

City of San Jose Construction Crane Guidance & Fee Program Packet





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Background:

The Federal Aviation Administration (FAA) protects airspace around airports through the application of Federal Aviation Regulations (FAR) Part 77 and Terminal Instrument Procedures (TERPS). These surfaces are used by the FAA to ensure approach/departure procedures are protected at Airports and to make a decision on maximum permissible heights for both permanent structures (buildings) and temporary structures (cranes) and to ensure airspace safety. This airspace safety review is completed by the FAA through a Form 7460-1 Notice of Proposed Construction or Alteration. The FAA’s airspace determination may include:

- a. Determination of No Hazard
- b. Determination of No Hazard with conditions (i.e. obstruction marking and lighting, also coordination with Airport and Air Traffic Control Tower)
- c. Determination of Presumed hazard (Notice of Preliminary Findings)
- d. Determination of Hazard

Detailed Part 77 Guidance

1. Developers are encouraged to submit a “feasibility study” through the FAA 7460 obstruction safety review process for temporary cranes and buildings as early as possible, ideally during the land procurement phase of a project.
2. Developers must reference permanent building(s) 7460 case numbers in 7460 submittal for temporary crane(s).
3. 7460 submittals to the FAA must have all fields filled in including schedule with a date range for construction crane activities, number of days the crane is expected to be up, and a thorough description/purpose of the crane. Submittals that do not include this information may be marked incomplete by the FAA.

A full Part 77 Form-7460 how-to-guide is available to the public on the Airport’s website at www.flysanjose.com/downtownheightlimits.

Construction Crane Guidance Criteria

The following guidance will be applied to all construction projects requiring construction cranes in the Downtown San Jose and Diridon Station Areas. (*Page 7*)

Developers must initiate consultation on project crane heights with the Airport as early as possible in the formulation of a project, but no later than design initiation. The following guidance criteria is provided and followed to minimize impacts to the aircraft operations arriving and departing the airport. The months of April – September will be referred to as “Summer” and October – March as “Winter”.

- 1. Utilize Crane “jumps” (raising of cranes) to ensure crane at maximum height for shortest period of time**
 - Developers to utilize crane jumps, as needed, to ensure construction cranes are at their maximum filed FAA heights for the shortest duration possible. There is no set guidance for how many jumps a construction crane should have.

- 2. Construction Cranes at maximum heights for 6 months**
 - Construction cranes shall not exceed the Downtown Building Height Limits (*Page 10*) at the project site for longer than six (6) months in total duration. Developer will ensure crane operation planning accounts for these time windows for the highest cranes used on a construction project. **Note:** Construction Cranes must always remain at or below the FAA “Determination of No Hazard” height in the approved 7460-1.

- 3. Schedule highest heights during non-South flow months (April-September “Summer”)**
 - Developers will make best efforts to schedule their highest construction cranes heights during the months of April to September.

Construction Crane Fee Program

On 9/28/2021, the City of San Jose City Council made the following actions related to the Construction Crane Fee Program.

1. Approve an [ordinance](#) requiring developers whose means or methods of construction exceed the City’s Downtown Building Height Limits to indemnify the City for all costs or losses arising out of developers construction means or methods, to make a deposit of estimated costs or losses prior to the city issuing a building permit, and to reconcile a percentage of costs associated with actual Air Carrier denied passenger boardings, prior to the city issuing a temporary or permanent certificate of occupancy.

2. Adopt a resolution to implement a Landing Fee Reduction Program for air carriers that incur passenger weight impacts caused by a developers construction means and methods in the “Construction Crane Guidance Area” and to grant the Director of Aviation authority to waive landing fees up to 75% of the total Air Carrier denied boarding costs due to construction cranes and to set the estimated crane fee deposit percentage up to 50% and fee cap on an annual basis.

A final report on both the Construction Crane Height Guidance Study and the Construction Crane Fee Program can be accessed on the Airport’s website at www.flysanjose.com/downtownheightlimits.

Prior to issuance of building permit, all construction projects in the “Construction Crane Guidance Area” (*Page 7*) that will operate construction cranes above the Downtown Building Height Limits must pay a construction crane fee deposit based on the expected duration of time the project’s construction cranes will be above this height. Payment of the construction crane fee deposit will be a building permit condition of approval.

Components of the Crane Fee Program include

- Payment of a construction crane fee deposit based on the expected duration of time the project’s construction cranes will be above the Downtown Building Height Limits. The construction crane fee deposit is based on the impacts associated with airline denied passenger boardings.
- A fee cap will apply for only the first six months a project’s construction crane(s) exceed the Downtown Building Height Limits. If a project’s construction crane(s) exceed the Downtown Building Height Limits for more than six months, the cap will be eliminated and the full published monthly crane fee rates will be applied to months greater than 6 months due at time of reconciliation.
- All developers will be required to submit an estimated construction crane operation schedule at time of crane fee payment.
- A reconciliation of fees will occur at project closeout and will be tied to the development’s temporary Certificate of Occupancy (TCO/COO), whichever occurs sooner.
- At the time of building permit processing and crane fee deposit, Developer will be required to sign the City’s Construction Crane Indemnification Agreement (Pages 13-20).

Crane Fee Deposit Formula

Published Monthly Fee Rate x Estimated # months¹ crane(s) exceed Downtown Building Height Limits

Divided by # of projects with crane(s) exceeding Downtown Building Height Limits ²

¹ *Note: (“Summer” and “Winter” months have different fee rates)*

² *A list will be updated monthly on the Airport’s website, identifying projects that have submitted a crane fee deposit to the Airport and anticipated construction dates.*

Crane Fee Cap

The fee cap formula is below and is based on the single developer rates published at www.flysanjose.com/downtownheightlimits:

Five (5) X Published Monthly fee rate

Fee Schedule

The City of San Jose Construction Crane Fee schedule is available on the Airport’s website at www.flysanjose.com/downtownheightlimits. This schedule will be updated and adjusted on an annual basis, based on actual Airport conditions such as: flight schedule changes and actual weather conditions.

Permitting (Site Development Permit & Building Permit)

Per City of San Jose General Plan Policy TR 14.2, all proposed structures (i.e. buildings) in San Jose that require FAA Part 77 airspace safety review must receive a “Determination of No Hazard” with or without conditions from the FAA. This is a condition of City **site development permit approval**.

Prior to building permit issuance, any project requiring construction cranes must complete the following steps:

1. Consult with the Airport on construction crane heights and duration (prior to filing an FAA Form 7460-1 for construction cranes).
2. Provide an estimated construction crane schedule including crane jump heights.
3. Provide a construction crane fee deposit to City.
4. Sign Construction Crane Guidance Developer Acknowledgement.
5. Sign the City of San Jose Construction Crane Indemnification Agreement.
6. Grant an Avigation Easement to the City of San Jose if applicable.

Construction Crane Height Exhibit Details

Page 7 - Downtown San Jose and Diridon Station Area Construction Crane Guidance Area

All projects in the Construction Crane Guidance Area are subject to comply with this document.

Page 8 - Construction Crane Height Map

This map details the presumed maximum FAA construction crane heights above mean sea level (MSL).

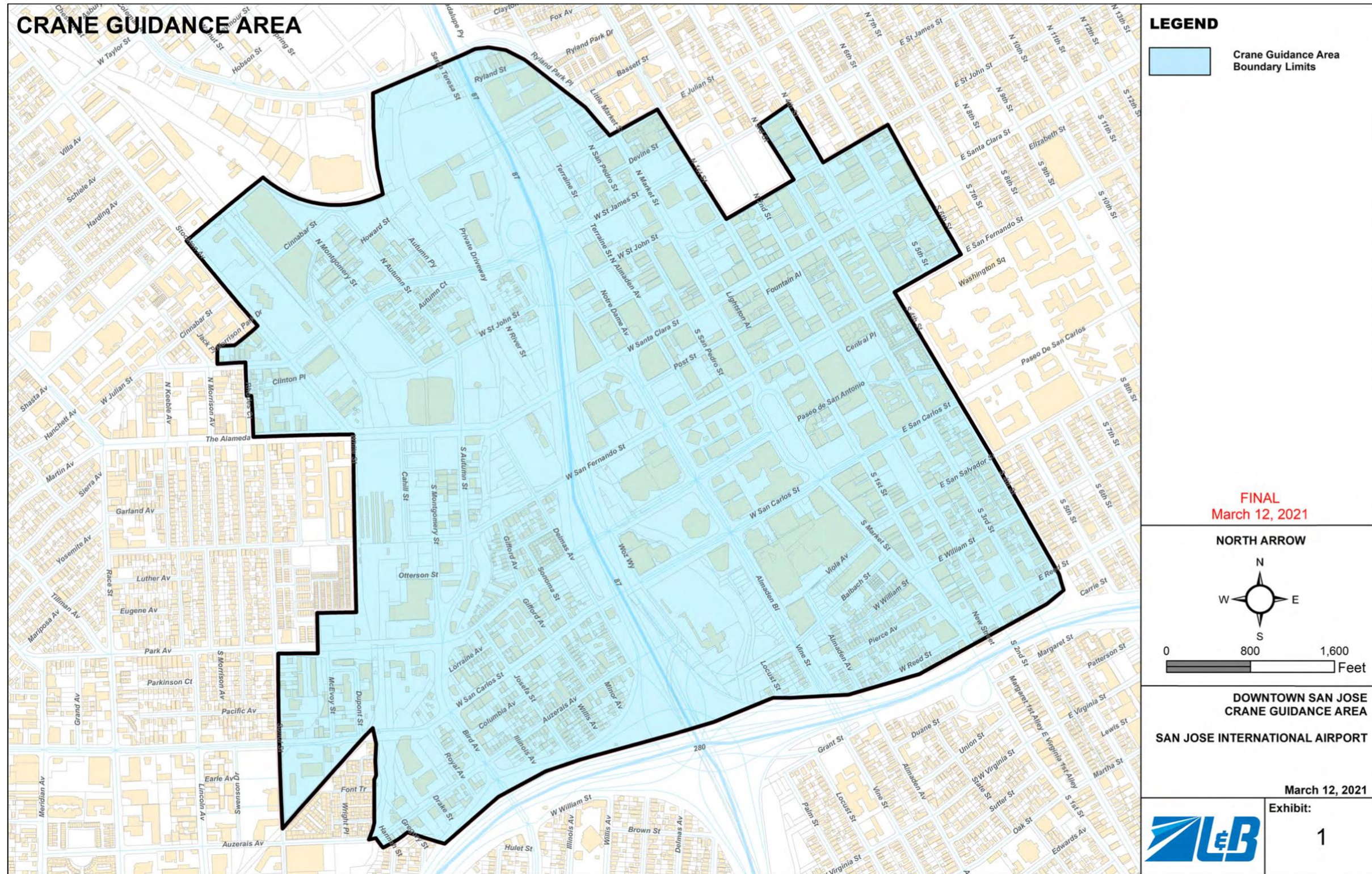
Page 9 - Construction Crane Height Map Above Downtown Building Height Limits

This map details the height difference between the Downtown Building Height Limits and the presumed maximum FAA construction crane heights above mean sea level (MSL).

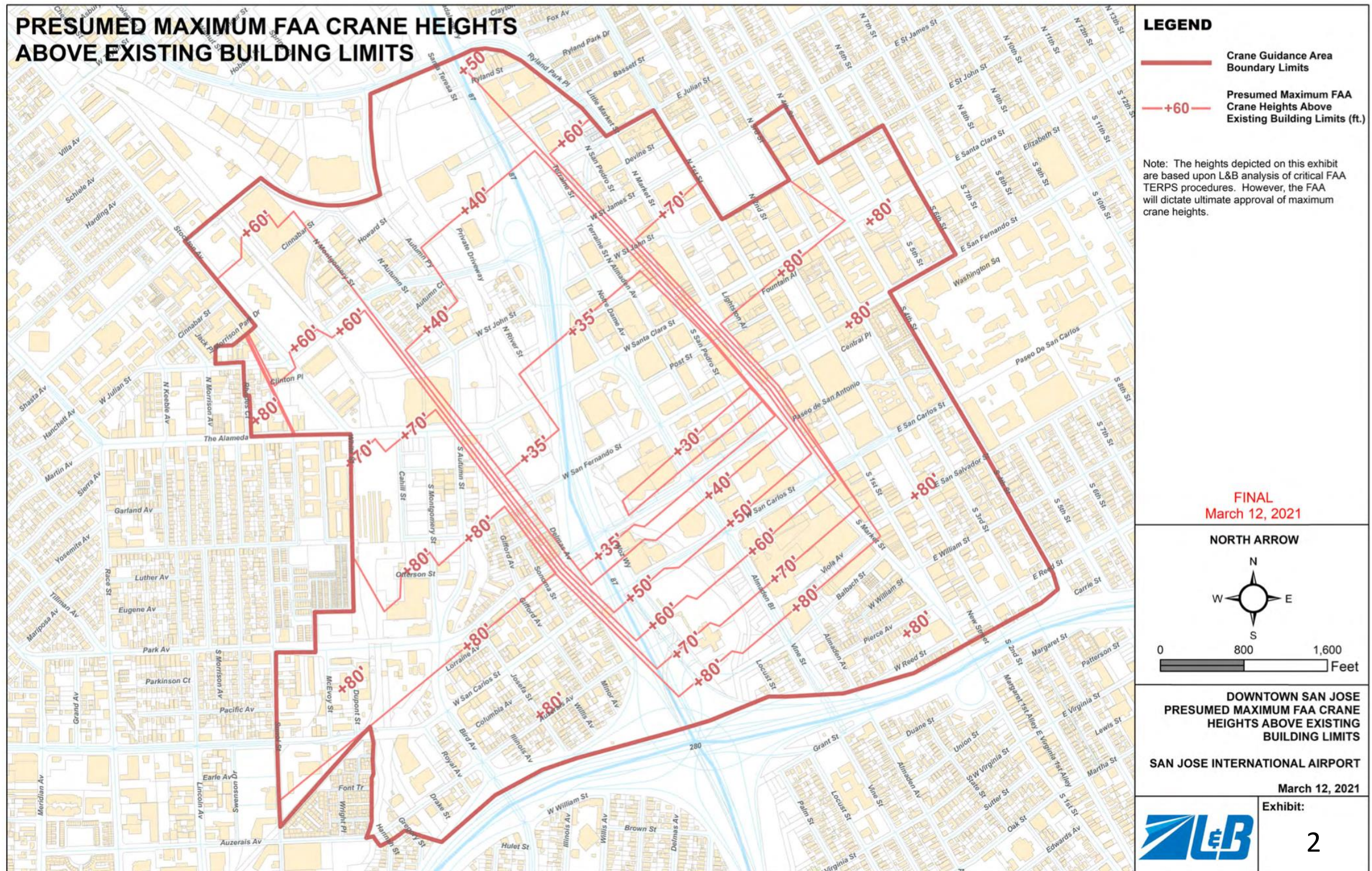
Page 10 - Downtown Building Height Limits Map

For reference, the Downtown Building Height Limits map has been included. It depicts the maximum heights above mean sea level (MSL) in the Downtown San Jose & Diridon Station Areas.

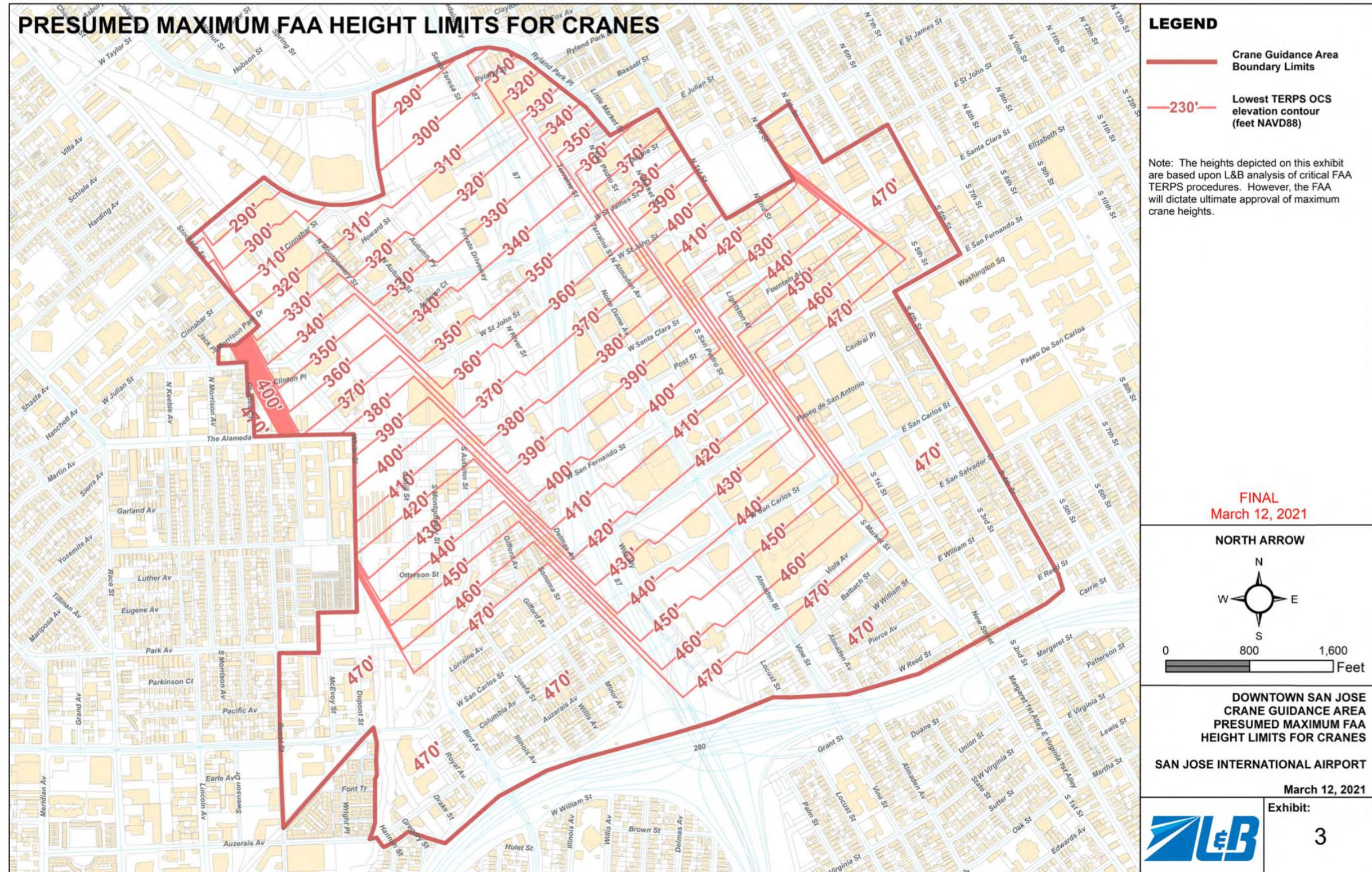
Downtown and Diridon Station Area Construction Crane Guidance Area



Downtown San Jose and Diridon Station Area Crane Height Map (Above Downtown Building Height Limits)



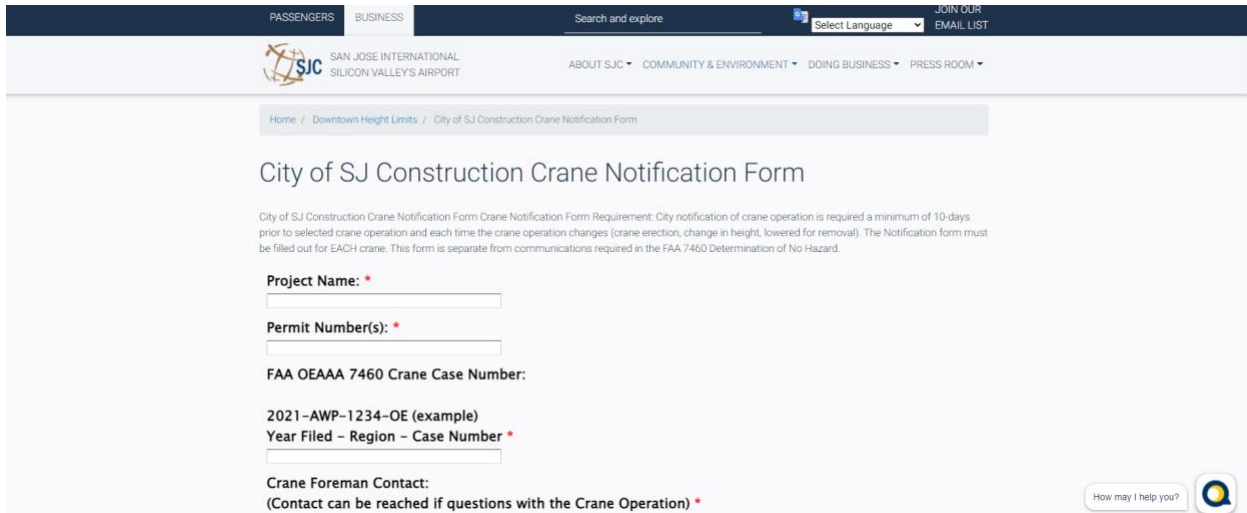
Downtown San Jose and Diridon Station Area Crane Height Map



Construction Crane Notification Form

The City of San Jose Construction Crane Notification Form is required to be filled out for all crane activity on a project site, including initial crane erection, raising or lowering the crane, and demobilization. One form should be filled out for each construction crane on-site.

The Form is available on SJC's website: <https://www.flysanjose.com/downtown-height-limits/city-of-sj-construction-crane-notification-form>.



The screenshot shows the top navigation bar with links for PASSENGERS, BUSINESS, Search and explore, Select Language, and JOIN OUR EMAIL LIST. Below the navigation bar is the SJC logo and the text "SAN JOSE INTERNATIONAL SILICON VALLEY'S AIRPORT". A breadcrumb trail reads "Home / Downtown Height Limits / City of SJ Construction Crane Notification Form". The main heading is "City of SJ Construction Crane Notification Form". Below the heading is a paragraph explaining the requirement: "City of SJ Construction Crane Notification Form Crane Notification Form Requirement: City notification of crane operation is required a minimum of 10 days prior to selected crane operation and each time the crane operation changes (crane erection, change in height, lowered for removal). The Notification form must be filled out for EACH crane. This form is separate from communications required in the FAA 7460 Determination of No Hazard." The form fields include: "Project Name: *", "Permit Number(s): *", "FAA OEAAA 7460 Crane Case Number:" with an example "2021-AWP-1234-OE (example)", "Year Filed - Region - Case Number *", and "Crane Foreman Contact: (Contact can be reached if questions with the Crane Operation) *". There is a "How may I help you?" button and a search icon in the bottom right corner.

All notifications required in the FAA's 7460-1 "Determination of No Hazard" letter must still be made and are separate from the City of San Jose Construction Crane notification process.

Heights of crane must not exceed approved FAA height in "Determination of No Hazard" letter.

Contact Information

Airport

Andres 'Drew' Niemeyer , Airport Deputy Director

Planning & Development

Office #: 408.392.3680 | Cell #: 669.282.0382 | aniemeyer@sjc.org

Ryan Sheelen, C.M.

Airport Planner IV (Acting)

Planning and Development Division

Office: 408.392.1193 | rsheelen@sjc.org



Construction Crane Guidance Developer Acknowledgement

By signing the block below, developer acknowledges they have reviewed this construction crane guidance and fee program packet and will implement for the project listed below:

Permit Number

Project Name

Developer

Date

Authorized Project Representative



RECORDING REQUESTED BY AND WHEN RECORDED, RETURN TO:

City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

APN: [insert Property's assessor's parcel number]

**CONSTRUCTION CRANE AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
[INSERT DEVELOPER'S NAME]**

THIS CONSTRUCTION CRANE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, _____ (the "Effective Date"), by and between the City of San José, a municipal corporation of the State of California ("City"), and [insert Developer's name], a [insert state of formation] [insert entity type] ("Developer"), with respect to the following facts:

RECITALS

- A. Developer is the owner in fee of that certain real property located in the City of San José, County of Santa Clara, State of California, commonly known as [insert address] (the "Property"), which Property is located within the Construction Crane Guidance Area, as defined in City's Ordinance No. 30674. The Property is more particularly described in **Exhibit A**, entitled "Legal Description," attached hereto and incorporated herein by this reference.
- B. Developer has filed for that certain Special Use Permit, File No. [insert file number and project description] (the "Project") to be constructed upon the Property.
- C. Developer's Project shall involve the operation of Construction Cranes above the Downtown Building Height Limits within the Construction Crane Guidance area and therefore the Project is subject to the requirements set forth in Ordinance No. 30674.

NOW, THEREFORE, pursuant to the provisions of City's Ordinance No. 30674, the parties hereto for their mutual consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

Section 1. Construction Crane Fee Ordinance

This Agreement is entered into pursuant to and shall be governed by Ordinance No. 30674, the "Construction Crane Fee Program." All capitalized terms used but not defined in this Agreement shall the meanings ascribed to them in Ordinance No. 30674.

Section 2. Indemnity

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

Section 3. Deposit and Reimbursement of Costs Arising from Use of Construction Cranes.

- A.** Developer has provided an Estimated Crane Fee Deposit of [insert dollar amount] to the City.
- B.** When Developer notifies City that the Construction Crane will no longer operate above the Downtown Building Heights Limits in the Construction Crane Guidance Area, then City shall 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.
- C.** Developer shall be required to pay the balance of the remaining Crane Fee, if any, prior to the City issuing a TCO or COO for the Project's structure, whichever comes first.

Section 4. Crane Fee Limitations for Certain Projects

- A.** If Developer submits a Building Permit application on or before September 29, 2021 and undertakes work that conforms with the Building Permit within six months of Building Permit issuance, then Developer shall pay no Crane Fees for the first six months of the operation of the Construction Crane. Developer will be responsible for Crane Fees arising from the operation of the Construction Crane beyond six months.
- B.** If Developer receives a Building Permit and undertakes work that conforms with the Building Permit by September 30, 2022, Developer shall pay no Crane Fees for the first six months of the operation of the Construction Crane. Developer 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.
- D.** If Developer fails to meet timeframes identified in subsections A or B of this section, then Developer shall be required to pay the balance of the Crane Fee, prior to the City issuing a TCO or COO for the Project's structure, whichever comes first.

Section 5. Notice Regarding Crane Status

Developer 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.

Section 6. Transfer of Property

Developer's transfer of any property described in **Exhibit A** shall not release Developer of its obligations hereunder. Upon any transfer, Developer shall give a copy of this Agreement to the transferee.

Section 7. Miscellaneous

- A.** Developer hereby acknowledges and agrees that, except as expressly set forth in this Agreement, this Agreement does not alter or suspend any other City requirement, nor does this Agreement alter or suspend any requirement or condition contained in any additional agreements related to the Project, in the Project's development approval, or in any Building Permit for the Project, and that the failure of Developer to comply with any term or condition contained in any additional agreements, or with any other City requirement applicable to the Project, including without limitation a requirement contained in the Project's development approval or in any Building Permit for the Project, shall not cause any deadlines contained in this Agreement to be extended or suspended.
- B.** Except as provided below, neither City nor Developer shall be deemed to be in default under this Agreement where delays or defaults in performance hereunder are due entirely to war; insurrection; civil disturbances; strikes; lock-outs; riots; floods; unusually severe rain beyond the anticipated average annual number of rain days over a historic ten (10) year period based on National Weather Service data; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; or governmental restrictions or any other comparably severe and unexpected occurrence that is beyond the reasonable control of the party whose performance is impacted by such cause. An extension of time to perform hereunder due to any such cause occurring shall be allowed for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if the performing party provides notice to the other party hereunder of such a claimed extension within ten (10) days of the commencement of the cause.
- C.** All notices, correspondence and communications between Developer and City contemplated or required under this Agreement shall be in writing and delivered in person or sent via certified mail, postage prepaid and return receipt requested to the offices of City or Developer, as appropriate, as set forth below and shall be deemed provided, received, made and/or communicated on the date personal delivery is made or, if mailed, on the delivery date shown upon the return receipt. The parties hereto agree that the addresses for such notices shall be as follows:

CITY: Director of Aviation
Norman Y. Mineta San José International Airport
1701 Airport Blvd., Suite B-1130
San José, California 95110

with a copy to:

City Attorney
City of San José
200 East Santa Clara Street, 16th Floor
San José, CA 95113

DEVELOPER: [Insert Developer's Name]
[Insert Developer's address]
[Insert Developer's address]

Either party may change the recipient and/or address for notices stated herein by giving notice in writing to the other party pursuant to the provisions of this **Section 7.C**, and thereafter notices to that party shall be addressed and transmitted to that party's new recipient/address.

- D. The parties agree that this Agreement shall be governed by the laws of the State of California and that venue for any lawsuit brought under or pursuant to this Agreement shall be exclusively vested in the state courts of the County of Santa Clara or, if federal jurisdiction is appropriate, in the United States District Court, Northern District of California, San José, California.
- E. This Agreement, including all exhibits attached hereto, represents the entire understanding of the parties hereto as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.
- F. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement by the parties hereto.
- G. Any failure by either party to perform any material term or provision of this Agreement shall constitute an "Event of Default," (i) if such defaulting party does not cure such failure within sixty (60) days following written notice of default from the other party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting party does not within such sixty (60) day period promptly and diligently commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.
- H. Each party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement. Proof of authority for Developer's signature(s) is required to be submitted concurrently with Developer's execution of this Agreement.



- I. Developer's and City's signatures to this Agreement must be acknowledged unless exempted from acknowledgement per Government Codes § 27282, 27285, and 27330.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as the day and year hereinafter written by City.

<p>"CITY"</p> <hr/> <p>John Aitken, A.A.E. Director of Aviation</p> <p>APPROVED AS TO FORM:</p> <hr/> <p>Jon Calegari Deputy City Attorney</p>	<p>"DEVELOPER"</p> <hr/> <p>Name: _____ Title: _____</p>
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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____,
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)



Exhibit A
Legal description of property
(to be attached)