

SAN DIEGO

FALL 2020

# dealer



**NCDA MEMBERSHIP:**  
ARE YOU TAKING FULL ADVANTAGE  
OF YOUR BENEFITS?

# FERRUZZO



**Ferruzzo & Ferruzzo, LLP** began providing legal representation to new car and truck dealers nearly four decades ago. Over the course of that time, one of the central goals of the firm has been to remain rooted in our client relationships. With the strength of over 20 attorneys, we provide a spectrum of legal services to support every aspect of running and owning your new car and/or truck dealership. Each member of our team is available to service the needs of you and your dealership.

## Business Transactions

- Buy-Sell Agreements
- DMV, BAR and other governmental approvals
- Lender flooring and capital loan agreements
- Entity formation and structure
- Shareholder Agreements
- Manufacturer approvals and relations
- NMV non-profit association representation

## Estate Planning

- Succession planning for business continuation
- Family estate planning (wills and trusts)

## Tax

- Property tax planning, audits and appeals
- Federal estate and gift tax controversies with IRS
- EDD audits

## Business Litigation

- Consumer Legal Remedies Act lawsuits
- Sales and Service Agreements
- Disputes before the CA New Motor Vehicle Board
- Consumer claims regarding the sale/lease of autos
- Manufacturer audit disputes
- Hearings before the AQMD, RWQC and OSHA

## Real Estate

- Dealership site acquisitions and lease agreements
- Lender opinion letters
- Relocations

## Employment Practices

- Arbitration agreements
- Wage and hour class action lawsuits
- Private Attorneys General Act (PAGA) claims



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- Spill Prevention Control & Countermeasures Plan (SPCC)
- Air Quality Management Audit

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- Safety Inspection & Meetings (IIPP)
- Respiratory Protection Program
- Safety Training
- Online Access to Safety Data Sheets (SDS)

### DOT Required Training for Hazmat Shippers & Receivers

- Training & Certification for Dealership Employees
- Providing a 24 Hour Support Phone Number As Required By DOT

Representation in OSHA/EPA enforcement cases. Periodic Newsletter on emerging EPA/OSHA issues as they impact dealers. See [www.epaoshablog.com](http://www.epaoshablog.com)

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We have Certified Safety Professionals on staff with decades of experience in working with dealers.

## Sam Celly, BChE MChE JD

Certified Safety Professional  
Member OCADA, NCDA, SMCDA, AIHA  
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Email: [sam@cellyservices.com](mailto:sam@cellyservices.com)

# LSL

*"We have a fantastic relationship with the LSL team. They keep our interests top of mind and maintain a positive reputation in the industry."*

-Craig Whetter, President, David Wilson Automotive Group (relationship since 1983)



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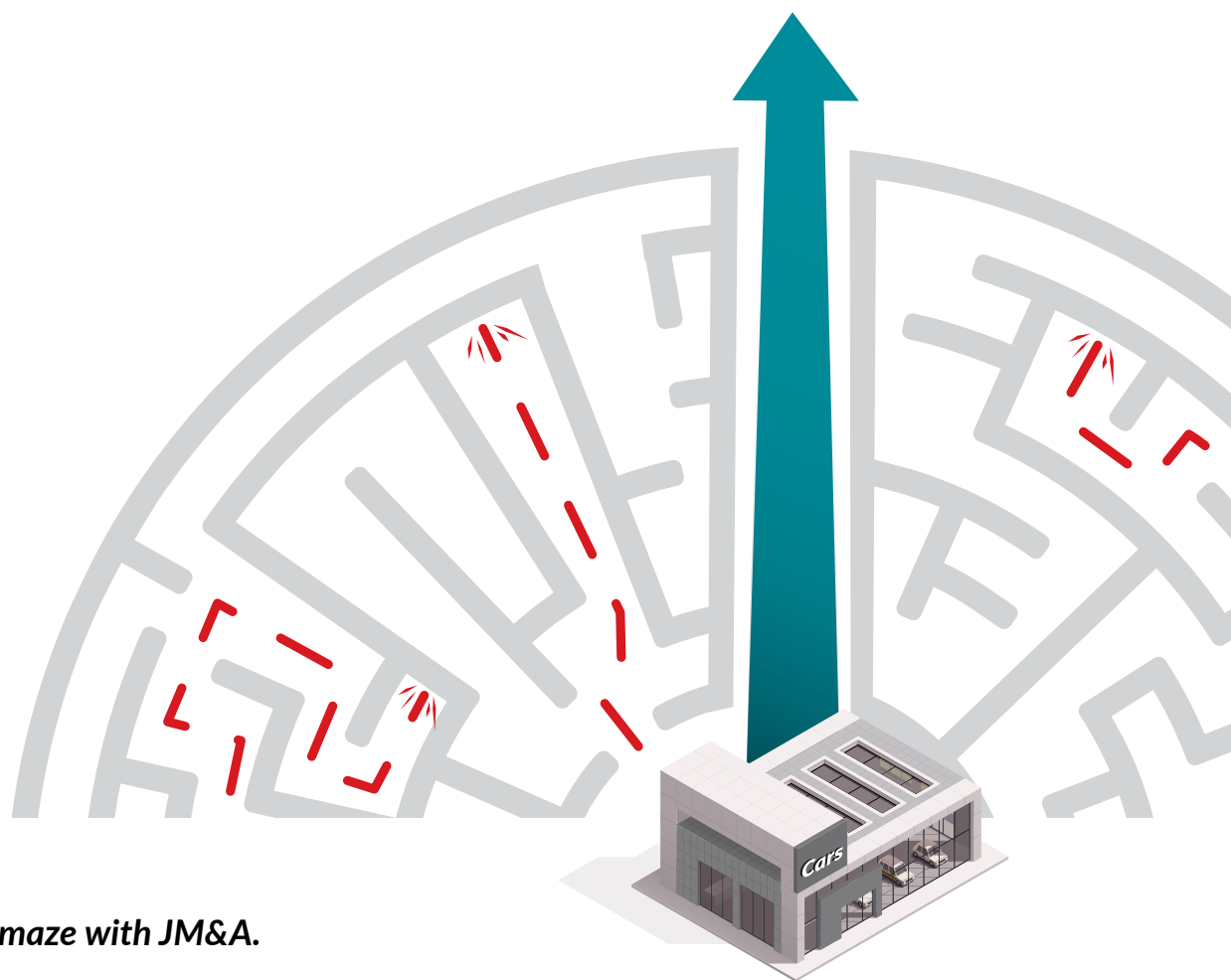
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## CHAIRMAN'S LETTER



**Jasen Powell**

California is eight months into a pandemic that has changed the world as we know it. Tragically, lives have been lost, social unrest has surged, and businesses have been forced to make radical changes to remain operational. The year 2020 will certainly be a year we look back upon as uniquely challenging. Fortunately, we are beginning to see the light at the end of the tunnel as schools restart, and the economy regains traction.


Looking back, I am grateful for the informative updates and actionable guidance provided by our local, state and national dealer associations. It's important to note that membership in the National Auto Dealers Association (NADA) and the California New Car Dealers Association (CNCDA) is provided free of charge for members of the New Car Dealers Association San Diego County (NCDA). As developments unfolded rapidly, dealer members received important directions for health requirements and legal compliance. Enforcing these protocols has been essential for providing a safe and productive environment for everyone in a dealership. If your store still needs guidance, I highly recommend implementing the COVID-19 Member Toolkit available on the CNCDA website.

As your new NCDA Board of Directors Chairman, I want to acknowledge the hard work and dedication of the NCDA staff during this time. For several months, they have monitored daily, city, state and federal press conferences and attended calls with leaders of our state and national associations to discuss local issues. San Diego auto dealers would not have been represented without their attention and may have missed essential updates. On behalf of all NCDA members, we thank you, Dean,

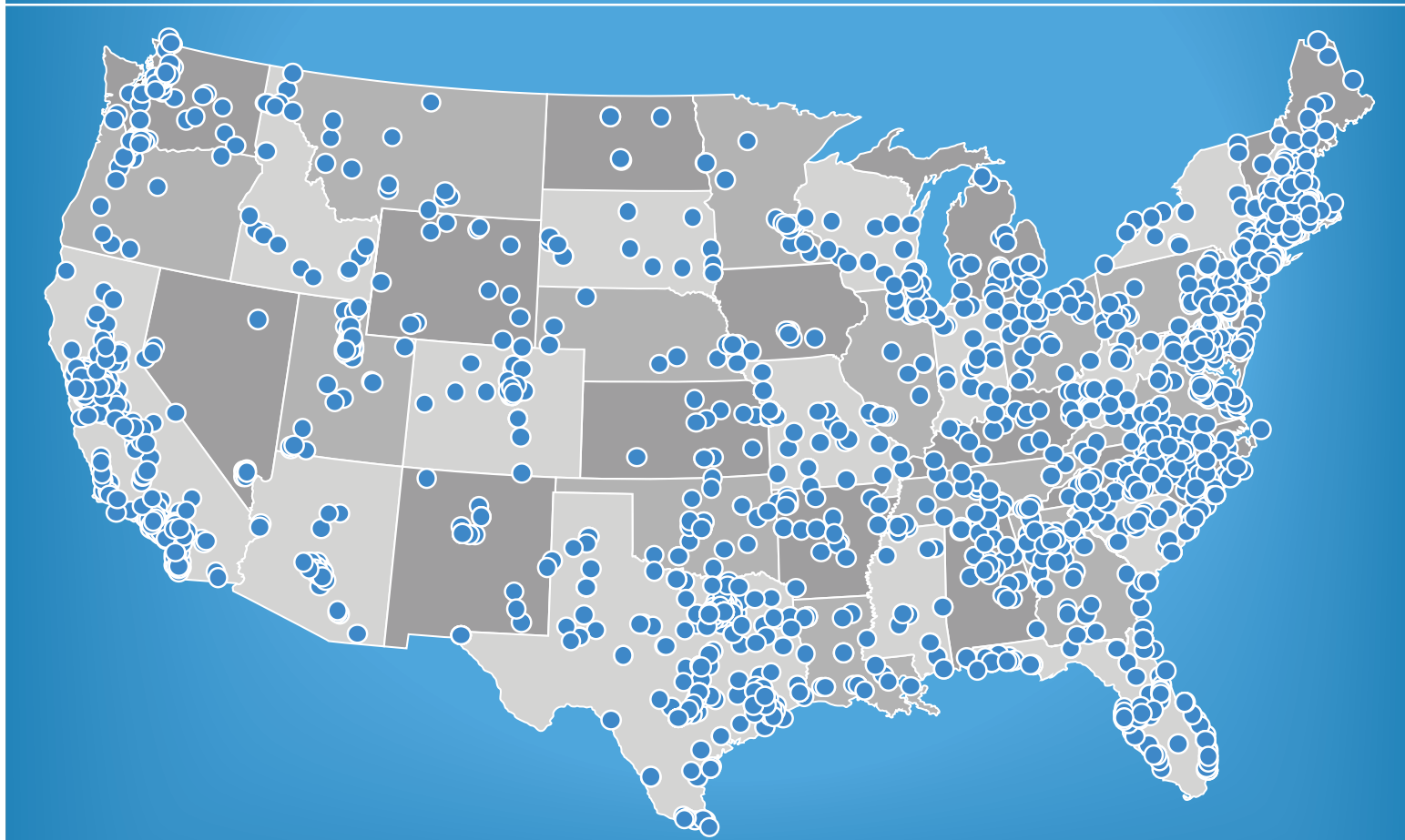
Scott, Diana and Claudia, for your exceptional efforts in the face of limited resources and great uncertainty.

As you'll see throughout this issue of San Diego Dealer, the NCDA continues to provide many other ongoing and valuable benefits for its members. Also, the California Sales Training Academy (CSTA) now offers its free automotive sales training course online for CSTA dealer partners. To become a dealer partner and/or enroll your new sales recruits, just reach out to the NCDA office.

Also of note are NCDA's significant efforts to provide local, state and national legislative representation. This year, NCDA facilitated vital outreach to dealers and state lawmakers that aided the opposition of two high-impact measures. The first was AB-326, a highly flawed consumer protection bill that raised serious franchise-related concerns, but was successfully defeated on the Senate floor. The second was the creation of the Department of Financial Protection and Innovation (DFPI), which would add an additional layer of regulation for California auto dealers. Despite the measure's passage, auto industry attorneys are hopeful that new car dealers will be effectively exempt from DFPI oversight since other agencies already license them. NCDA is committed to taking action in all legislative negotiations affecting new car dealers.

Looking forward, I am excited to work with my fellow board members to help revitalize our economy, strengthen franchise protections and prosper together. I am honored to be of service to my dealer counterparts and welcome your feedback or questions at any time. 

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Dealership Clients Served



**160+**

Dedicated Dealerships Professionals



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Facilities & Factory Matters



Performance



Succession Planning



Risk & Regulatory



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# WE'RE BRINGING THE 2021 SHOW ➡➡➡ TO YOU!

**NADA SHOW 2021 IS GOING VIRTUAL**  
Tuesday-Thursday, February 9-11

All the excitement you love and expect from the NADA Show is coming to you virtually — dynamic speakers, franchise meetings, education sessions, dealer networking and, of course, the NADA Expo, the virtual dealer marketplace where business gets done.

**Registration is now open.**  
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Visit [nadashow.org](https://nadashow.org) to learn more.



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*Translates into real Cost Savings!*

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**vitu**

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We know dealerships have specific needs and issues, we are here to help. Please contact us for a free evaluation of your insurance and HR/compliance packages.

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Leonard Bellavia and Steven Blatt have represented auto dealers across the nation for over 33 years and the firm is regarded as the pre-eminent authority for obtaining retail warranty parts and labor reimbursement in 45 states.

### 2 RESULTS

Bellavia Blatt has successfully handled several thousand retail submissions on behalf of dealers over the past fifteen years. And because of this unmatched experience, our results yield the highest possible increases on warranty parts and labor.

### 3 KNOWLEDGE

We carefully analyze your data, retail repair orders and trends to ensure your warranty reimbursement on both parts and labor is maximized. We know everything there is to know about your state law, as well as your manufacturer's policy and procedure.

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### 5 EARNINGS

Our average dealership client has realized \$20,000 to \$30,000 in additional profits per month. We will show you how to maximize your dealership's blue sky value.

### 6 REPUTATION

Bellavia Blatt is recommended by state dealer associations, CPAs and attorneys nationwide. We are widely regarded as the industry leader when it comes to obtaining retail warranty reimbursement for parts and labor.

### 7 LAW FIRM ADVANTAGE

We offer a low flat fee and never charge a contingency. Our fees are much lower than "consultants" who take a percentage of your increases. As a law firm, we are held to the highest standards and have more resources and options available for favorable outcomes.

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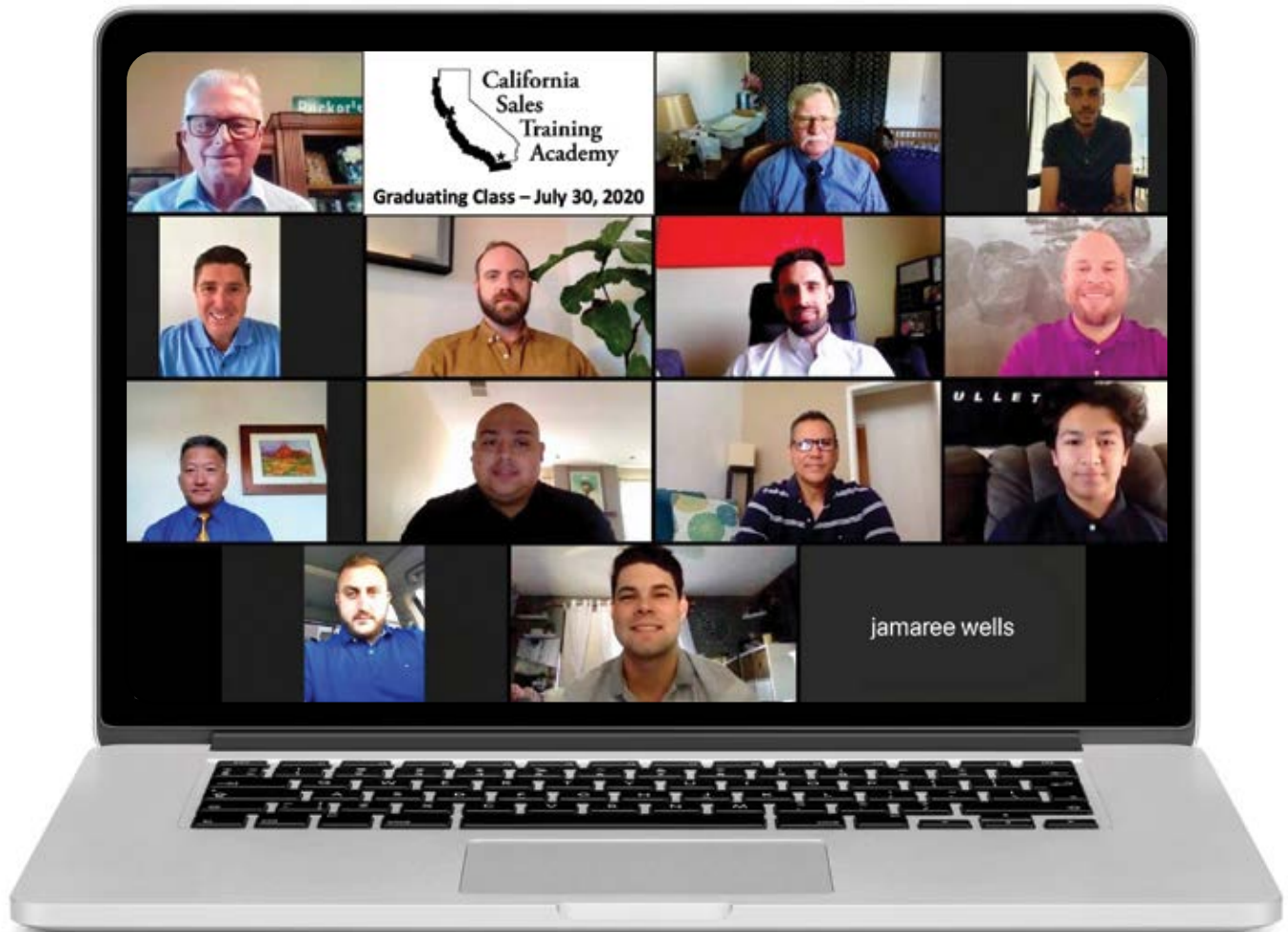
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# California Sales Training Academy Goes Virtual



After halting operations for the first four months of the Coronavirus pandemic, the NCDA's California Sales Training Academy (CSTA) resumed operation in late June, albeit virtually. Now using a modified curriculum optimized for the Zoom platform, the CSTA has graduated dozens of students to meet the growing demand for new salespeople at San Diego County new car dealerships. 🏁







# NCDA MEMBERSHIP:

## ARE YOU TAKING FULL ADVANTAGE OF YOUR BENEFITS?

**B**y definition, associations consist of people or businesses that share common problems, needs and goals. They work together to find solutions, meet those needs, and provide valuable resources to enhance members' success. From time to time, we hear from dealers that they were unaware of some valuable resources available to them as an NCDA member. As such, we thought we'd dedicate an issue of San Diego Dealer Magazine to highlight the breadth of valuable benefits available to dealers so that they can take advantage of all of them.

### MEMBERSHIP IN CNCDA & NADA

By paying for memberships in the National Automobile Dealers Association (NADA) and the California New Car Dealers (CNCDA), the NCDA provides its dealer members with access to critical industry information, regulatory assistance, and training programs and legislative representation at the state and national level. Additionally, it provides opportunities for dealer members to participate in annual events such

as NADA's Annual Convention & Expo and Washington, DC Legislative Conference and CNCDA's Dealer Day. From a financial perspective, dealers save 50% annually by joining the NCDA and receiving free membership in the CNCDA and NADA compared to paying for CNCDA and NADA memberships alone.

### LEGAL & COMPLIANCE RESOURCES

Three valued partner companies provide free legal and compliance consultations over the phone to NCDA dealers. If you have a quick question for Fisher Phillips LLP, Scali Rasmussen and Celly Services, Inc. that can be answered during a single phone call, then the call is free.

### MANAGEMENT/DEALER TRAINING

The NCDA hosts a variety of important training seminars for dealers throughout the year. Whether it's learning about new laws, ensuring

Continued on page 12

# What Our Members Have to Say

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“NCDCA San Diego is a tremendous resource for an auto dealer. They communicate issues that are occurring within the San Diego community that may affect us. NCDCA puts on great seminars for dealers that impact a dealer’s ability to do business. Laws and trends change so fast in our industry and NCDCA helps us keep up with these changes.”

— Ron Fornaca, President, Frank Motors

“The San Diego New [Car] Dealers Association is extraordinary in many ways. It is now one of the most successful metro associations in the country, thanks to Dean’s leadership and outstanding support by the dealer members. The Association owns its own building where it hosts various dealer activities, trains salespeople, conducts seminars and houses an outstanding staff that manages the auto show and enhances our relations with our public officials and media partners, among many other things. The dealer member benefit is substantial and ongoing.”

— John McCallan, Dealer, Kearny Mesa Ford/Kia

“As past chairman and a current board member of the New Car Dealers Association, I am reminded of the powerful resources and benefits the Association provides. From Meeting rooms at our state-of-the-art facility in Sorrento Valley to industry seminars, labor and legal resources and, of course, our world-class San Diego International Auto Show. These are the benefits that keep our dealerships front and center to all the issues that affect our day-to-day business. I encourage you to be proactive in the association.”

— Paul Dyke, President, El Cajon Ford

“I have been the beneficiary of this industry for the past 35 years. It’s groups like the NCDCA that make it possible for mentorship on a broader level to exist. There are dealer groups and educational opportunities and, of course, the ‘united voice’ in the legislative process. An organization like the NCDCA is especially important as it provides a common place for knowledge and support in building a better dealership. It’s the network of relationships that’s invaluable.”

— Richard Newendyke, Sunroad Automotive Group

“We have an organization behind us whose main purpose and focus is to help all of us be better dealers. The relationships are a big benefit because they can impact so much of our day-to-day experience as dealers. We can learn so much from each other — we don’t have to learn from our own mistakes, through membership in NCDCA, we can learn from the success of others.”

— Mark Gruwell, Dealer Principal, Courtesy Chevrolet

”

Continued from page 11

compliance with safety and environmental regulations, or finding new ways to improve employee relations, members learn from NCDCA partners and industry experts.

## CALIFORNIA SALES TRAINING ACADEMY

The NCDCA’s California Sales Training Academy has been graduating top-performing salespeople for nearly 30 years. Not only do CSTA partners have access to new sales recruits enrolled by NCDCA outreach, but they also have the opportunity to send new hires to be trained.

## LEGISLATIVE REPRESENTATION

The NCDCA continuously monitors local, state and national legislation and regulatory activities which may impact new car dealers and their operations. Regular visits are made to Sacramento to discuss pertinent issues with CNCDA staff and coordinate lobbying efforts with state lawmakers. Each year, the NCDCA coordinates dealer meetings in Sacramento

in conjunction with Dealer Day. Face-to-face meetings with legislators are a powerful tool in representing dealers’ interests and viewpoints on pending legislation.

## POLITICAL ACTION COMMITTEE

The NCDCA’s Political Action Committee (PAC) assists state legislative candidates who support business and understand the significant, positive impact dealers have on San Diego County’s economy. The PAC also provides support for ballot measures that may impact dealership operations.

## NETWORKING EVENTS

The NCDCA produces an annual golf tournament each spring and an annual luncheon and meeting where newly elected officers and directors are welcomed. Members get a chance to hear world-class speakers such as Terry Bradshaw, George Will and Lou Holtz.





## MEETING, CONFERENCE & TRAINING SPACE

The NCDCA headquarters in Mira Mesa offers over 20,000 square feet of state-of-the-art meeting space. Conference rooms equipped with the latest audio/visual presentation equipment can accommodate groups ranging from 25-50. The Video Conference Center can seat up to 100 in a classroom-style setting. Dealer Members and their advertising and training groups are encouraged to utilize our facilities free of charge, representing significant financial savings compared to meeting at hotels or similar conference facilities.

## RETIREMENT PROGRAM


Dealer members have access to high-quality 401(k) plans with group pricing based on the strength of the entire NADA Retirement Program administered by Empower Retirement.

## SALES & ECONOMIC IMPACT REPORTS

Each month and quarter, the NCDCA distributes San Diego Auto Outlook, which provides Dealer Members with a comprehensive report on new vehicle registrations by brand, sales trends and projections, and sales of pre-owned vehicles throughout the county.

The annual Economic Impact Report highlights the significant positive monetary impact dealers have on San Diego's economy, including employment, tax revenue, advertising spending, purchasing and other important statistics. Reports are distributed to local, state and federal elected officials as a reminder of the extraordinary contributions NCDCA Dealer Members present to the region's economic health.

## COMMUNICATION TOOLS

The NCDCA keeps dealers informed with an award-winning magazine (San Diego Dealer), email dealer alert and advisories, and targeted social media communication via Facebook and LinkedIn. Consumers can also use the NCDCA website to find a conveniently located dealer, by location or brand. The NCDCA also publishes a Membership Directory annually to facilitate easy communication among dealers and associate members. 

Founded more than 100 years ago, the New Car Dealers Association® San Diego (NCDCA) represents franchised new car and truck dealers throughout San Diego County. The NCDCA provides programs and services that are designed to meet the business needs of its dealer members while providing education and training, events and an international auto show, as well as legislative advocacy on issues affecting the automobile industry to continue growing members' significant economic impact on the San Diego County economy.

Access the QR Code with your phone to learn more about NCDCA's member benefits



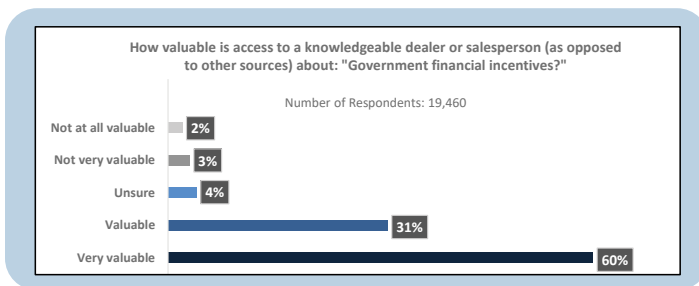
<https://www.ncda.com/member-services/>

# The Clean Vehicle Rebate Project

## Offering Dealerships Resources to Help Sell EVs

The Clean Vehicle Rebate Project (or CVRP) is California's main consumer rebate offering for the purchase or lease of a battery electric vehicle (BEV), plug-in hybrid (PHEV), or fuel cell electric vehicle (FCEV). Not only does the CVRP offer rebates, but we have a whole team dedicated to supporting you, the dealers.

Did you know that 91% of consumers found knowledgeable sales staff valuable in their shopping experience?



To help keep your sales staff up to date on the latest rebates and incentives available, each dealership in California has a dedicated CVRP Dealership Coordinator. We encourage you to utilize them as your go-to resource as our Dealership Outreach Team offers no-cost online information sessions, webinars, marketing materials and other resources to ensure dealership sales staff are equipped to sell EVs and provide EV car shoppers a comprehensive and positive buying experience. CVRP Dealership Coordinators are always available to answer any questions and concerns regarding the program. To get in contact with your representative, visit our contact us page or email us at [dealership@energycenter.org](mailto:dealership@energycenter.org)

CleanVehicleRebate.org is an excellent resource for program info, as well as other incentives and general EV knowledge. Our dealer focused webpage, also known as the Dealer Hub, has a wide array of digital resources and tools to help educate your sales staff and even the customer.

With the wide variety of incentives available, we have our Savings Calculator to help the customer figure out what incentives they qualify for. This is also a great tool for sales staff to utilize while on the sales floor or in the sales process.

A great training resource is the Auto Dealers Guide to EV's. Created in partnership with the CNCDA, this comprehensive guide addresses the benefits of EVs, common questions from consumers, and a whole list of resources to help educate your staff. We highly suggest using it as training material.

Lastly, CVRP offers consumer-facing materials that are perfect for sharing with your potential consumers so they can research further at home. To learn more about the Dealer Hub, please visit: <https://cleanvehiclerebate.org/eng/dealer>

### CVRP Rebate Now — Point of Purchase Pilot Program

To simplify and expedite the process for customers to get into electric vehicles, the Clean Vehicle Rebate Project is offering the Rebate Now pilot program for San Diego county residents and dealerships. This is an opportunity for consumers to be preapproved for a CVRP rebate before purchasing an eligible vehicle and directly applying the rebate as a down payment at the time of lease or purchase. All consumers need to do is apply online and submit all supporting documents.

A few benefits of the Rebate Now program are:

- Expedited rebate processing time
- Incentive money can be applied at the time of purchase
- Your dealership will be placed on a participating dealership list on [Cleanvehiclerebate.org](https://Cleanvehiclerebate.org)
- Your dealership will receive direct ACH payment within 10 business days of approval

To take advantage of the CVRP Rebate Now benefits, dealerships must be enrolled in the Rebate Now program. To begin enrollment, contact Tim Mensalvas ([tim.mensalvas@energycenter.org](mailto:tim.mensalvas@energycenter.org)) or Tanner Allen

#### The Dealer Hub





(tanner.allen@energycenter.org). Once enrollment is complete, our team will host a training session for your dealership providing you with all the tools you may need to navigate EV sales!


We look forward to enrolling your dealership in CVRP Rebate NOW! Thank you for helping us achieve California's goal of having 5 million EVs on the road by 2030.

More information regarding CVRP Rebate Now can be found at [Cleanvehiclerebate.org/rebatenow](http://Cleanvehiclerebate.org/rebatenow).

## CVRP Program Overview

CVRP has frequent updates to funding and program changes, which helps expand EV adoption accessibility to California residents. CVRP current rebate amount and eligibility requirements include:

### CVRP Rebate Amounts



Vehicle Type	Standard Rebate	Increased Rebate
Fuel Cell Electric Vehicle (FCEV)	\$4,500	\$7,000
Battery Electric Vehicle (BEV)	\$2,000	\$4,500
Plug-in Hybrid Electric Vehicle (PHEV)	\$1,000	\$3,500
Zero-Emission Motorcycle	\$750	\$750

### Income Eligibility



Consumers are ineligible for a rebate if their gross annual income exceeds the following thresholds.

- \$150,000 for single filers
- \$204,000 for head-of-household filers
- \$300,000 for joint filers

The caps do not apply to FCEV's.

### Program Eligibility




**Applicants must fulfill the following requirements for eligibility.**

- Must be a California resident.
- **Vehicle must be new** at time of lease or purchase.
- One rebate per person. FCEV's may qualify for second rebate.
- Must apply within three months after purchase.

### Vehicle Eligibility



- Rebates have a cap of \$60,000 base MSRP (except FCEVs).
- Eligible PHEVs must have a minimum all-electric range of 35 miles in compliance with the Urban Dynamometer Driving Schedule (UDDS) test standards.
- Vehicle must be owned, operated and registered in California for a minimum of 30 months.
- Previously registered unwinds, rollbacks and demo vehicles are not eligible. 

### Reach out! We're here to help!

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# HOW SHOULD YOUR BUSINESS HANDLE ANTI-MASK GUESTS?

## A 5-STEP ACTION PLAN



**A**s an increasing number of businesses begin to require face coverings in their facilities — whether as a result of a local legal mandate or in the interest of public safety — there has been a corresponding increase in the number of well-publicized reports of customers and guests reacting in a belligerent, hostile or even violent manner after being asked to comply with mask rules. What should your business do to minimize the chances of such an incident occurring in your workplace, and what should you do if an anti-mask guest disrupts your business? Here is a five-step plan to address this unfortunate part of our new reality.

### Step One: Understand That You Are Permitted to Require Employees and Visitors to Wear Cloth Face Coverings or Masks

While many jurisdictions already require that businesses have their employees and any members of the public who enter their facilities wear masks, you may be wondering whether you can require masks if your jurisdiction does not have such a mandate in place. The answer is simple. As a private business, you can decide whether you allow customers or visitors onto your property if they are not wearing a mask. This is similar to the “no shirt, no shoes, no service” policy that you commonly see at businesses.

The Centers for Disease Control and Prevention (CDC) and World Health Organization (WHO) recommend the use of face masks or cloth face coverings as part of a comprehensive plan to help slow the spread of COVID-19. Face masks should be worn when employees or visitors will interact with other people. They are not the only method, but they are one of the strategies recommended by experts to slow the spread of COVID-19.

CDC guidance provides several exemptions indicating who should not wear masks: “Cloth face coverings should not be placed on young children younger than two years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance.” And although you may have a policy or be subject to a state or local obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Taking a few precautions, as outlined below, will allow you to refuse entry to customers without masks.

### Step Two: Be Proactive With Your Mask Policy

Providing notice to customers, visitors, and guests of your mask requirement prior to their arrival at your business can help reduce confusion and prevent an uncomfortable situation. Personal service providers (such as spas and salons) and hospitality businesses (such as hotels and restaurants) should provide notice of your policy when confirming reservations. A simple message to visitors and guests is best, not only confirming the reservation but highlighting your efforts to keep them and your staff safe by sharing your social distancing and mask requirements. Posting notices on your public-facing website, apps, and social media platforms to notify visitors of your policy is recommended; you can also use emails or texts as additional communication tools.

You should post conspicuous signs in prominent places at your entrances. The notices should include a statement that you have the right to refuse entry or service to anyone not complying with the requirement, particularly where required by local law. Many jurisdictions, in fact, already require such signage.

Consider having a staff member stationed at the entrance to remind guests of your requirement. Many businesses, such as retailers, hotels and restaurants, have taken their policy a step further to offer masks to visitors when they enter. For hotel guests who will be staying for extended periods, have guests sign an acknowledgment of the policy with an agreement to adhere to it. Be specific about consequences — tell guests that they will be asked to put a mask on if they are discovered without one and asked to leave the property if they refuse to comply.

### Step Three: Train Your Staff

Your staff will be more likely to effectively enforce your requirement for masks if they understand why you have the requirement. Train your employees on all health and safety measures you are implementing, including the face mask requirement, and the reasons why you are implementing these measures. You should emphasize that these measures are for their protection as well as the protection of others that they interact with.

Educate your employees about your state and local government requirements, so they understand what is required and what is not. Additionally,



because both OSHA and the CDC have included masks in their respective recommendations and guidance, requiring masks for both employees and visitors could help avoid an OSHA General Duty Citation or similar challenge by local health and safety authorities.

It is also crucial to train your visitor and customer-facing employees on how to politely request them to wear a mask. For example, consider something like, "Our policy is to require all visitors to wear a mask. May I provide one to you?" If the guest refuses, communicate a clear procedure to your employees for how to address this unfortunate situation (Step Five provides suggestions).

#### **Step Four: Reasonably Accommodate Visitors If They Have a Medical Condition**

Visitors may refuse to wear a mask by claiming they have an underlying health condition that prevents them from doing so. Although an individual may have a condition that makes it difficult to wear a mask (e.g., a pulmonary condition), it is highly unlikely the person is carrying a doctor's note to that effect. Further, some state public health orders prohibit you from requiring medical documentation when this type of exemption is claimed. For these reasons, it is best not to require documentation from a visitor to support their request.

Even though you may have a policy or are subject to a state-ordered obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Instead of engaging in discussion with the customer or guest about whether they are exempt from your rule, consider whether you can offer an accommodation that would allow them to either access your business or your products/services. Some examples could include curbside service, online shopping for products, or by letting them know they can enter your business at another time. You could also look into other alternatives that would not inhibit breathing, such as requiring your guests to wear a full, clear face shield.

However, it is important to recognize that accommodation recommendations are based on highly fact-specific analyses that need to take into account the medical condition of the guest, the type of business you are conducting, and any specific state or local laws that present additional requirements (or punish offending businesses with stiff monetary penalties). You will want to coordinate with legal counsel for clarity regarding general or specific situations that may arise at your place of business.

What if a visitor doesn't say they have a medical issue but instead presents a card or literature indicating that masks are unsafe? Social or political objections do not allow customers to refuse to wear masks. However, rather than engage in confrontations, it is best to remind a visitor of your rule and offer alternatives for how to access your business.

#### **Step Five: Delicately Deal With Visitors Who Refuse to Comply**

If you've taken all of the steps above and you still have a visitor who refuses to comply, what do you do? A clear policy and training are key. Share the exact phrase you want your employees to use when dealing with an anti-mask guest, such as, "If you will not wear the mask per our policy, I have been instructed to contact my manager who will need to discuss this with you." If your frontline employee is unable to coax your guests or customers to comply, you should have a designated manager to

---

The manager should inform your visitor that they will be asked to leave if they continue to refuse to comply. If the guest does not cooperate, your manager should escort the individual to the exit and inform them that they are welcome to return if they comply with the policy or when the need for a mask is gone.

---


handle the removal of a visitor. Do not ask or expect a non-management employee to handle the removal of a noncompliant visitor, guest, or customer. Instead, encourage them to immediately involve a manager.

That manager will need guidance on what your business wants to do if a guest or visitor becomes belligerent. The first step in such an unfortunate situation should be for the manager to meet the guest in a private location, share your policy, and, if applicable, the local/state ordinance or any acknowledgment the guest may have signed upon arrival or at the time of reservation.

The manager should inform your visitor that they will be asked to leave if they continue to refuse to comply. If the guest does not cooperate, your manager should escort the individual to the exit and inform them that they are welcome to return if they comply with the policy or when the need for a mask is gone. Where applicable, your manager should offer to reschedule an appointment or reservation.

It is always wise for your manager to avoid raising their voice and to refrain from physical contact. If the situation escalates, your manager should know to call on your own security personnel or local authorities in the same manner you would handle a trespassing situation. Regardless of how the situation concludes, your manager should immediately document the incident in objective, non-emotional terms. They should be instructed to provide the documentation to key personnel (human resources, legal, etc.) as soon as possible, and your business should retain the report in the event you are required to later demonstrate what happened.

#### **Conclusion**

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers. 

# San Diego Auto Outlook

Comprehensive information on the San Diego County new vehicle market



NEW CAR  
DEALERS ASSOCIATION  
SAN DIEGO COUNTY

## FORECAST

### New Vehicle Market Shows Resiliency During Pandemic

2020 has been a year unlike any other for the San Diego County new vehicle market, with several seemingly paradoxical events occurring at the same time. Despite a preponderance of bad economic news, the main factor restricting growth in the new-vehicle market has been tight inventories, not weak demand. The latest evidence: September registrations increased by about 6% versus a year earlier. And even with a 16.5% decline in year-to-date new vehicle sales, dealership profits have, for the most part, held steady. It's unprecedented that these events would take place simultaneously.

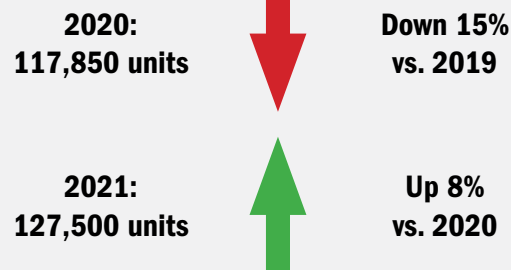
In times such as these, it is challenging to get a clear picture of what lies ahead for the county new-vehicle market. But despite the elevated uncertainty, four identifiable trends that should dictate the course of the new vehicle market over the next year:

- **Pent up demand is growing.** Pent up demand has grown significantly due to the sales slowdown resulting from the pandemic (see page 2). These delayed purchases will occur at some point in the future and boost sales during the next several years.
- **Vehicle affordability will remain strong.** Interest rates are low and the Fed has indicated that they will stay that way for an extended period, which is a key factor in helping to keep monthly lease and finance payments affordable. Incentives have eased during the summer as vehicle supplies have dwindled, but the manufacturers will almost certainly increase discounts once inventories improve. In addition, record-high used vehicle prices have boosted vehicle trade-in values.
- **Robust economic recovery will take a while.** Employment levels and GDP growth have rebounded during the summer, but most economists believe it will take years, not months, for the labor market to return to full employment. Until then, the new vehicle market will be limited to about 85% of its baseline potential.
- **Pandemic will likely fuel increased desire for vehicle ownership.** As discussed in the last issue of Auto Outlook, new vehicle sales will get a boost by changes in consumer behavior brought about by the virus. Vehicle ownership provides freedom, independence, and a sense of personal control that is now front and center in peoples' minds. These benefits are likely to impact consumer behavior, even when COVID-19 fades.

**Bottom line:** There are some encouraging signs pointing to a recovery in the new vehicle market, but until the virus is no longer a factor, significant economic headwinds are likely to prevent sales from taking off. Auto Outlook predicts that 117,850 new vehicles will be registered in the county this year, a 15% decline from 2019. Assuming there is not a major spike in the virus that would lead to the reoccurrence of widespread business closures, the market should move higher next year. However, even with the increase, registrations are predicted to remain below 128,000 units, which is about 11,000 lower than the total in 2019.

#### Key Indicators for County New Vehicle Market

##### Annual Forecasts



##### County Market vs. U.S.

##### Percent change in new retail registrations YTD '20 thru Sept. vs. YTD '19

San Diego County:	U.S. Market:
<b>DOWN 16.5%</b>	<b>DOWN 16.4%</b>

Historical Data Source: AutoCount data from Experian.  
Forecast projections: Auto Outlook.

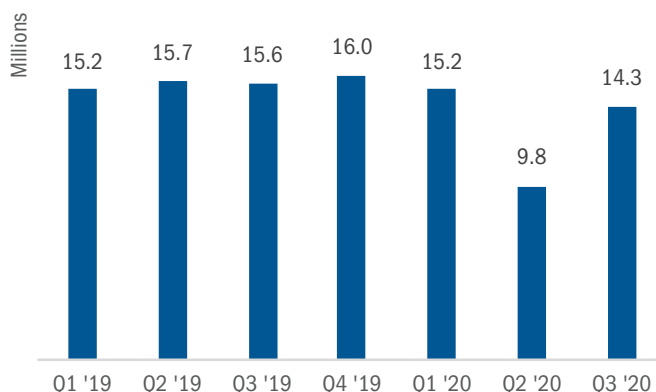


# San Diego County New Vehicle Market Dashboard



## MARKET PERFORMANCE DURING PAST TWO YEARS

**San Diego County  
Quarterly Registrations**  
**Seasonally Adjusted  
Annual Rate, Converted  
to Equivalent U.S. New  
Vehicle Market SAAR  
(millions of units)**



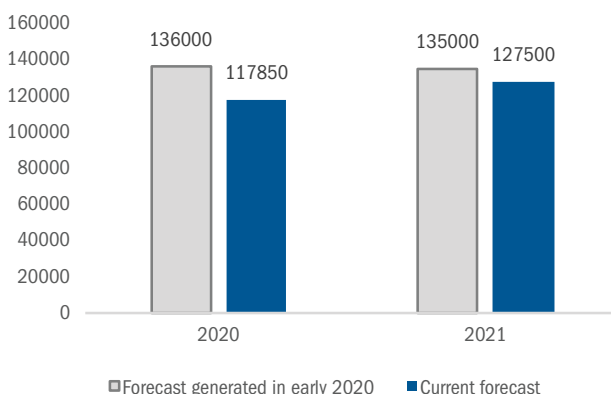
Data Source: AutoCount data from Experian.

The graph on the left provides an easily recognizable way to gauge the strength of the county market. It shows quarterly registrations in the county, based on a seasonally adjusted annual rate. These figures are then indexed to SAAR sales figures for the U.S. new-vehicle market. So just like in the national market, when the quarterly SAAR is above 17 million units, the county market is strong, 15 million is about average, and below 13 million is weak. Quarterly registrations in the county plummeted to a U.S. equivalent level of 9.8 million units in the Second Quarter, and recovered to a better but still not great 14.3 million in the Third Quarter.



## PENT UP DEMAND

**County market forecasts  
for 2020 and 2021**  
**Before and after onset  
of COVID Pandemic**



**25,650**  
**new vehicle purchases will  
be postponed during 2020  
and 2021,**  
**representing about**  
**21%**  
**of sales in an average year**

Historical Data Source: AutoCount data from Experian. Forecast projections: Auto Outlook.

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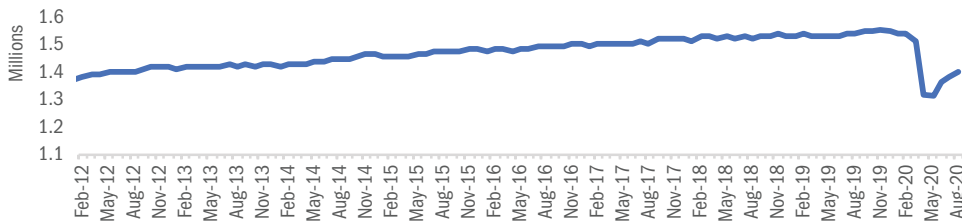
Continued on page 22

# San Diego County New Vehicle Market Dashboard



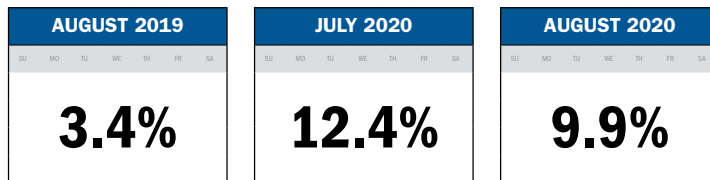
## TRACKING ECONOMIC INDICATORS

### Total Employment in San Diego County



Following the sharp decline in April, total employment in San Diego County has trended upward but remains well below pre-pandemic levels. The county unemployment rate was 9.9% in August, down from 12.4% in July, but higher than a year earlier. Consumer sentiment has improved somewhat during the past few months but is still off from recent highs.

### Monthly Unemployment Rates in San Diego County



### Average Hourly Earnings for All Workers in County - August 2020



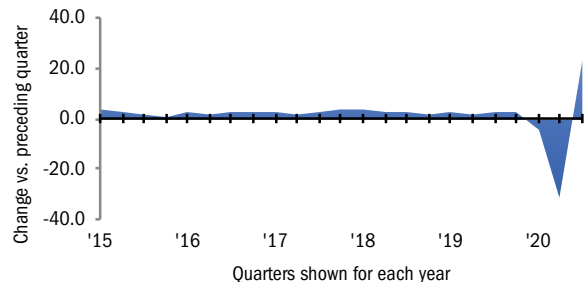
### University of Michigan Consumer Sentiment



10 year high — 101.4 (Mar. 2018)  
12 month high — 101.0 (Feb. 2020)  
  
Most recent — 78.1 (Sept., 2020)  
  
10 year low — 55.7 (Aug. 2011)

Key Values During Past 10 Years

Percent Change in U.S. Gross Domestic Product  
Change vs. previous quarter

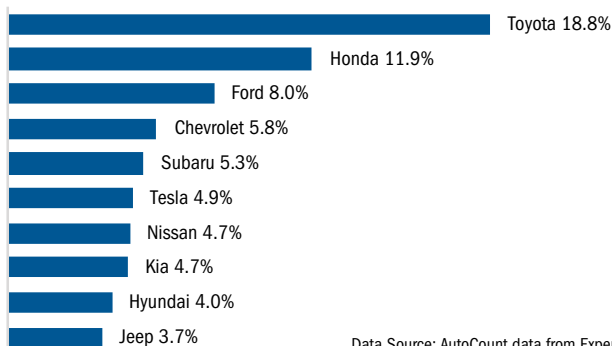


Sources: Bureau of Labor Statistics, University of Michigan, and U.S. Bureau of Econ. analysis.



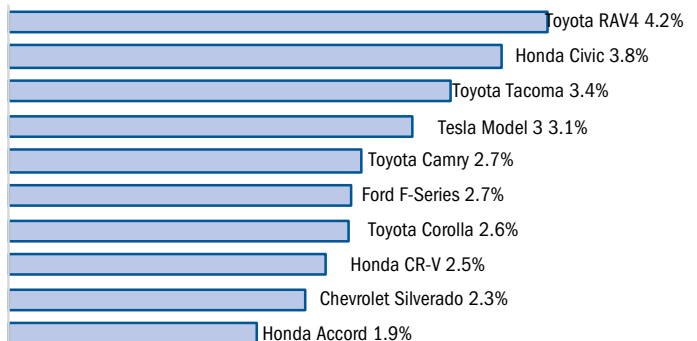
## TOP TEN RANKINGS IN COUNTY MARKET

### Market Share for Top Ten Selling Brands in County Market YTD 2020 thru September



Data Source: AutoCount data from Experian.

### Market Share for Top Ten Selling Models in County Market YTD 2020 thru September





# Three Long Term Trends in San Diego County New Vehicle Market

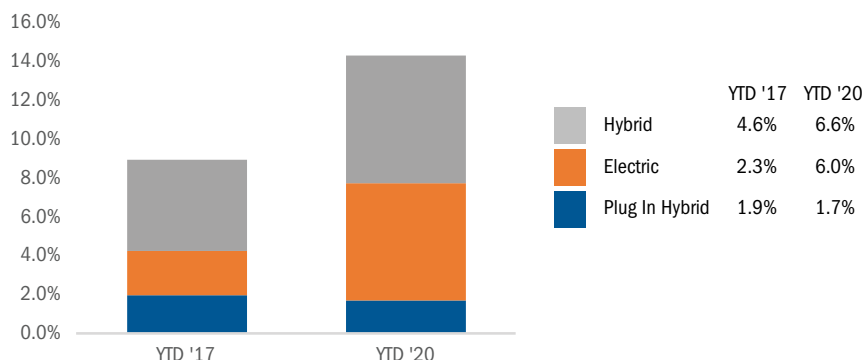
Trend ...

The numbers ...

Primary conclusion ...

**Estimated Alternative Powertrain Share\* — YTD '17 and '20, thru Sept.**

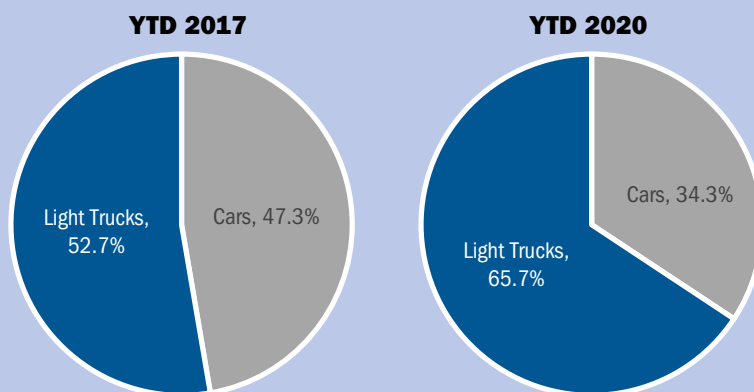
## Alternative Powertrains



**Electric vehicle market share in the county has increased by 3.7 share points during the past three years. Hybrid vehicle share was up by two points.**

**Light Truck and Passenger Car Share — YTD '17 and '20, thru Sept.**

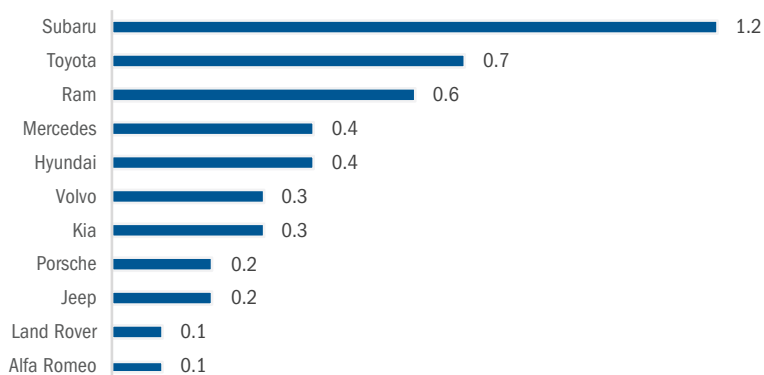
## Light Trucks



**Light truck market share increased to 65.7% during the first nine months of 2020, up 13 points from 2017.**

**Brands with Largest Market Share Increases — YTD '17 to YTD '20**

## New Vehicle Brands



**Five brands had market share increases of 0.4 of a point or higher: Subaru, Toyota, Ram, Mercedes, and Hyundai.**

Data Source: AutoCount data from Experian. \*Registrations by powertrain for vehicles equipped with multiple engine types were estimated by Auto Outlook. The estimates are based on model registrations compiled by Experian, and engine installation rates collected from other sources. The graph above showing largest market share increases excludes Tesla, since the Model 3 was introduced during 2017.

Continued on page 24

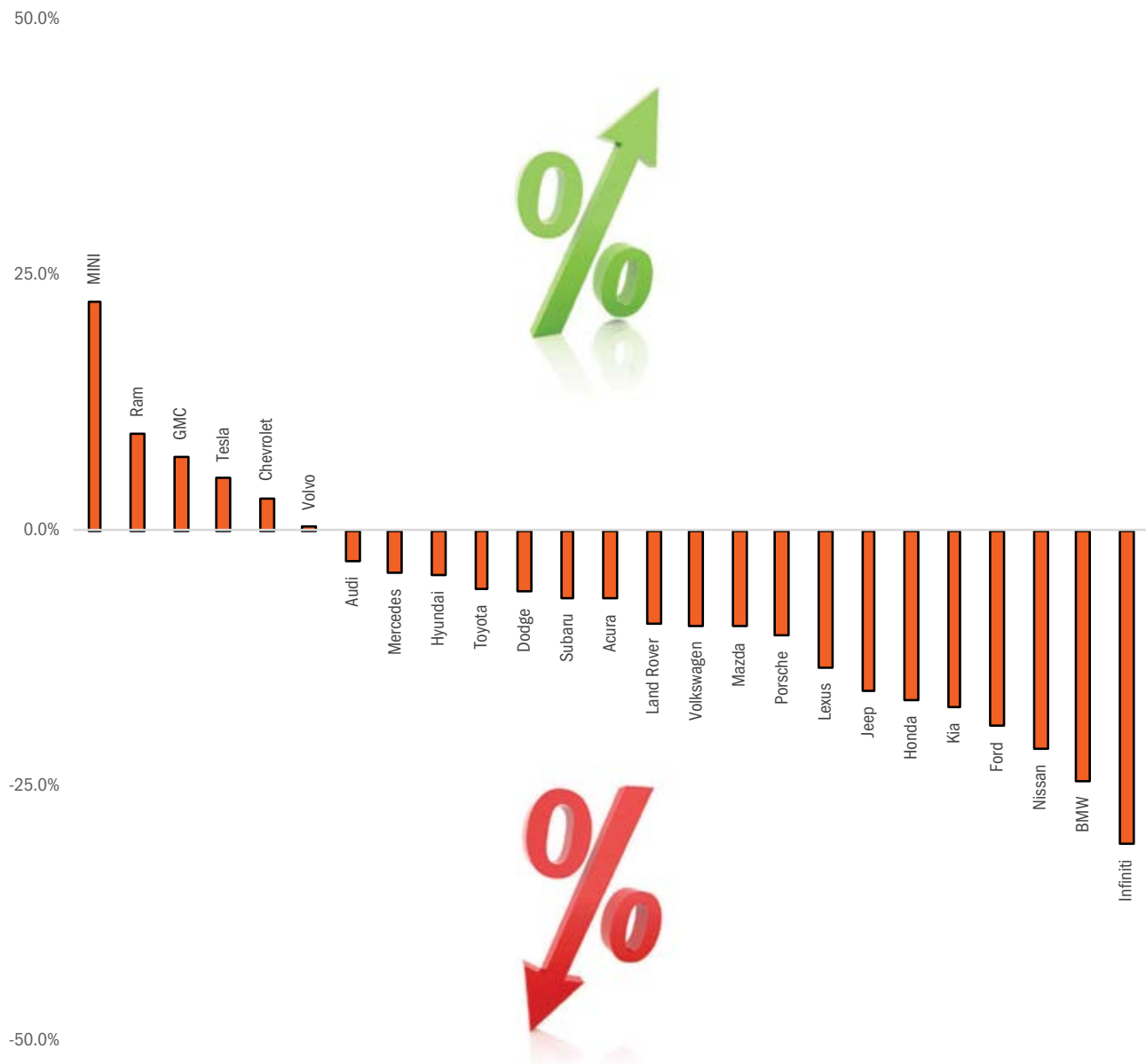
**BRAND SCOREBOARD — PART ONE****MINI, Ram and GMC Had Largest Percentage Gains in 3Q 2020**

The graph below would have typically displayed the percent change in registrations during the first nine months of this year versus a year earlier. But given the unprecedented impact of the pandemic on sales during the first six months of 2020, focusing on registrations during the Third Quarter provides a better barometer of results. For the top 25 selling brands, the graph shows the percent change in registrations from July thru September of 2020 versus the same period a year earlier. Results for some brands were significantly impacted by lean inventories.

**Six brands had increases in the Third Quarter of 2020:**

MINI, Ram, GMC, Tesla, Chevrolet, and Volvo.

**Percent Change in San Diego County New Retail Light Vehicle Registrations (Top 25 brands)  
Third Quarter, 2020 vs. Third Quarter, 2019**



Source: AutoCount data from Experian.

## Brand Market Share Leaders in Primary Segments



### Leading Car Brands

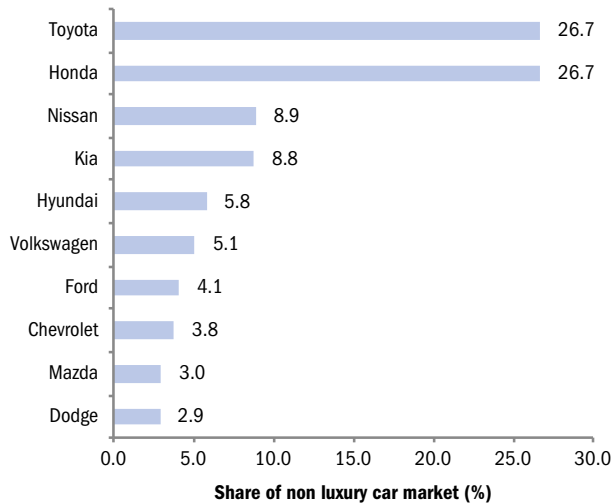
Non Luxury: Toyota, Honda, and Nissan  
Luxury: Tesla, BMW, and Mercedes



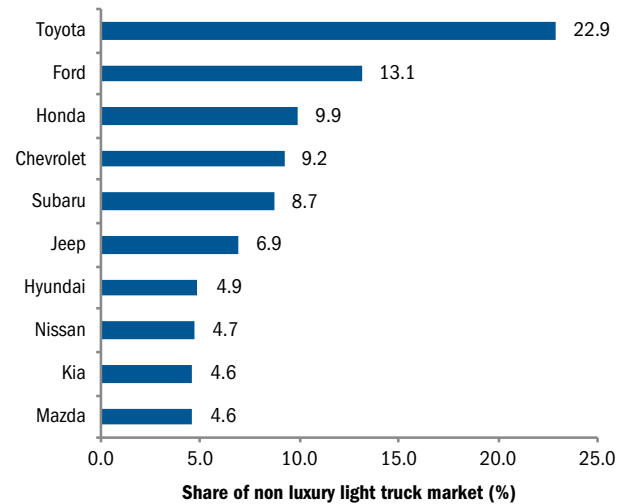
### Leading Light Truck Brands

Non Luxury: Toyota, Ford, and Honda  
Luxury: Lexus, Mercedes, and BMW

#### Top 10 Non Luxury Car Brands in County Market YTD 2020 thru September

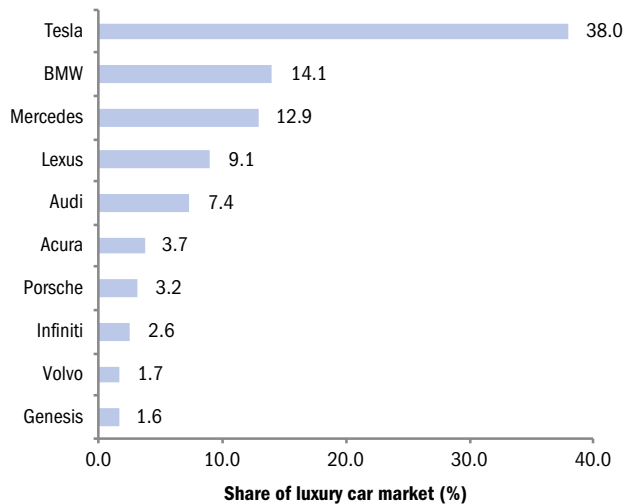


#### Top 10 Non Luxury Truck Brands in County Market YTD 2020 thru September

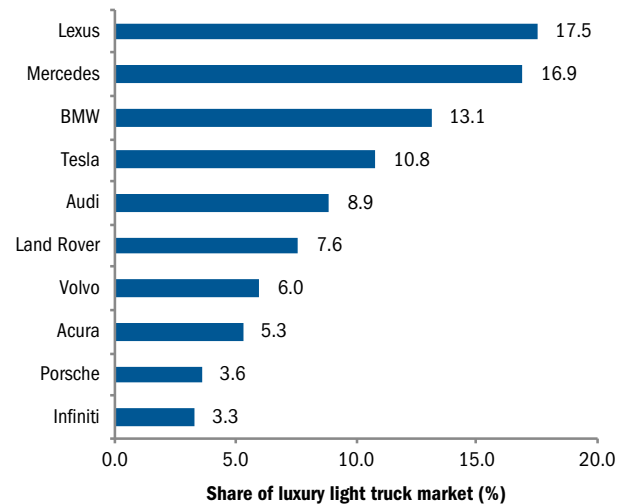


Data Source: AutoCount data from Experian.

#### Top 10 Luxury Car Brands in County Market YTD 2020 thru September



#### Top 10 Luxury Light Truck Brands in County Market YTD 2020 thru September



Data Source: AutoCount data from Experian.

Continued on page 26



## SEGMENT CLOSE-UP: MID SIZE SUVs

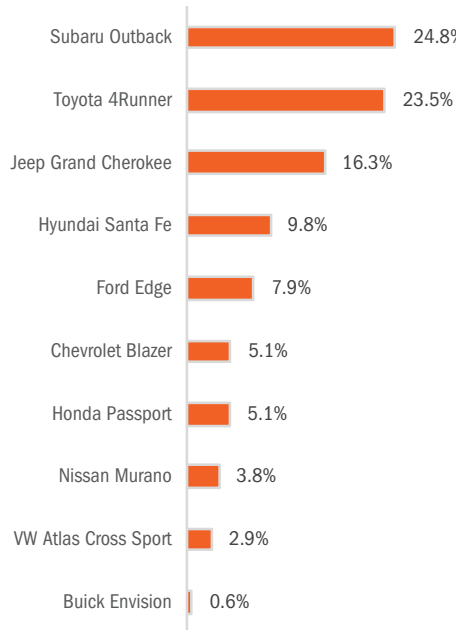
## Toyota &amp; Subaru Lead County Mid Size SUV Segment



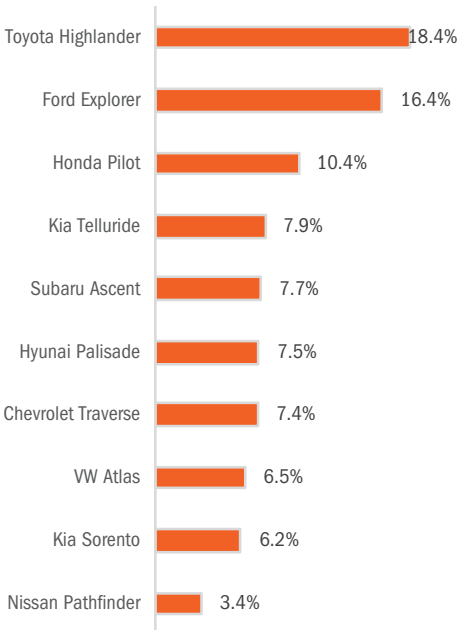
## Model Sales Leaders

Top 10 Selling Models in County for Two Row and Three Row Mid Size SUVs — YTD 2020 thru Sept.

## Market Share for Two Row Mid Size SUVs



## Market Share for Three Row Mid Size SUVs



Data Source: AutoCount data from Experian.



## Two Key Trends

**#1** Mid Size SUV segment is performing better than the overall market

% Change in New Vehicle Registrations  
YTD '17 thru Sept. to YTD '20

Mid Size SUVs: **DOWN 9.0%**

Industry **DOWN 25.1%**

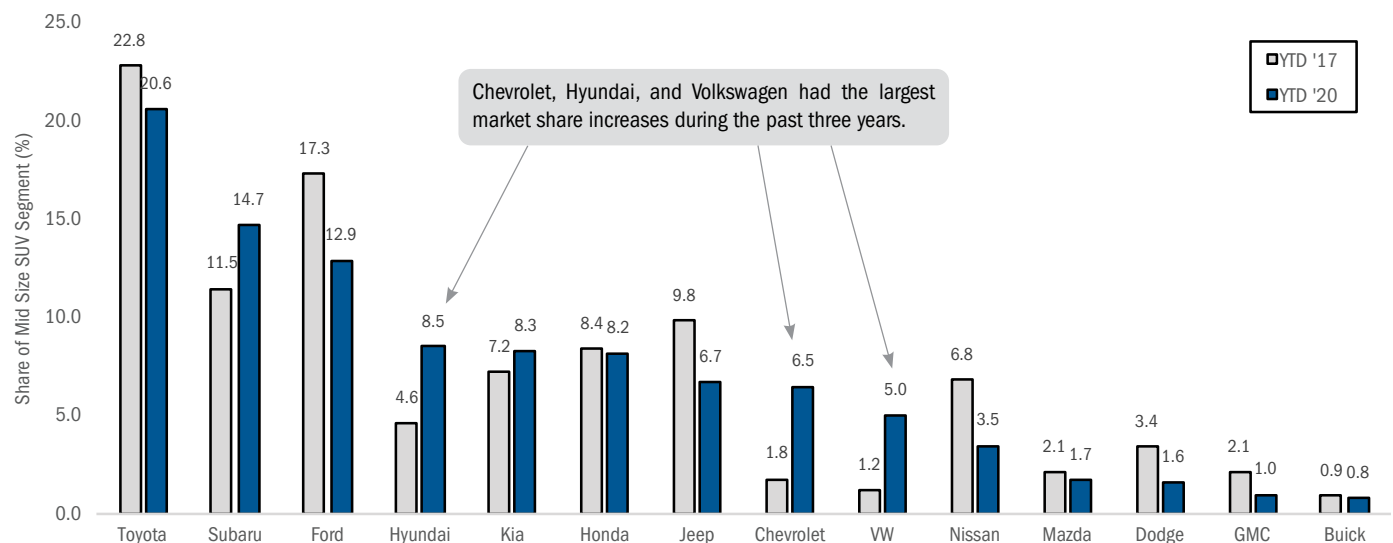
**#2** Three row SUVs have been gaining market share in Mid Size SUV segment

3 Row SUV Share of Mid Size SUV Segment — YTD '17 and YTD '20 (Sept.)

YTD 2017: **55.9%**

YTD 2020: **58.8%**

## Brand Market Share in County Mid Size SUV Segment — YTD 2017 and YTD 2020 (thru Sept.)



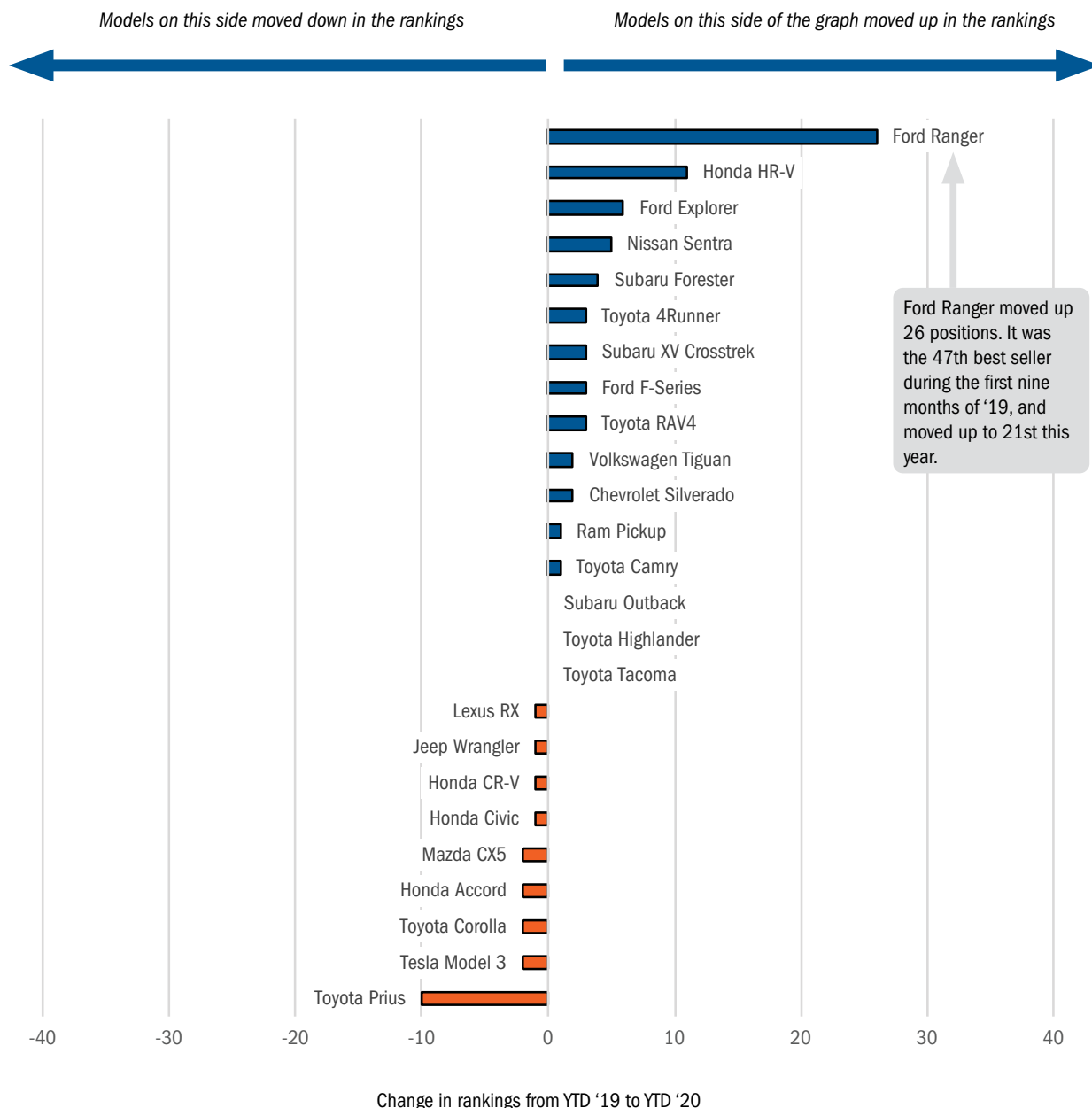
Data Source: AutoCount data from Experian.

## CHANGE IN MODEL RANKINGS

# Ford Ranger and Honda HR-V Move Up in Rankings

The graph below shows the change in rankings during the first nine months of 2019 to the same period this year for the top 25 selling models in the San Diego County market. Models are positioned on the graph from top to bottom based on the change in rankings. The biggest gainer was the Ford Ranger. Other winners were Honda HR-V, Ford Explorer, Nissan Sentra, and Subaru Forester.

**Change in Rankings for Top 25 Selling Models — YTD '19 thru September to YTD '20**



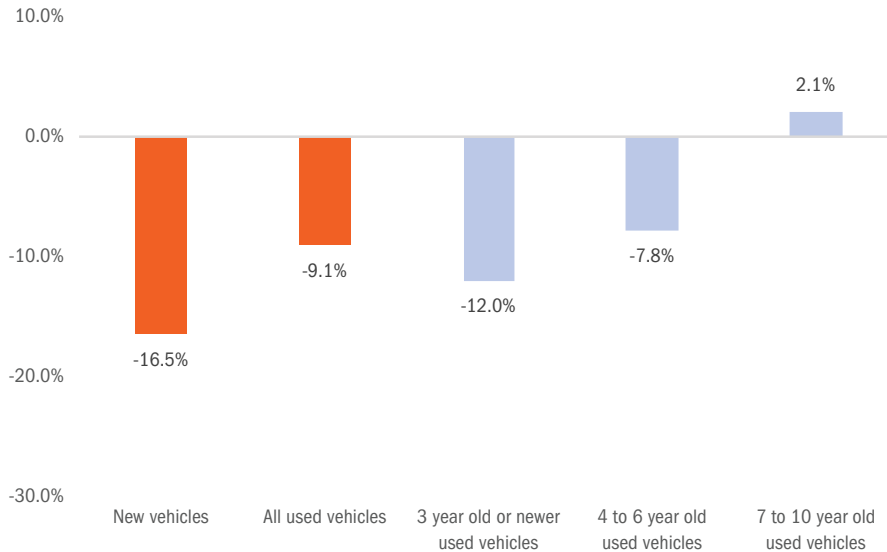
Source: AutoCount data from Experian.

Continued on page 28

## SAN DIEGO COUNTY USED VEHICLE MARKET

## Used Vehicle Market Declined by Less Than 10%

Percent Change in New and Used Vehicle Registrations — YTD '20 thru Sept.



Data Source: AutoCount data from Experian.

## 3 KEY TRENDS IN USED VEHICLE MARKET



01.

Used vehicle registrations in San Diego County declined 9.1% during the first nine months of '20, better than the 16.5% drop for new vehicles.

02.

The nearly new used vehicle market (3 years old or newer) declined at a faster pace than older vehicles.

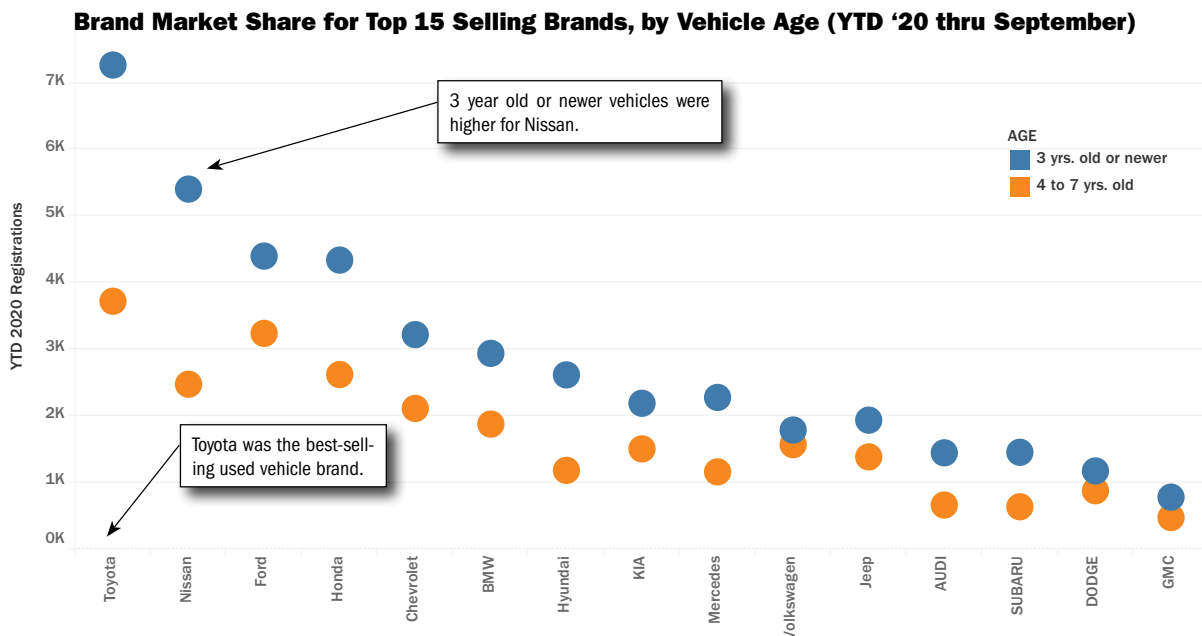
03.

Used vehicle market has been given a boost by sparse new vehicle inventories and cost conscious consumers. Used vehicle market should remain relatively strong for the remainder of 2020.

## USED VEHICLE BRAND MARKET SHARE

## Toyota is Top-Selling Brand in Area Used Vehicle Market

The graph below shows used light vehicle registrations by brand for two age categories: vehicles newer than three years old, and vehicles four to seven years old. Brands are positioned from left to right based on total registrations. Each circle corresponds to brand registrations for three year old or newer vehicles (blue circle) and four to seven year old vehicles (orange circle).




Data Source: AutoCount data from Experian.



Brand Registrations Report												
San Diego County New Retail Car and Light Truck Registrations												
	Third Quarter						YTD thru September					
	Registrations			Market Share (%)			Registrations			Market Share (%)		
	3Q '19	3Q '20	% change	3Q '19	3Q '20	Change	YTD '19	YTD '20	% change	YTD '19	YTD '20	Change
TOTAL	35,191	31,411	-10.7				104,239	87,088	-16.5			
Cars	13,730	10,059	-26.7	39.0	32.0	-7.0	42,037	29,879	-28.9	40.3	34.3	-6.0
Light Trucks	21,461	21,352	-0.5	61.0	68.0	7.0	62,202	57,209	-8.0	59.7	65.7	6.0
Domestic Brands	9,295	8,541	-8.1	26.4	27.2	0.8	27,733	24,040	-13.3	26.6	27.6	1.0
European Brands	5,207	4,599	-11.7	14.8	14.6	-0.2	15,231	12,881	-15.4	14.6	14.8	0.2
Japanese Brands	17,551	15,507	-11.6	49.9	49.4	-0.5	52,761	42,457	-19.5	50.6	48.8	-1.8
Korean Brands	3,138	2,764	-11.9	8.9	8.8	-0.1	8,514	7,710	-9.4	8.2	8.9	0.7
Acura	315	294	-6.7	0.9	0.9	0.0	1,132	880	-22.3	1.1	1.0	-0.1
Alfa Romeo	102	47	-53.9	0.3	0.1	-0.2	291	171	-41.2	0.3	0.2	-0.1
Audi	572	555	-3.0	1.6	1.8	0.2	1,791	1,579	-11.8	1.7	1.8	0.1
BMW	1,096	827	-24.5	3.1	2.6	-0.5	3,263	2,575	-21.1	3.1	3.0	-0.1
Buick	90	69	-23.3	0.3	0.2	-0.1	291	232	-20.3	0.3	0.3	0.0
Cadillac	145	113	-22.1	0.4	0.4	0.0	421	292	-30.6	0.4	0.3	-0.1
Chevrolet	1,862	1,921	3.2	5.3	6.1	0.8	5,422	5,060	-6.7	5.2	5.8	0.6
Chrysler	134	67	-50.0	0.4	0.2	-0.2	409	216	-47.2	0.4	0.2	-0.2
Dodge	312	293	-6.1	0.9	0.9	0.0	872	808	-7.3	0.8	0.9	0.1
FIAT	36	4	-88.9	0.1	0.0	-0.1	113	31	-72.6	0.1	0.0	-0.1
Ford	2,964	2,395	-19.2	8.4	7.6	-0.8	8,603	6,991	-18.7	8.3	8.0	-0.3
Genesis	59	40	-32.2	0.2	0.1	-0.1	119	125	5.0	0.1	0.1	0.0
GMC	334	358	7.2	0.9	1.1	0.2	1,050	967	-7.9	1.0	1.1	0.1
Honda	4,332	3,614	-16.6	12.3	11.5	-0.8	13,385	10,340	-22.7	12.8	11.9	-0.9
Hyundai	1,371	1,311	-4.4	3.9	4.2	0.3	3,982	3,517	-11.7	3.8	4.0	0.2
Infiniti	277	192	-30.7	0.8	0.6	-0.2	918	573	-37.6	0.9	0.7	-0.2
Jaguar	83	79	-4.8	0.2	0.3	0.1	257	203	-21.0	0.2	0.2	0.0
Jeep	1,327	1,119	-15.7	3.8	3.6	-0.2	3,858	3,196	-17.2	3.7	3.7	0.0
Kia	1,708	1,413	-17.3	4.9	4.5	-0.4	4,413	4,068	-7.8	4.2	4.7	0.5
Land Rover	330	300	-9.1	0.9	1.0	0.1	1,044	849	-18.7	1.0	1.0	0.0
Lexus	1,131	979	-13.4	3.2	3.1	-0.1	3,525	2,648	-24.9	3.4	3.0	-0.4
Lincoln	150	102	-32.0	0.4	0.3	-0.1	408	322	-21.1	0.4	0.4	0.0
Maserati	43	20	-53.5	0.1	0.1	0.0	124	79	-36.3	0.1	0.1	0.0
Mazda	1,124	1,018	-9.4	3.2	3.2	0.0	3,214	2,750	-14.4	3.1	3.2	0.1
Mercedes	1,224	1,172	-4.2	3.5	3.7	0.2	3,435	2,960	-13.8	3.3	3.4	0.1
MINI	107	131	22.4	0.3	0.4	0.1	302	345	14.2	0.3	0.4	0.1
Mitsubishi	97	47	-51.5	0.3	0.1	-0.2	278	158	-43.2	0.3	0.2	-0.1
Nissan	1,959	1,541	-21.3	5.6	4.9	-0.7	5,903	4,127	-30.1	5.7	4.7	-1.0
Other	86	53	-38.4	0.2	0.2	0.0	251	166	-33.9	0.2	0.2	0.0
Porsche	253	227	-10.3	0.7	0.7	0.0	721	666	-7.6	0.7	0.8	0.1
Ram	591	647	9.5	1.7	2.1	0.4	1,767	1,716	-2.9	1.7	2.0	0.3
Subaru	1,801	1,682	-6.6	5.1	5.4	0.3	5,254	4,606	-12.3	5.0	5.3	0.3
Tesla	1,386	1,457	5.1	3.9	4.6	0.7	4,632	4,240	-8.5	4.4	4.9	0.5
Toyota	6,515	6,140	-5.8	18.5	19.5	1.0	19,152	16,375	-14.5	18.4	18.8	0.4
Volkswagen	986	894	-9.3	2.8	2.8	0.0	2,844	2,467	-13.3	2.7	2.8	0.1
Volvo	289	290	0.3	0.8	0.9	0.1	795	790	-0.6	0.8	0.9	0.1

Source: AutoCount data from Experian.

The table above shows new retail light vehicle (car and light truck) registrations in San Diego County. Figures are shown for the Third Quarters of 2019 and 2020, and year to date totals. The top ten ranked brands in each category are shaded yellow. 

# COVID-19 FREQUENTLY ASKED QUESTIONS: FACE MASKS, SURGICAL MASKS & RESPIRATORS

By Sam Celly, BChE MChE JD CSP, Celly Services, Inc.



## What are the key differences between cloth face coverings, surgical masks, and respirators?

### Cloth face coverings:

- May be commercially produced or improvised (i.e., homemade) garments, scarves, bandanas or items made from t-shirts or other fabrics.
- Are worn in public over the nose and mouth to contain the wearer's potentially infectious respiratory droplets produced when an infected person coughs, sneezes, or talks and to limit the spread of SARS-CoV-2, the virus that causes Coronavirus Disease 2019 (COVID-19), to others.
- Are not considered personal protective equipment (PPE).
- Will not protect the wearer against airborne transmissible infectious agents due to loose fit and lack of seal or inadequate filtration.
- Are not appropriate substitutes for PPE, such as respirators (e.g., N95 respirators) or medical face masks (e.g., surgical masks) in workplaces where respirators or face masks are recommended or required to protect the wearer.
- May be used by almost any worker, although those who have trouble breathing or are otherwise unable to put on or remove a mask without assistance should not wear one.
- May be disposable or reusable after proper washing.

### Surgical masks:

- Are typically cleared by the U.S. Food and Drug Administration as medical devices (though not all devices that look like surgical masks are medical-grade, cleared devices).
- Are used to protect workers against splashes and sprays (i.e., droplets) containing potentially infectious materials. In this capacity, surgical masks are considered PPE. Under OSHA's PPE standard (29 CFR 1910.132), employers must provide any necessary PPE at no cost to workers.<sup>1</sup>
- May also be worn to contain the wearer's respiratory droplets
- Will not protect the wearer against airborne transmissible infectious agents due to loose fit and lack of seal or inadequate filtration.
- May be used by almost anyone.
- Should be properly disposed of after use.

### Respirators<sup>2</sup> (e.g., filtering facepieces):

- Are used to prevent workers from inhaling small particles, including airborne transmissible or aerosolized infectious agents.
- Must be provided and used in accordance with OSHA's Respiratory Protection standard (29 CFR 1910.134).

- Must be certified by the National Institute for Occupational Safety and Health (NIOSH).

OSHA has temporarily exercised its enforcement discretion concerning supply shortages of disposable filtering facepiece respirators (FFRs), including as it relates to their extended use or reuse, use beyond their manufacturer's recommended shelf life, use of equipment from certain other countries and jurisdictions and decontamination. Need proper filter material (e.g., N95 or better) and, other than for loose-fitting powered, air-purifying respirators (PAPRs), tight fit (to prevent air leaks).

- Require proper training, fit testing, availability of appropriate medical evaluations and monitoring, cleaning, and oversight by a knowledgeable staff member. Automotive body shops are mandated to follow this requirement when refinishing automobiles.

OSHA has temporarily exercised its enforcement discretion concerning annual fit testing requirements in the Respiratory Protection standard (29 CFR 1910.134), as long as employers have made good-faith efforts to comply with the requirements of the standard and to follow the steps outlined in the March 14, 2020, and April 8, 2020, memoranda (as applicable to their industry). When necessary to protect workers, require a respiratory protection program that is compliant with OSHA's Respiratory Protection standard (29 CFR 1910.134). OSHA consultation staff can assist with understanding respiratory protection requirements.

- FFRs may be used voluntarily if permitted by the employer. If an employer permits voluntary use of FFRs, employees must receive the information contained in Appendix D of OSHA's Respiratory Protection standard (29 CFR 1910.134).

## Are employers required to provide cloth face coverings to workers?

Cloth face coverings are not considered personal protective equipment (PPE) and are not intended to be used when workers need PPE for protection against exposure to occupational hazards. As such, OSHA's PPE standards do not require employers to provide them.

- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires each employer to furnish to each of his employees' employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. Control measures may include a combination of engineering and administrative controls, safe work practices like social distancing and PPE. We at CSI recommend that employers provide face protection at no cost to employees and enforce mandatory usage. Visitors should be provided with masks at no cost and be required to wear them while on the premises. Certain counties and cities have mandated their use by all when in a commercial establishment.
- When transmission risk cannot be controlled through engineering or administrative controls, including social distancing, employers can use cloth face coverings as a means of source control.

## Should workers wear a cloth face covering while at work, in accordance with the Centers for Disease Control and Prevention recommendation for all people to do so when in public?

OSHA generally recommends that employers encourage workers to wear face coverings at work. Face coverings are intended to prevent wearers who have Coronavirus Disease 2019 (COVID-19) without knowing it (i.e., those who are asymptomatic or pre-symptomatic) from spreading potentially infectious respiratory droplets to others. This is known as source control.

Consistent with the Centers for Disease Control and Prevention (CDC) recommendation for all people to wear cloth face coverings when in public and around other people, wearing cloth face coverings, if appropriate for the work environment and job tasks, conserves other types of personal protective equipment (PPE), such as surgical masks, for healthcare settings where such equipment is needed most.

Employers have the discretion to determine whether to allow employees to wear cloth face coverings in the workplace based on the specific circumstances present at the worksite. For some workers, employers may determine that wearing cloth face coverings presents or exacerbates a hazard. For example, cloth face coverings could become contaminated with chemicals used in the work environment, causing workers to inhale the chemicals that collect on the face covering. Over the duration of a work shift, cloth face coverings might also become damp (from workers breathing) or collect infectious material from the work environment (e.g., droplets of other peoples' infectious respiratory secretions). Workers may also need to use PPE that is incompatible with the use of a cloth face covering (e.g., an N95 filtering facepiece respirator).

Where cloth face coverings are not appropriate in the work environment or during certain job tasks (e.g., because they could become contaminated or exacerbate heart illness), employers can provide PPE, such as face shields or surgical masks, instead of encouraging workers to wear cloth face coverings. Like cloth face coverings, surgical masks and face shields can help contain the wearer's potentially infectious respiratory droplets and limit the spread of COVID-19 to others.

Note that cloth face coverings are not considered PPE and cannot be used in place of respirators when respirators are otherwise required.

Learn more about cloth face coverings on the CDC website.

Employers should consider evaluating their accessible communication policies and procedures to potentially provide masks with clear windows to facilitate interaction between employees and members of the public who need to lip-read to communicate.


## If I wear a reusable cloth face covering, how should I keep it clean?

CDC provides guidance on washing face coverings. OSHA suggests following those recommendations and always washing or discarding cloth face coverings that are visibly soiled.

In general, employers should always rely on a hierarchy of controls that first includes efforts to eliminate or substitute out workplace hazards and then uses engineering controls (e.g., ventilation, wet methods), administrative

Employers have the discretion to determine whether to allow employees to wear cloth face coverings in the workplace based on the specific circumstances present at the worksite.

controls (e.g., written procedures, modification of task duration), and safe work practices to prevent worker exposures to respiratory hazards, before relying on personal protective equipment, such as respirators. When respirators are needed, OSHA's guidance describes enforcement discretion around the use of respirators, including in situations in which it may be necessary to extend the use of or reuse certain respirators, use respirators beyond their manufacturer's recommended shelf life or use respirators certified under the standards of other countries or jurisdictions.

If respirators are needed but not available (including as described in the OSHA enforcement guidance noted above), and hazards cannot otherwise be adequately controlled through other elements of the hierarchy of controls (i.e., elimination, substitution, engineering controls, administrative controls, and/or safe work practices), avoid worker exposure to the hazard. Whenever a hazard presents an imminent danger, and in additional situations whenever feasible, the task should be delayed until feasible control measures are available to prevent exposures or reduce them to acceptable levels (i.e., at or below applicable OSHA permissible exposure limits). 

Source: <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html> dl 06112020

<sup>1</sup> If surgical masks are being used only as source control — not to protect workers against splashes and sprays (i.e., droplets) containing potentially infectious materials — OSHA's PPE standards do not require employers to provide them to workers. However, the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires each employer to furnish to each of his employees' employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. Control measures may include a combination of engineering and administrative controls, including safe work practices like social distancing. Choosing to ensure the use of surgical masks for source control may constitute a feasible means of abatement as part of a control plan designed to address hazards from SARS-CoV-2, the virus that causes COVID-19.

**DISCLAIMER:** The contents of this newsletter are merely for informational purposes only and are not to be considered as legal advice. Employers must consult their lawyers for legal matters and EPA/OSHA consultants for matters related to Environmental, Health & Safety. The article was authored by Sam Celly of Celly Services, Inc. who has been helping automobile dealers comply with EPA and OSHA regulations since 1987. Sam received his B.E. (1984) and MS (1986) in Chemical Engineering, followed by a J.D. from Southwestern University School of Law (1997). Our newsletters can be accessed at [www.epaoshablog.com](http://www.epaoshablog.com). Your comments/questions are always welcome. Please send them to [sam@cellysolutions.com](mailto:sam@cellysolutions.com).



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