

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING
NEW SECTIONS AND AMENDING VARIOUS EXISTING
SECTIONS OF PART 3 OF CHAPTER 25.01 AND
CREATING A NEW CHAPTER 25.09 OF TITLE 25 OF THE
SAN JOSE MUNICIPAL CODE TO ESTABLISH SECURED
IDENTIFICATION DISPLAY AREA (SIDA) BADGE
PROCEDURES AT THE NORMAN Y. MINETA SAN JOSE
INTERNATIONAL AIRPORT**

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 changes to the physical environment); and

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

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

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

SECTION 1. Section 25.01.306 of Part 3, entitled "Definitions," of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to read as follows:

25.01.306 ~~Approved methodology~~**Aircraft movement area**

~~"Approved methodology Aircraft movement area" means the runways, taxiways, and other areas of the airport which are utilized for taxiing/hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and parking areas. Specific approval for entry onto the movement area must be obtained from the control tower methodology for adjusting airport access contracts, as approved by the San José city council on November 16, 2004, and any amendments subsequently approved by the city council.~~

SECTION 2. Part 3, entitled "Definitions," of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

25.01.307 Airport operations area

~~"Airport operations area," or "AOA," means a portion of the airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under 49 CFR part 1544 or 1546, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area. means the geographic location that includes Aircraft Movement Areas, Aircraft parking areas (aprons), loading ramps, safety areas and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures.~~

SECTION 3. Part 3, entitled "Definitions," of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

25.01.308 Approved methodology

“Approved methodology” means the methodology for adjusting airport access contracts, as approved by the San José city council on November 16, 2004, and any amendments subsequently approved by the city council.

SECTION 4. Part 3, entitled “Definitions,” of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

25.01.411 **Restricted area**

“Restricted area” includes both the Airport Operations Area (AOA) and the Security Identification Display Area (SIDA), and any other areas of the airport that requires a valid badge to gain access.

SECTION 5. Part 3, entitled “Definitions,” of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

25.01.412 **Security identification display area**

“Security identification display area” or “SIDA” means a portion of the Airport Operations Area (AOA) in which security measures are carried out and individual and vehicular identification must be displayed at all times.

SECTION 6. Part 3, entitled “Definitions,” of Chapter 25.01 of Title 25 of the San José Municipal Code is amended to add the following section, to be numbered, entitled and to read as follows:

25.01.413 **Sterile area**

“Sterile area” means the area in the terminal beyond the security screening checkpoint(s).

SECTION 7. A new Chapter is added to Title 25 of the San José Municipal Code to be numbered, entitled and read as follows:

Chapter 25.09
AIRPORT BADGE PROCEDURES

Part 1
General Provisions

25.09.010 Purpose and intent

- A. The purpose of this chapter is to establish procedures for the application, denial, issuance, suspension, and revocation of identification media which are required to access portions of the Norman Y. Mineta San José International Airport (airport) designated as Security Identification Display Areas or other Restricted Areas.

- B. It is the intent of the city council that the procedures set forth herein enhance airport security by improving the qualifications of identification media holders with access to the airport's SIDA in a manner most protective of the public's health, welfare, and safety, and in particular airport security, and the due process rights of an applicant or identification media holder, consistent with state or federal law.

25.09.020 Authority and applicability

- A. This Chapter is adopted pursuant to the authority granted to charter cities in Article 11, Section 5 of the California Constitution, the City of San José's general police power, and 49 CFR 1542.209.
- B. This Chapter applies to all individuals who apply for or are granted a SIDA badge to gain access to the airport's SIDA.
- C. Except where an individual applies for or is granted an airport-issued SIDA badge, as forth in subsection B above, the requirements of this Chapter shall not apply to persons authorized to receive badges from other entities pursuant to 49 CFR 1542.209, as may be amended from time to time.

25.09.030 Restricted Areas

Access or entry to a Restricted Area, which includes the Airport Operations Area and the SIDA, is limited to persons under appropriate supervision or escort or persons with a proper and current identification badge issued by the airport. Examples of persons authorized access or entry to a Restricted Area include:

- A. Authorized employees or authorized representatives of the city;
- B. Authorized lessees and sublessees;
- C. Owners and operators of based aircraft;
- D. Authorized commercial operators, airline operators and the vendors, suppliers, contractors, or designated employees of such operators who have a need, as

determined by the Director (or designee), to conduct business in a Restricted Area of the airport;

- E. Personnel from the government agencies who are responsible for implementing the city's Emergency Response Plan for the airport; and
- F. Employees or representatives of the Federal Aviation Authority (FAA), Department of Homeland Security (DHS), or Transportation Security Administration (TSA).

25.09.040 Access to Sterile Areas

Access or entry to the Sterile Area at the airport is limited to persons who have been screened by TSA personnel and possess a valid boarding pass/ticket; SIDA or Sterile badge holders accessing the Sterile Area through designated routes as specified by the airport, or persons under appropriate supervision and escort by a person with an approved SIDA badge.

25.09.060 Access to SIDA

Access or entry to the airport's SIDA shall be restricted to persons who have been subjected to an individual criminal history check, successfully completed training in accordance with a TSA-approved curriculum specified in the airport's Airport Security Program (ASP), and issued an identification medium, which shall be prominently displayed at all times while accessing or within the airport's SIDA or other restricted areas.

25.09.070 Airport Security Program; Specific Offenses

- A. All individuals on or at the airport shall fully comply with the Airport Security Program.

- B. All individuals applying for an initial or renewal SIDA badge are subject to a fingerprint-based Criminal History Record Check (CHRC) prior to issuance of the badge. Individuals that are issued a SIDA badge will be enrolled in a continuous vetting system to inform the airport of any subsequent crimes they are charged with.
- C. Airport badges will not be issued to individuals with disqualifying crimes as listed in 49 CFR1542.209(d), 19 CFR 122.183 or equivalent. In addition, an applicant may be determined ineligible for a badge based on analyses of records related to violations of transportation security requirements, including security-related offenses at airports or in connection with air cargo and other regulatory violations.
- D. Persons who fail to comply with these provisions may be denied access to the airport, which shall include but without limitation suspension or revocation of SIDA badge, or imposition of a fine, or penalized in accordance with certain provisions of the airport's General Aviation Rules and Regulations and ASP, or some combination of the preceding.

25.09.080 Method of service

- A. All written notices and decisions required by this Chapter shall be served as provided in Section 1.04.140 of this Code. Alternatively, any written notice required by this Chapter may be delivered personally to the applicant, or SIDA badge holder, or personally delivered to the address given in the application, or delivered electronically to the electronic address given on the application or such other address on file or record with the airport.

- B. The failure of any applicant or SIDA badge holder to receive any notice required throughout this Chapter shall not affect the validity of any proceedings taken under the Parts providing for hearings.

Part 2

Application Procedures

25.09.100 Application procedures

- A. All persons requiring access or entry to the SIDA at the airport shall complete and submit an Airport Identification Badge Application form for submission to the Airport Badging Office. Airport Identification Badge Applications are available at the Badging Office or on the airport website.
- B. In addition to being completed in full, all SIDA badge applications shall be accompanied by the information and documentation necessary for airport personnel to verify an applicant's identity and work authorization, and for the Airport Security Coordinator ,or designee, to conduct an investigation under Section 25.09.120 and to make the determinations required by Section 25.09.130.
- C. Prior to obtaining an approved SIDA badge, applicants must successfully complete a fingerprint-based Criminal History Records Check (CHRC) and satisfactorily complete an airport training course (and other requirements) as may be required by the airport's ASP, as may be amended from time to time.

25.09.110 SIDA badge application

SIDA badge applicants shall complete, sign and make all required representations contained within the SIDA badge application in effect at the time of the application.

25.09.120 Criminal history investigation

- A. The Airport Security Coordinator or designee is authorized to conduct a criminal background investigation in accordance with 49 CFR 1542 standards of any person applying for or a SIDA badge. The Director (or designee) may request the chief of police (or designee) to conduct a further criminal background investigation on any applicant or SIDA badge holder to clarify eligibility on a pending application, resubmission or renewal of an existing SIDA badge.
- B. It is the duty of all applicants or SIDA badge holders to notify the Director (or designee) if he or she has been arrested for any disqualifying criminal offenses set forth in 49 CFR 1542.209, or by this code if different than 49 CFR 1542.209, within 24 hours.
- C. All applicants or SIDA badge holders may obtain a copy of criminal background information obtained under this section by making a written request to the Director (or designee).

25.09.130 Grounds for denial, suspension, or revocation

Upon receiving the completed SIDA badge application and conducting an investigation, the Airport Security Coordinator (or designee) may deny an application for, or suspend or revoke a SIDA badge, for any of the following grounds:

- A. The individual has been convicted, or found not guilty by reason of insanity, of one or more disqualifying offenses set forth in 49 C.F.R. § 1542.209, 19 C.F.R. 122.183(a)(4), and 49 C.F.R. § 1572.103 ,as may be amended from time to time, in any jurisdiction during the ten (10) years before the date of the application for a

SIDA badge, or if the individual was incarcerated for such crime and released from incarceration within 5 years of the date of such application.

- B. The individual has been arrested for, or charged with, one or more disqualifying offenses set forth in 49 CFR § 1542.209 ,as may be amended from time to time, or this code. Denial, suspension, or revocation on this ground shall remain in effect until the Airport Security Coordinator or designee has determined, after an investigation, whether the arrest or charge resulted in a conviction or finding of not guilty by reason of insanity, or some other disposition.
- C. The individual fails to comply with or fails or refuses to comply with TSA-issued Security regulation or the Airport Security program.
- D. There is reason to believe that the individual has knowingly made false statements on the application or has otherwise knowingly provided false information to the airport or the city.
- E. The individual has had his or her SIDA badge suspended, revoked, or otherwise has surrendered upon request of the Airport his or her SIDA badge within the three (3) years preceding the date of the current application.
- F. The individual has previously been denied a SIDA badge within the sixty (60) days preceding the date of the current application.
- G. The individual has engaged in conduct that would constitute a violation of the ASP or airport's 3-strikes policy that would have merited immediate suspension or revocation of a SIDA badge.

- H. The individual refuses or repeatedly neglects to obey any order of the Director, Airport Security Coordinator, or any of their designees that relates to airport security.
- I. The individual no longer requires access to the SIDA for an extended period of time at the airport because of a change in duties, termination of employment, or other reason.
- J. In the discretion of the Airport Security Coordinator or designee, it has been determined that issuing or maintaining SIDA badge privileges for such an individual would adversely impact the public's health, welfare, safety, or similar public interest, or would otherwise pose a security threat.

Part 3

Hearing Procedures

25.09.200 Notice of decision

- A. Upon determining the existence of any of the grounds for denial, suspension or revocation of a SIDA badge in accordance with Section 25.09.130 above, the Airport Security Coordinator (or designee) shall issue a written notice of decision to deny, revoke, or suspend the SIDA badge.
- B. The notice of decision shall state all the grounds and reasons upon which the denial, suspension or revocation is based.
- C. The notice of decision shall be delivered to to the applicant, or SIDA badge holder, utilizing any of the methods of service identified in section 25.09.080.

- D. The notice of decision shall advise that the denial, suspension or revocation shall become final unless the applicant, or SIDA badge holder, files a written request for hearing before the Director (or designee) within the time period specified in Section 25.09.210 below.
- E. If such written request for hearing is not filed within the time permitted in section 25.09.210, the denial, suspension or revocation set forth in the notice of decision shall become final upon the airport's close of business on the last day to file the written request for hearing.

25.09.210 Hearing before Director

- A. A written request for a hearing before the Director (or designee) must be received within fourteen (14) calendar days of the date the notice of decision was mailed or delivered personally to the applicant or SIDA badge holder.
- B. The Director (or designee) shall schedule a hearing which shall be held as soon as reasonably possible after receipt of a timely request for hearing.
- C. The notice of hearing shall be delivered to the applicant, or SIDA badge holder, , utilizing any of the methods of service identified in section 25.09.080 no later than seven (7) calendar days prior to the scheduled date of the hearing.
- D. At the hearing, the applicant, or SIDA badge holder, may provide any relevant evidence or testimony. The Director (or designee) may consider any and all evidence deemed reliable, relevant and not unduly repetitious. The hearing will be conducted informally, and the technical rules of evidence shall not apply.
- E. The applicant, or SIDA badge holder, may be represented by another person.

25.09.220 Decision of Director

- A. After closing the hearing, the Director or designee shall render a decision sustaining, reversing or modifying the decision to deny, suspend or revoke the SIDA badge within 20 business days.
- B. A written decision shall be mailed or delivered personally to the applicant or SIDA badge holder.
- C. Following the service of a written decision after the hearing, a SIDA badge holder who is dissatisfied with the Director's decision may seek judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California, as the Director's written decision shall be the airport's final action on the matter.

25.09.230 Failure to appear

An applicant or SIDA badge holder's failure to appear at a scheduled hearing before the Director or designee in person, through a representative, or by written submission, except upon twenty-four (24) hours' prior notice to the Director or designee will result in denial of the challenge of the notice of decision, which will be a final action of the airport that is not subject to further administrative review; provided, however, that the Director (or designee) shall have the discretion, upon an applicant's or SIDA badge holder's showing of good cause, to excuse such failure to appear.

Part 4
Summary Action Procedures

25.09.300 Purpose and intent

- A. The purpose of this Part is to provide all the necessary procedural safeguards after a decision is made by the Airport Security Coordinator (or designee) to summarily suspend or revoke SIDA badge privileges.
- B. It is the intent of the City Council to balance the significant interest of the airport to abate imminent threats to airport security and the due process rights of SIDA badge holders who are granted unescorted access to areas within the airport which are critical to airport security.

25.09.310 Summary suspension or revocation

- A. If the Airport Security Coordinator or designee, determines there is an imminent threat to the health, safety, welfare, or similar public interest a SIDA badge may be summarily suspended for a period of time not to exceed sixty (60) days.
- B. The summary suspension shall take effect immediately upon service of a notice of suspension by the Airport Security Coordinator or designee, utilizing any of the methods of service identified in section 25.09.080. Notice given to the SIDA badge holder shall include the following information:
 - 1. The effective date and time period of the summary suspension;
 - 2. The grounds and reasons upon which the summary suspension is based;
 - 3. The SIDA badge holder who wishes to challenge the notice of summary suspension may request a hearing before the Director (or designee);
 - 4. The method for requesting a hearing before the Director (or designee); and

5. The notice of summary suspension shall become final unless the Director (or designee) receives a written request for a hearing from the SIDA badge holder within the time period specified in Section 25.09.320 below.
- B. The period of time of the summary suspension shall remain in effect unless and until either:
1. The Airport Security Coordinator or designee amends the notice of summary suspension to shorten the time period provided in the earlier notice of summary suspension; or
 2. The Director (or designee) issues a decision after holding a hearing pursuant to the requirements of Section 25.09.330 that overrules or modifies the summary suspension, including without limitation, ordering permanent revocation or continued suspension of the SIDA badge, where appropriate, on grounds set forth in Section 25.09.130 above.

25.09.320 Request to challenge summary suspension

- A. If the SIDA badge holder wishes to challenge the notice of summary suspension, the SIDA badge holder must file a written request for a hearing before the Director (or designee) within three (3) business days after service of the notice of summary suspension. If the Director (or designee) does not receive a request for a hearing from the SIDA badge holder within this time period, the notice of summary suspension shall become final upon the airport's close of business on last day to file the written request for a post-deprivation hearing.

- B. The Director (or designee) must respond to the SIDA badge holder's request for a hearing by holding a hearing to affirm, modify or overrule the notice of summary suspension within five (5) business days of the SIDA badge holder's request for a hearing, unless the SIDA badge holder requests an extension of the time within which the Director (or designee) can hold the hearing.

25.09.330 Post-deprivation hearing before Director

- A. The Director (or designee) shall serve a written notice of hearing on the SIDA badge holder not later than two (2) business days after receiving the SIDA badge holder's written request for a hearing. The notice of hearing shall contain the date, time and place at which the hearing shall be conducted.
- B. At the hearing before the Director (or designee), the SIDA badge holder shall be given the opportunity to present evidence that either rebuts the ground(s) for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected.
- C. The hearing will be conducted informally and technical rules of evidence shall not apply. Any and all evidence that the Director (or designee) deems reliable, relevant and not unduly repetitious may be considered.
- D. The SIDA badge holder may waive their right under this Section to an accelerated post-deprivation hearing before the Director (or designee) by providing a written request for such a waiver at least 24 hours prior to the scheduled post-deprivation hearing before the Director (or designee).

25.09.340 Decision of Director

- A. Following the conclusion of the hearing, the Director (or designee) shall issue a decision which affirms, modifies or overrules the notice of summary suspension, as specified in subsection B below. If the Director (or designee) affirms or modifies the summary suspension, the Director (or designee) may impose additional conditions upon the SIDA badge if those conditions were reviewed at the hearing and the conditions are intended to protect the health, safety or welfare of the public or prevent the conduct or condition that led to the notice of summary suspension.
- B. The Director (or designee) shall issue an oral decision upon the close of the hearing or may communicate the decision by telephone, within twenty-four (24) hours of the close of the hearing. The Director (or designee) shall also serve the SIDA badge holder with a written decision within three (3) business days of the close of the hearing, utilizing any of the methods of service identified in section 25.09.080. However, the Director (or designee) may exercise discretion to delay issuance of a decision for a period not to exceed seven (7) additional business days for any reason, including the Director's request for submission of supplemental information from the SIDA badge holder or airport staff.
- C. Following the service of a written decision after the hearing, a SIDA badge holder who is dissatisfied with the Director's decision may seek judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California, as the Director's written decision shall be the airport's final action on the matter

25.09.350 Failure to appear

An applicant or SIDA badge holder's failure to appear at a scheduled hearing before the Director (or designee) in person, through a representative, or by written submission, except upon twenty-four (24) hours' prior notice to the Director (or designee) will result in denial of the challenge of the notice of decision or hearing concerning such decision,

which will be a final action of the airport that is not subject to further administrative review; provided, however, that the Director (or designee) shall have the discretion, upon an applicant's or SIDA badge holder's showing of good cause, to excuse such failure to appear.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk