

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 25 OF THE SAN JOSE MUNICIPAL CODE TO ADD
A NEW CHAPTER 25.18 ENTITLED "CONSTRUCTION
CRANE FEE PROGRAM"**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (general procedure and policy making resulting in no physical changes to the environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 25 of the San José Municipal Code is amended by adding a new Chapter to be numbered and entitled and to read as follows:

**CHAPTER 25.18
CONSTRUCTION CRANE FEE PROGRAM**

Part 1

Definitions

25.18.100 Definitions

The definitions contained in this part shall govern the application and interpretation of this chapter. The definitions set forth in Part 3 of Chapter 25.01 of this title shall govern the application and interpretation of the following terms as used in this chapter: “Airport,” “Certificated Air Carrier,” and “Director”.

28.18.105 Actual Denied Boarding Costs

“Actual Denied Boarding Costs” means the actual Denied Boarding Costs incurred by Airlines as a result of Construction Cranes operating above the Downtown Building Heights Limits in the Construction Crane Guidance Area when the Airport is operating in South Flow.

28.18.110 Administrative Program Fee

“Administrative Program Fee” means the fee for City staff time to administer the Construction Crane Fee Program.

28.18.115 Airline

“Airline” means a Certificated Air Carrier that has entered into an agreement or operating agreement with City for its use of the Airport’s terminal facilities and/or the airfield.

28.18.120 Building Permit

“Building Permit” means full structural building permits as well as partial permits such as foundation-only permits, or any other permit or approval issued by City of San José Building Division for a structure within the Construction Crane Guidance Area.

25.18.125 Certificate of Occupancy (COO)

“Certificate of Occupancy” (COO) means the permit issued by the City of San José Building Division authorizing the use or occupancy of a building or structure or portion thereof within the Construction Crane Guidance Area.

25.18.130 Construction Crane

“Construction Crane” means any means and methods used to construct, develop, or improve a structure. Examples include but are not limited to: temporary construction cranes, hoisting devices, and helicopters.

25.18.135 Construction Crane Guidance Area

“Construction Crane Guidance Area” means that area so designated on that certain map entitled "Construction Crane Guidance Area," on file with the clerk of the City of San José. Said map is incorporated in this section by this reference.

25.18.140 Construction Crane Height Guidance Study

“Construction Crane Height Guidance Study” means the study performed by the City of San José to analyze the potential impacts of Construction Cranes on Airline procedures, as accepted by City Council on March 9, 2021.

25.18.145 Crane Fee

“Crane Fee” means the Actual Denied Boarding Costs plus the Administrative Program Fee.

25.18.150 Denied Boarding Costs

“Denied Boarding Costs” mean involuntarily denied passenger boarding costs incurred by Airlines as a result of Construction Cranes operating above the Downtown Building Heights Limits in the Construction Crane Guidance Area. Denied Boarding Costs may include, but not be limited to, ticket voucher values, compensation and per diem costs.

25.18.155 Developer

“Developer” means the person, persons, or entity that applies for a Building Permit from the City of San José Building Division to build a structure within the Construction Crane Guidance Area.

25.18.160 Downtown Airspace and Development Capacity Study (DADCS)

“Downtown Airspace and Development Capacity Study” (DADCS) means the study performed by the City of San José to use FAA TERPS surfaces as the Downtown Building Height Limits in the Construction Crane Guidance Area, as accepted by the City Council on March 12, 2019, as may be amended

25.18.165 Downtown Building Height Limits

“Downtown Building Height Limits” means the lowest FAA TERPS surfaces limits for building heights that are specific to an individual project site located within the Construction Crane Guidance Area, as set forth in the DADCS.

25.18.170 Estimated Crane Fee

“Estimated Crane Fee” means the Estimated Denied Boarding Costs plus the Administrative Program Fee.

28.18.175 Estimated Denied Boarding Costs

“Estimated Denied Boarding Costs” means the estimated Denied Boarding Costs incurred by Airlines as a result of Construction Cranes operating above the Downtown Building Heights Limits in the Construction Crane Guidance Area.

25.18.180 Temporary Certificate of Occupancy (TCO)

“Temporary Certificate of Occupancy” (TCO) means the permit issued by the City of San José Building Division authorizing the temporary use or occupancy of a building or structure or portion thereof prior to its completion within the Construction Crane Guidance Area.

25.18.185 TERPS surfaces

“TERPS surfaces” means the United States Standard for Terminal Instrument Procedures used for airspace obstruction evaluation determination, as promulgated by order of the United States Federal Aviation Administration, as may be amended.

Part 2

Building Permit Issuance Conditions

25.18.205 Estimated Crane Fee Deposit required prior to Building Permit

- A. Prior to the City issuing a Building Permit for a project involving Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area, Developers shall be required to place with the City an Estimated Crane Fee Deposit.
- B. The Director shall have the authority to set the amount of the Estimated Crane Fee Deposit in subsection A at up to fifty percent of the Estimated Crane Fee.

25.18.210 Request for determination of Estimated Crane Fee Deposit.

Prior to the City issuing a Building Permit for a project involving Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area, Developers shall provide the City with the following information: schedule (months) of estimated construction activities above the Downtown Building Height Limits at a Developer's project site, billing information, and any other information Airport may require for Airport to determine the Estimated Crane Fee Deposit.

25.18.215 Limit on costs for initial six month period

The Director may establish a limit on the amount of the obligation for the initial six month period that a Developer operates Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area.

25.18.220 Execution of agreement required prior to Building Permit

- A. Prior to the City issuing a Building Permit for a project involving Developers operating Construction Cranes above the Downtown Building Height Limits in the

Construction Crane Guidance Area, Developers shall enter into an agreement with City that are consistent with the requirements of this Chapter.

B. The Director is authorized to execute agreements identified in this section.

25.18.225 Obligations arising from use of Construction Cranes above Downtown Building Height Limits

Any person operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area shall indemnify the City, defend and hold harmless the City for the use of the Construction Cranes and shall be responsible for all costs or losses arising from Developer's use of the Construction Cranes.

Part 3
Construction Cranes Status

25.18.305 Notices regarding status of Construction Cranes

Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area shall provide notice to the City any time a Construction Crane is erected, changes heights, or is taken down for removal. Notice will be accomplished through the City of San José Construction Crane Notification Form, available on the Airport's website www.flysanjose.com/downtownheightlimits and shall include the following information required by the Airport (as applicable), including but not limited to: Developer's name, email address, phone number and alternate phone number; Project Name, Project Building Permit Number; FAA's Obstruction Evaluation / Airport Airspace Analysis (OE/AAA) Construction Crane Case Number; Project Foreman's name, email address, phone number, and alternate phone number, Contractor's name, email address, phone number and alternate phone number; type of

Construction Crane operation; schedule (months) with start and end date for
Construction Crane operation; schedule (months) with start and height of Construction
Crane above ground level and above mean sea level for highest point and jib; and any
other information Director may require.

Part 4
TCO/COO Issuance Conditions

25.18.405 Reconciliation required

- A. When a Developer notifies City consistent with this Chapter that the Construction Crane is or will be taken down for removal from the Construction Crane Guidance Area or will no longer operate above the Downtown Building Heights Limits in the Construction Crane Guidance Area, then a reconciliation will be made with respect to any overpayment or underpayment of the Crane Fee. The reconciliation will be based on the Crane Fees arising from the Developer's use of the Construction Crane.
- B. City will prepare a reconciliation invoice for the Developer's project and either refund the remaining Estimated Crane Fee Deposit or request additional funds from the Developer to be paid prior to issuance of a Certificate of Occupancy of Temporary Certificate of Occupancy, whichever comes first.

25.18.410 Crane Fee required before TCO/COO

Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area shall be required to pay the Crane Fee prior to the City issuing a TCO or COO for the structure, whichever comes first.

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk