the preceding year.

(A substitute motion was introduced.)

17.2 ACTION:

A substitute motion was made by Supervisor Desmond, seconded by Supervisor Anderson, to take the following actions:

1. Accept the attached regional economic analysis and impact report that evaluates the cost impact to County construction projects and employment wage standards for workers on County-owned leased property.

2. Select Option 2b:
 - 2b. Approve the introduction (first reading), read title and waive further reading of the Ordinance: AN ORDINANCE AMENDING THE COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO EMPLOYMENT ON COUNTY CONSTRUCTION PROJECTS AND PROPERTY, with the following changes in the proposed Ordinance.
 - i. Replace the first paragraph of section 73.10 with the following:
 - Any contractor and its subcontractors (at any level) performing construction pursuant to a contract valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601), awarded by the County in accordance with the Public Contract Code (collectively, “County Construction Contractors”) shall:
 - ii. Add the following as section 73.11(b), and make conforming edits to renumber the remainder of the sections:
 - Utilize a skilled and trained workforce (as that term is defined in Public Contract Code Section 2601(d)) in the completion of any construction project on County-owned property valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601).
 - iii. Exclude all airport lands and agriculture on County-owned leased land in the Ordinance.

And, take action to further consider and adopt the Ordinance on March 1, 2022.

3. Adopt the amendments to Board of Supervisors Policy F-41 implementing a bid prequalification policy.
4. Direct the Chief Administrative Officer to prepare an annual report on the number of County lessees, the revenue generated, with an analysis looking back in the preceding year.

AYES: Anderson, Desmond

NOES: Vargas, Lawson-Remer, Fletcher

(Motion failed due to lack of majority vote.)

17.3 ACTION:

Noting for the record that an Errata was submitted; ON MOTION of Supervisor Fletcher, seconded by Supervisor Lawson-Remer, the Board of Supervisors closed the Hearing and took the following actions:

1. Accepted the attached regional economic analysis and impact report that evaluates the cost impact to County construction projects and employment wage standards for workers on County-owned leased property.
2. Selected Option 2b:
 - 2b. Approved the introduction (first reading), read title and waived further reading of the Ordinance: AN ORDINANCE AMENDING THE COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO EMPLOYMENT ON COUNTY CONSTRUCTION PROJECTS AND PROPERTY, with the following changes in the proposed Ordinance.
 - i. Replace the first paragraph of section 73.10 with the following:

- Any contractor and its subcontractors (at any level) performing construction pursuant to a contract valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601), awarded by the County in accordance with the Public Contract Code (collectively, “County Construction Contractors”) shall:
- ii. Add the following as section 73.11(b), and make conforming edits to renumber the remainder of the sections:
 - Utilize a skilled and trained workforce (as that term is defined in Public Contract Code Section 2601(d)) in the completion of any construction project on County-owned property valued over \$1,000,000, or over \$25,000 where all of the work is performed by an apprenticeable occupation (as that term is defined Public Contract Code Section 2601).

And, took action to further consider and adopt the Ordinance on March 1, 2022.

3. Adopted the amendments to Board of Supervisors Policy F-41 implementing a bid prequalification policy.
4. Directed the Chief Administrative Officer to prepare an annual report on the number of County lessees, the revenue generated, with an analysis looking back in the preceding year.

AYES: Vargas, Lawson-Remer, Fletcher

NOES: Anderson, Desmond

State of California) §
County of San Diego)

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter

