

BOARD of SUPERVISORS



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MEMORANDUM

TO: Nikesh Patel, Director, Office of Cannabis
William Scott, Police Chief, Police Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: September 21, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on September 13, 2022:

File No. 220971

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, 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; 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.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

cc: Jeremy Schwartz, Office of Cannabis
Lisa Ortiz, Police Department
Lili Gamero, Police Department
Diana Oliva-Aroche, Police Department
Sgt Stacy Youngblood, Police Department

1 [Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and
2 Existing Non-Residential Uses]

3 **Ordinance amending the Planning Code to exempt certain existing gates, railings, and**
4 **grillwork at Non-Residential uses from transparency requirements, subject to the**
5 **provisions for noncomplying structures, and exempt Cannabis Retail uses from**
6 **transparency requirements for gates, railings, and grillwork for a three-year period, and**
7 **require removal of gates, railings, and grillwork installed pursuant to that exemption**
8 **when a Cannabis Retail use’s business permit becomes invalid or the business ceases**
9 **to operate; affirming the Planning Department’s determination under the California**
10 **Environmental Quality Act; and making findings of consistency with the General Plan,**
11 **and the eight priority policies of Planning Code, Section 101.1, and public necessity,**
12 **convenience, and welfare findings pursuant to Planning Code, Section 302.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Findings.

22 (a) The Planning Department has determined that the actions contemplated in this
23 ordinance comply with the California Environmental Quality Act (California Public Resources
24 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
25 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
determination.

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
7 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
8 Planning Commission Resolution No. _____. A copy of said Resolution is on file with
9 the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by
10 reference.

11
12 Section 2. Article 1.2 of the Planning Code is hereby amended by revising Section
13 145.1, to read as follows:

14 **SEC. 145.1. STREET FRONTAGES IN NEIGHBORHOOD COMMERCIAL,**
15 **RESIDENTIAL-COMMERCIAL, COMMERCIAL, AND MIXED USE DISTRICTS.**

16 (a) **Purpose.** The purpose of this Section 145.1 is to preserve, enhance, and promote
17 attractive, clearly defined street frontages that are pedestrian-oriented, and fine-grained, and
18 that are appropriate and compatible with the buildings and uses in Neighborhood Commercial
19 Districts, Commercial Districts, Residential-Commercial Districts, and Mixed Use Districts.

20 * * * *

21 (c) **Controls.** The following requirements shall generally apply, except for those
22 controls listed in subsections (c)(1) Above Grade Parking Setback and (c)(4) Ground Floor
23 Ceiling Height, which only apply to a "development lot" as defined above, and except as
24 specified in subsection (d).

1 In NC-S Districts, the applicable frontage shall be the primary facade(s) that
2 contains customer entrances to commercial spaces.

3 * * * *

4 (7) **Gates, Railings, and Grillwork.** *Except as specified in subsection (d), any*
5 decorative railings or grillwork, other than wire mesh, which is placed in front of or behind
6 ground floor windows, shall be at least 75%~~percent~~ open to perpendicular view. Rolling or
7 sliding security gates shall consist of open grillwork rather than solid material, so as to provide
8 visual interest to pedestrians when the gates are closed, and to permit light to pass through
9 mostly unobstructed. Gates, when both open and folded or rolled as well as the gate
10 mechanism, shall be recessed within, or laid flush with, the building facade.

11 * * * *

12 (d) **Exceptions.**

13 (1) **Exceptions for Historic Buildings.** Specific street frontage requirements in
14 this Section 145.1 may be modified or waived by the Planning Commission for structures
15 designated as landmarks, significant or contributory buildings within a historic district, or
16 buildings of merit when the Historic Preservation Commission advises that complying with
17 specific street frontage requirements would adversely affect the landmark, significant,
18 contributory, or meritorious character of the structure, or that modification or waiver would
19 enhance the economic feasibility of preservation of the landmark or structure.

20 (2) **Exception to Gates, Railings, and Grillwork Requirements for Cannabis Retail.**

21 (A) A Cannabis Retail use, as defined in Section 890.125 or Section 102, as
22 applicable, is exempt from the requirements of Section 145.1(c)(7) as provided herein, and may install
23 gates, railings, or grillwork that are less than 75% open to perpendicular view, including features that
24 are fully opaque, provided that such gates, railings, or grillwork are deployed only when the Cannabis
25 Retail use is not open to the public for business.

1 (B) A Cannabis Retail use that has installed any gates, railings, or grillwork
2 pursuant to subsection (d)(2)(A) shall remove such gates, railings, or grillwork within the earliest of
3 the following:

4 (i) 90 days after its Cannabis Business Permit issued pursuant to Article
5 16 of the Police Code is revoked or otherwise rendered invalid;

6 (ii) 90 days after the Cannabis Retail use ceases regular operation at the
7 premises; or

8 (iii) 90 days after the Cannabis Retail use is abandoned or discontinued
9 pursuant to either Section 178 or Section 183.

10 (C) Any building permit application to install gates, railings, or grillwork
11 pursuant to subsection (d)(2)(A) shall include a statement acknowledging the requirements of
12 subsection (d)(2)(B).

13 (D) Subsections (d)(2)(A) and (C) shall expire by operation of law three years
14 after the effective date of the ordinance in Board File No. _____ enacting this subsection (d)(2). In the
15 event a Cannabis Retail use does not procure a building permit pursuant to subsection (d)(2)(A) prior
16 to the expiration of subsection (d)(2)(A), the business shall comply with, and not be exempt from, the
17 requirements of Section 145.1(c)(7). Subsection (d)(2)(B) shall continue to apply after the expiration of
18 subsections (d)(2)(A) and (C).

19 **(3) Exception for Existing Gates, Railings, or Grillwork.**

20 (A) Any Non-Residential use that has not been discontinued or abandoned as of
21 the effective date of the ordinance enacting this subsection (d)(3) and that has gates, railings, or
22 grillwork that are less than 75% open to perpendicular view, including features that are fully opaque,
23 will be deemed in compliance with the requirements of Section 145.1(c)(7), provided that such gates,
24 railings, or grillwork existed and were occupied by the use prior to September 13, 2022, and are

1 deployed only when a business is not open to the public. This subsection (d)(3) does not otherwise
2 exempt a use from any required building permit.

3 (B) Existing gates, railings, and grillwork permitted pursuant to this subsection
4 (d)(3) shall be treated as noncomplying structures subject to the restrictions on intensification,
5 expansion, and relocation under Section 188(a), and may undergo ordinary maintenance and minor
6 repairs as described in Section 181(b).

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor’s veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19 APPROVED AS TO FORM:
20 DAVID CHIU, City Attorney

21 By: /s/ Kathy J. Shin
22 KATHY J. SHIN
23 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses]

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, 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; 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

Section 145.1(c)(7) of the Planning Code requires that in Neighborhood Commercial, Residential-Commercial, Commercial and Mixed Use Districts, storefront gates, railings and grillwork, including security gates, must be at least 75% open to perpendicular view.

Amendments to Current Law

This ordinance would exempt Cannabis Retail uses and certain existing gates, railings, or grillwork from the 75% transparency 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 that 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. 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 removal requirements for Cannabis Retail would continue to apply after expiration of the exemption, and any building permit application to install gates, railings, or grillwork pursuant to the exemption must include a statement acknowledging the removal requirements.

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 75% 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).

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

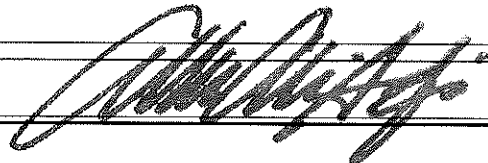
Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:



For Clerk's Use Only