

**REVISED LEGISLATIVE DIGEST**  
(Amended in Committee, 4/3/2023)

[Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses and Change in 75% Gate Transparency Requirement to 20%]

**Ordinance amending the Planning Code to exempt certain existing gates, railings, and grillwork at Non-Residential uses from transparency requirements, subject to the provisions for noncomplying structures, and exempt Cannabis Retail uses from transparency requirements for gates, railings, and grillwork for a three-year period, provided the Cannabis use installs artwork on any new exempt gates, and require removal of gates, railings, and grillwork installed pursuant to that exemption when a Cannabis Retail use’s business permit becomes invalid or the business ceases to operate, and change the transparency requirement for gates, railings, and grillwork in Neighborhood Commercial Districts, Commercial Districts, Residential-Commercial Districts, and Mixed Use Districts from 75% to 20% open to perpendicular view with additional requirements for fire safety; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and welfare findings pursuant to Planning Code, Section 302**

Existing Law

Planning Code Section 145.1(c)(7) contains transparency controls for gates, railings, and grillwork located in Neighborhood Commercial Districts, Commercial Districts, Residential-Commercial Districts, and Mixed Use Districts. With an exception for historic buildings, the section requires decorative railings or grillwork, other than wire mesh, placed in front of or behind ground floor windows, to be at 75% open to perpendicular view. Rolling or sliding security gates are also required to consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled, and gate mechanisms are also required to be recessed within, or laid flush with, the building façade.

Amendments to Current Law

The legislation changes the 75% transparency standard to a 20% standard and requires gates that are less than 75% open to perpendicular views to include a transparent viewing window or grill at least 10 inches in height, located at least 50-60 inches above the nearest abutting sidewalk, to ensure sufficient visibility for fire safety. Gate mechanisms are no longer required to be recessed within, or laid flush with, the building façade, and will be subject to objective design standards that may be adopted by the Planning Commission.

The legislation also exempts Cannabis Retail uses and certain existing gates, railings, or grillwork from the requirements of Section 145.1(c)(7).

The exemption for Cannabis Retail uses would expire three years after the effective date of the ordinance. During this three-year period, a Cannabis Retail use would be permitted to install gates, railings, or grillwork that are less than 75% open to perpendicular view, including features that are fully opaque, provided that such gates, railings, or grillwork are deployed only when the Cannabis Retail use is not open to the public for business. A Cannabis Retail use that does not procure a building permit for its gate before the ordinance expires shall comply with, and not be exempt from, the requirements of Section 145.1(c)(7). Cannabis Retail use gates that are less than 20% open to perpendicular view and which were not in existence and occupied before September 6, 2022 are required to install a mural on the surface of the gate visible from the public sidewalk. Any gates, railings, or grillwork installed pursuant to this exemption must be removed within the earliest of the following:

- (a) 90 days after the Cannabis Business Permit issued to the use pursuant to Article 16 of the Police Code is revoked or otherwise rendered invalid;
- (b) 90 days after the Cannabis Retail use ceases regular operation at the premises; or
- (c) 90 days after the Cannabis Retail use is abandoned or discontinued pursuant to either Section 178 or Section 183.

The exemption for existing structures applies to any Non-Residential use that has not been discontinued or abandoned as of the effective date of the ordinance, and that has gates, railings, or grillwork in use prior to September 06, 2022, which are less than 20% open to perpendicular view, including features that are fully opaque. Such gates, railings, or grillwork will be deemed in compliance with the requirements of Section 145.1(c)(7), provided that they are deployed only when a business is not open to the public. The ordinance does not otherwise exempt a use from any required building permit. Existing gates, railings, and grillwork permitted by the ordinance will be treated as noncomplying structures for purposes of the restrictions on intensification, expansion, and relocation in Section 188(a), and the provisions for ordinary maintenance and minor repairs in Section 181(b). Businesses must procure a building permit within three years of the date of mailed notice to establish their existing gates, railings, or grillwork as a noncomplying structure. In the event a non-cannabis business does not procure a building permit within this three-year period, the business shall be subject to fines under Section 176 until it obtains the required permit, but existing non-cannabis business gates that meet the requirements for exemption in the ordinance will continue to be exempt from the requirements of Section 145.1(c)(7).

#### Background Information

On September 13, 2022, Supervisor Safai introduced a proposed ordinance under Board of Supervisors File Number 220971 that would amend the Planning Code to exempt certain existing gates, railings, and grillwork at Non-Residential uses from transparency requirements, subject to the provisions for noncomplying structures, and exempt gates, railings, and grillwork at Cannabis Retail uses from transparency requirements for a three-year period, and

require removal of these gates when a Cannabis Retail use's business permit becomes invalid or the business ceases to operate.

On December 8, 2022, the Planning Commission recommended approval of the ordinance with the following proposed modifications:

1. Require artwork on all new and existing solid security gates;
2. Allow 3 years from the date of mailed notice (to be mailed to all ground floor retail establishments) for any active, non-residential use in a NC, RC, C, or MU district with an existing security gate that does not comply with the (then) 75% transparency requirements to apply for a permit to establish the existing gate as a legal-nonconforming building element. In the event a qualifying business does not procure a building permit within the allocated time to legalize their non-compliant gate, the business would not be exempt from the requirements of Section 145.1(c)(7).
3. Add language to clarify that the amnesty program for security gate transparency requirements does not exempt historic buildings from other required review procedures or CEQA requirements;
4. Instruct the Commission to adopt objective design standards for gate mechanisms.

On April 3, 2023, the Land Use and Transportation Committee adopted substantive amendments to the ordinance introduced by the sponsor. The primary amendment was to change the 75% gate transparency requirement in Section 145.1(c)(7) to 20% and require 10-inch high viewing windows for gates that are less than 75% open to perpendicular view to ensure visibility for fire safety. The proposed amendments also removed the requirement that gate mechanisms be recessed within, or laid flush with, the building façade, and rather require gates and gate mechanisms to be consistent with objective design standards adopted by the Planning Commission. The amendments also require Cannabis Retail uses to install murals on new gates that do not meet the 20% transparency standard and require Non-Residential uses with existing nonconforming gates to procure a building permit within three years from the date of mailed notice. The Committee moved to continue hearing on the ordinance as amended to April 17, 2023.

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