

Chapter 25.18 - CONSTRUCTION CRANE FEE PROGRAM

Parts:

Part 1 - DEFINITIONS

Sections:

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".

(Ord. 30674.)

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.

(Ord. 30674.)

28.18.110 - Administrative Program Fee.

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

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

25.18.145 - Crane Fee.

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

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

25.18.170 - Estimated Crane Fee.

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

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

Part 2 - BUILDING PERMIT ISSUANCE CONDITIONS

Sections:

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

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.

(Ord. 30674.)

Part 3 - CONSTRUCTION CRANES STATUS

Sections:

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.

(Ord. 30674.)

Part 4 - TCO/COO ISSUANCE CONDITIONS

Sections:

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.

(Ord. 30674.)

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.

(Ord. 30674.)

Part 5 - PIPELINE PROJECTS

Sections:

25.18.505 - Crane Fee limitation for pipeline projects.

- A. Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area who have submitted a Building Permit application on or before September 29, 2021 and undertake work that conforms with the Building Permit within six months of Building Permit issuance, shall pay no Crane Fees for the first six months of the operation of the Construction Crane, but will be responsible for Crane Fees arising from the operation of the Construction Crane beyond six months.
- B. Developers operating Construction Cranes above the Downtown Building Height Limits in the Construction Crane Guidance Area who receive a Building Permit and undertake work that conforms with the Building Permit by September 30, 2022, shall pay no Crane Fees for the first six months of the operation of the Construction Crane, but will be responsible for Crane Fees arising from the operation of the Construction Crane beyond six months.
- C. For purposes of this section, undertaking work that conforms with the Building Permit shall not include grading, demolition, or utility relocation.

(Ord. 30674.)