



January 10, 2023

Ms. Angela Calvillo, Clerk
Honorable Supervisor Safai
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2022-009700PCA:
Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses
Board File No. 220971

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Safai,

On December 8, 2022, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Safai 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 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. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

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 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 shall 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.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc: Kathy J. Shin, Deputy City Attorney
Jeff Buckley, Aide to Supervisor Safai
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21218

HEARING DATE: DECEMBER 8, 2022

- Project Name:** Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses
- Case Number:** 2022-009700PCA [Board File No. 220971]
- Initiated by:** Supervisor Safai / Introduced September 13, 2022
- Staff Contact:** Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
- Reviewed by:** Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO EXEMPT CERTAIN 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.

WHEREAS, on September 13, 2022 Supervisor Safai introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 220971, which 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 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;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 8, 2022; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 **and** 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission’s proposed recommendation(s) is/are as follows:

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 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 shall 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.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Department understands that non-compliant security gates are common in the City. It also recognizes the many economic hardships that our small business community currently faces, and that an additional burden of replacing often long-standing security gates will only add to that hardship. At the same time, the Department also believes transparency requirements are beneficial to the City for both aesthetic and public safety reasons. Completely opaque rolldown gates can create a hostile environment for pedestrians when stores are closed

and provide a tempting canvas for graffiti vandals. Additionally, the Fire Department has expressed concern that completely opaque gates may pose an increased fire risk. Weighing all these factors, the Department finds that allowing an amnesty program for existing non-compliant security gates balances the City's desire to support small businesses while still promoting vibrant public spaces. However, the Department has concerns over singling out Cannabis Retail, and implementations concerns. The following recommendations are intended to address those two issues.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance, with all recommended modifications, will assist small businesses in the City by giving those with non-compliant security gates time to come into compliance, removing the financial burden or fear of enforcement fines so long as they apply for a building permit to establish their legal-nonconforming gate within three years. It will also ensure that these types of gates are eventually replaced with those that comply with the City's transparency requirements, thereby ensuring a more inviting and safer street front in the long term.

URBAN DESIGN ELEMENT

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4.3

Provide adequate lighting in public areas.

Policy 4.13

Improve pedestrian areas by providing human scale and interest.

In commercial areas, continuous and well-appointed shop windows and arcades are invitations to movement. The light generated from shop windows greatly increases a feeling of safety and security to pedestrians. Allowing

fully opaque gates on a permanent basis would create a dark wall along street frontages. The proposed Ordinance, with all recommended modifications, will succeed in balancing the immediate economic needs of small business owners, while also preserving the transparency requirements for storefronts once legal-noncomplying gates need to be replaced. The modifications will also succeed in ensuring no new opaque gates are installed.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss

of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 8, 2022.



Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2022.12.08 10:00:00 -0800

Jonas P. Ionin
Commission Secretary

AYES: Braun, Diamond, Imperial, Koppel, Tanner

NOES: Moore

ABSENT: Ruiz

ADOPTED: December 8, 2022



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: December 8, 2022

90-Day Deadline: December 12, 2022

Project Name: Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses

Case Number: 2022-009700PCA [Board File No. 220971]

Initiated by: Supervisor Safai / Introduced September 13, 2022

Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534

Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance 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 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.

The Way It Is Now:

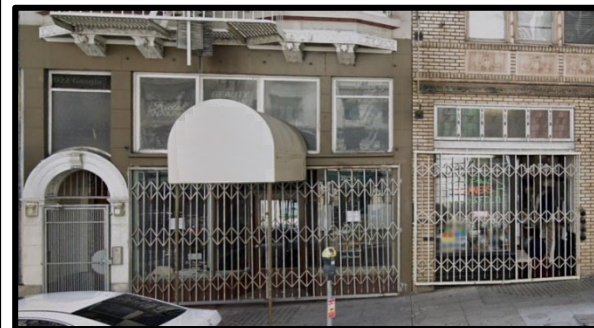
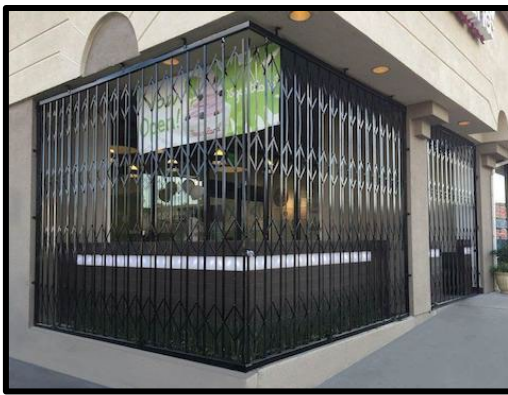
1. In Neighborhood Commercial (NC), Residential Commercial (RC), Commercial (C) & Mixed-Use (MU) districts, storefront gates, railings, and grillwork must be at least 75% open to perpendicular view.
2. There are no standards mandating when security gates may and may not be deployed, and no requirement to remove (compliant) security gates when a business vacates a particular location.

The Way It Would Be:

1. In NC, RC, C, and MU districts, Cannabis Retail uses **and** any other non-residential use with non-complying security gates that were in existence prior to Sept. 13, 2022, would be exempt from the 75% transparency requirement, with certain limitations.
2. Security gates that do not meet the 75% requirements must adhere to the following:

- a. The exception for Cannabis Retail uses would expire 3 years after the legislation becomes active. Cannabis Retail security gates that are less than 75% open must be immediately removed in any of the following circumstances:
 - i. 90 days after a Cannabis Business permit is revoked/rendered invalid
 - ii. 90 days after a Cannabis Retail uses ceases operations at the premises
 - iii. 90 days after the Cannabis Retail use is abandoned or discontinued (via Sec. 178 or 183)
- b. The exemption for Non-Residential uses only applies to businesses that are active as of the date of the Ordinance.
- c. Exempted Non-Residential use security gates that are less than 75% open must only be deployed when the business is not open to the public and may not intensify/expand/relocate the gate except for ordinary maintenance/minor repairs.

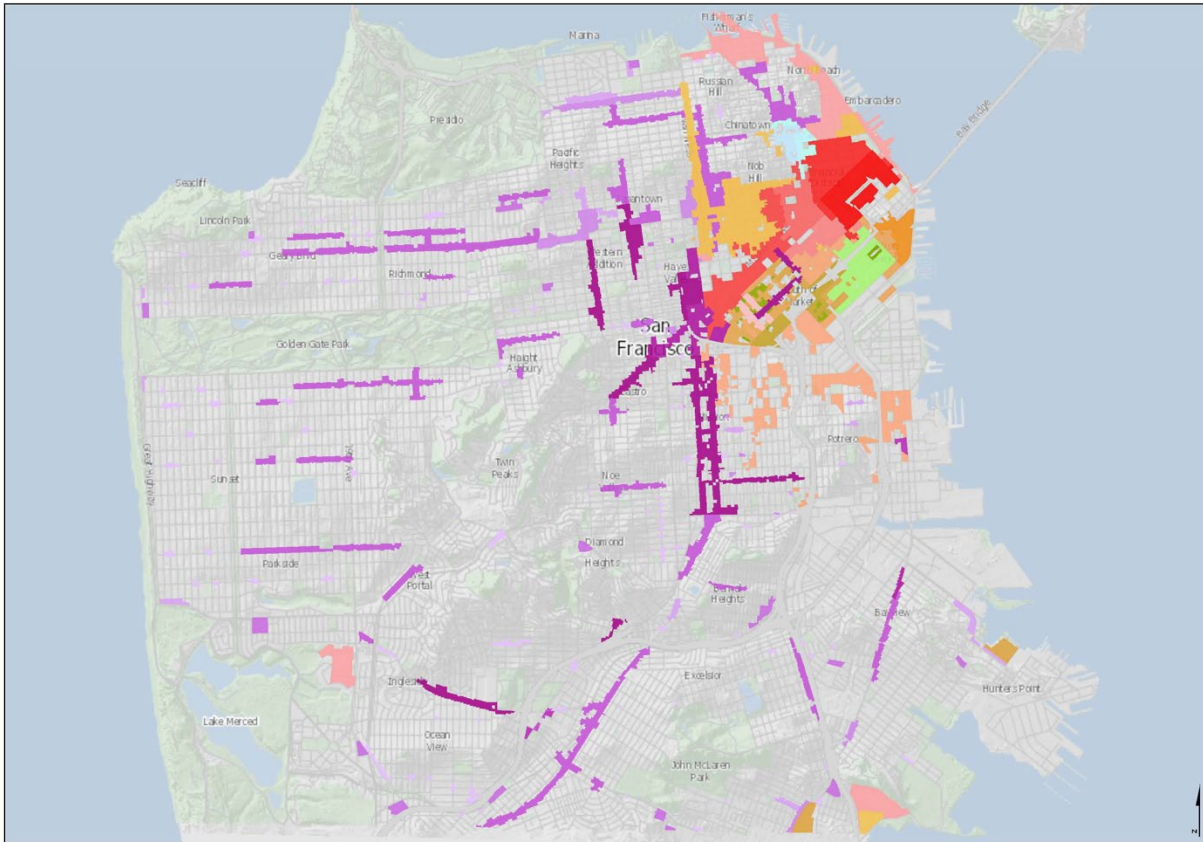
Gates Allowed Under Current Law:



Gates Allowed Under Proposed Ordinance for *Any* Cannabis Retail Use or Non-Residential Use with an *Existing* Non-Compliant Gate:



Neighborhood Commercial, Residential Commercial, Commercial & Mixed-Use Districts



Background

The Planning Department's Code Enforcement Division is complaint driven. The Department generally receives very few complaints for violations of the Planning Code's requirements on security gates. In 2019 and 2020 only two complaints were filed for illegal security gates, one of which was in the rear of the property, and the other which also alleged other major unpermitted construction. Recently, the Department received many complaints (62) for this type of violation, all filed on the same day. Since the Supervisor introduced legislation that would exempt all these gates from the transparency requirements so long as they file a permit, the Department has enacted their standard protocols of pausing all enforcement (for these types of violations) until the legislation is either approved, disapproved, or tabled.

Small Business Commission

The Small Business Commission heard the proposed Ordinance at their November 14, 2022, hearing. At that hearing, the Commission unanimously voted to support the legislation noting that small businesses frequently experience vandalism and burglary, and non-transparent gates protect storefront windows and deter break-ins. The Commission noted that Cannabis retail is a target for burglary because some federal laws prevent these businesses from using banking services, therefore they typically utilize cash. The Commission emphasized the need to make any requirements for gates, railings, and grillwork easily comprehensible. The Commission urged Supervisor Safai to allow for future modifications to these rules and to consider new businesses in this proposal.

Issues and Considerations

Planning Code Section 145.1: Storefront Transparency

Planning Code Section 145.1 regulates both storefront transparency and security gate transparency. The purpose of Planning Code Section 145.1 is to preserve, enhance, and promote attractive, clearly defined street frontages that are pedestrian-oriented, fine-grained, and that are appropriate and compatible with the buildings and uses in Neighborhood Commercial (NC), Commercial (C), Residential-Commercial (RC), and Mixed-Use (MU) districts. To that end, under Section 145.1 the front glazing of any active, non-PDR use must be at least 60% “visible” to the inside of the building. Items that may cause a storefront to be non-compliant can include painting or boarding up windows, large posters/signs, or installing opaque shelves or refrigerator units directly behind storefront glass. The proposed Ordinance would not change the requirements or provide an exception to storefront transparency requirements.

The Ordinance would create an exception for Section 145.1’s requirements for “Gates, Railings, and Grillwork” of storefronts. Currently, these gates may be installed on either side of the glass of a storefront, but in either case, they require a building permit. Current code requires security gates to be at least 75% open to perpendicular view. Sec. 145.1 also requires mechanisms that may be needed for rolldown gates (such as canisters at the top of the gate used for storing a roll-down gate when not deployed) to be installed completely within (or laid flush with) the building façade. Should this ordinance pass, Cannabis Retail and storefronts that have existing non-complying roll down gates installed prior to Sept. 13, 2022, would be exempt from the 75% transparency requirement, with certain limitations.

Supporting Small Businesses

The Controller’s Office of Economic Analysis released a report¹ earlier this month on the status of the re-opening of the City’s economy. Some of the key findings were:

- San Francisco continues to lag behind most other metro areas in office attendance, at just 40% of pre-pandemic levels.
- New business formation (tracked by the number of business registration certificates filed) remains far below pre-pandemic rates, especially in the retail trades and restaurant/bar categories.

The report revealed that visitors are beginning to return to San Francisco to shop, eat, and experience the City; however, the lack of daily commuters and lower than normal number of tourists has hurt small businesses. As many businesses are still attempting to recover from the pandemic, the country is also entering a period of economic uncertainty. The Department supports small businesses, and as such must weigh the benefits of all storefronts complying with security gate transparency requirements, versus the immediate harm this requirement may have on the City’s small business recovery.

Value of Transparent Gates

Aesthetic Value

The storefront is arguably the most valuable space in a store and should be used to full advantage. A transparent storefront welcomes customers inside with products and services on display, discourages crime with more “eyes on the street”, and enhances the curb appeal and value of the store and the entire neighborhood. These are the

¹ https://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/October%20Re-Opening%20Report_final.pdf

reasons the San Francisco Planning Code requires storefronts to maintain transparent windows that allow visibility into the store, and transparent security gates, even when the store is not open to the public.

Street view with fenestrated security gates:



The same street view with one business utilizing a 100% opaque gate:



When studying other cities' transparency requirements, staff found that many cities with less stringent transparency requirements struggle with vandalism of security gates. Solid gates provide an easy surface for tagging with graffiti. This problem has become so widespread in New York City that in 2009 the city council passed a law requiring all roll-down gates to be at least 70% transparent. The law requires all roll-down gates in the city to comply with the transparency requirement by 2026.



Roll-down Gates in Manhattan

Image courtesy of Google streetview

Public Safety

The SF Fire Department has informed staff that solid security gates can be a hinderance in the early observation and notification of a fire within the store they protect. The inability to see the orange glow of flames makes it difficult for both the Fire Department and public to locate the fire. Most commercial spaces do not have sprinklers or fire alarms, as they are not required. This means fire detection depends on passersby to see the fire or smoke and call 911. Response delays allow the fire to spread, making it more difficult to put out and endangering firefighters and adjacent businesses and homes. The longer the fire burns, the greater likelihood the fire will ignite everything inside the space or compromise the wooden floors (as many storefronts have basements for storage). SFFD staff have stated: “Early notification and early suppression keep fires from growing to a multiple alarm fire and injuring firefighters and the public. Roll down doors with some ability to see what is happening in the closed store could help the fire department”.

General Plan Compliance

Objective 2 of the Commerce and Industry Element is to “Maintain and enhance a sound and diverse economic base and fiscal structure for the City”. Policy 2.1 of this Objective is to “Seek to retain existing commercial and industrial activity and to attract new such activity to the City”. The proposed Ordinance, with all recommended modifications, will assist small businesses in the City by giving those with non-compliant security gates time to come into compliance, removing the financial burden or fear of enforcement fines so long as they apply for a building permit to establish their legal-nonconforming gate within three years.

Racial and Social Equity Analysis

The proposed amendments will advance racial and social equity as many of the cannabis businesses that will benefit from the legislation are “Equity Applicants”. To qualify as an Equity Applicant, the Office of Cannabis requires at least 3 of the following 6 criteria to be met:

1. Have a household income below 80% of the average median income (AMI) in San Francisco for 2018;
2. Have been arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971-2016;
3. Have a parent, sibling, or child who was arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971-2016;
4. Lost housing in San Francisco after 1995 through eviction, foreclosure or subsidy cancellation;
5. Attended school in the San Francisco Unified School District for a total of 5 years from 1971-2016; and/or,
6. Have lived in San Francisco census tracts for a total of 5 years from 1971-2016 where at least 17% of the households had incomes at or below the federal poverty level.

To qualify to apply for a Cannabis business permit, Equity Applicants must also:

- Apply as a person, not a company;
- Have net assets below established limits for each household. This means you will not qualify as an Equity Applicant if your 1-person household has net assets over \$193,500; and,
- Be either the business owner, own at least 40% of the business and be the CEO, own at least 51% of the business, be a board member of a non-profit cannabis business where most of the board also qualify as

Equity Applicants, or have a membership interest in a cannabis business formed as a cooperative.

Most Cannabis Retail businesses currently in operation are Equity Applicants. The Ordinance will assist these businesses by taking away a financial burden for those with non-compliant security gates. In addition to assisting the owners of Cannabis Retail uses, the Ordinance will assist *all* small businesses with existing non-compliant (with transparency) security gates by alleviating the financial burden of replacing a non-complying security gate before it reaches its useful life. These small businesses frequently hire from the adjacent neighborhood, serving a source of employment for the neighborhood's youth, entry level workers, and immigrants.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures. The Ordinance as currently proposed could lead to an increased burden on staff who process security gate permits. The proposed Ordinance does not require existing non-residential businesses with illegal security gates to apply for a permit, which will add additional confusion for which businesses' gates will be considered "legal non-conforming". As currently drafted, the Ordinance would also require enforcement staff to monitor when Retail Cannabis businesses go out of business to remove "legal nonconforming" Cannabis Retail gates. Lastly, the proposed Ordinance would increase the number of buildings with a "legal nonconforming" element, which leads to greater difficulty in implementing the Code, and can cause confusion among the public regarding what is and is not allowed.

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Do not create a separate set of requirements for Cannabis Retail uses to install security gates that are less than 75% open to perpendicular view.
2. Allow 3 years from the introduction date of the legislation 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 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 shall 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.

Basis for Recommendation

The Department understands that non-compliant security gates are common in the City. It also recognizes the many economic hardships that our small business community currently faces, and that an additional burden of replacing often long-standing security gates will only add to that hardship. At the same time, the Department also believes transparency requirements are beneficial to the City for both aesthetic and public safety reasons. Completely opaque rolldown gates can create a hostile environment for pedestrians when stores are closed and

provide a tempting canvas for graffiti vandals. Additionally, the Fire Department has expressed concern that completely opaque gates may pose an increased fire risk. Weighing all these factors, the Department finds that allowing an amnesty program for existing non-compliant security gates balances the City's desire to support small businesses while still promoting vibrant public spaces. However, the Department has concerns over singling out Cannabis Retail, and implementations concerns. The following recommendations are intended to address those two issues.

Recommendation 1: Do not create a separate set of requirements for Cannabis Retail uses to install security gates that are less than 75% open to perpendicular view. Since California legalized adult use cannabis both the City and the state have sought to destigmatize Cannabis Retail and the cannabis industry in general. The City has done this by folding cannabis related businesses in with other comparable use definitions and by requiring that Cannabis Retail abide by the same transparency requirements as other businesses. The public has often considered Cannabis Retail as more "dangerous" than other types of retail businesses, yet that has not been proven to be the case. Allowing *only* Cannabis Retail to have solid security gates will reinforce that notion. Although the risk for break-in's may currently be higher for Cannabis Retail due to their need to operate as a cash enterprise, the City anticipates that this will not always be the case. The current federal administration is looking into declassifying cannabis as a schedule one drug, which will allow this industry to utilize the banking system. Further, more immediately, there are roll-down gates that provide comparable levels of protection to solid roll-down gates that also comply with the Planning Code's transparency requirements². The Planning Department strongly believes that to continue to destigmatize Cannabis Retail, this use should not be treated any differently than other retail uses with valuable merchandise.

Recommendation 2: Allow 3 years from the introduction date of the legislation 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 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 shall not be exempt from the requirements of Section 145.1(c)(7). All businesses that may have a qualified legal-nonconforming gate need to establish their legal status through the filing of a building permit, otherwise the Department will not be able to properly enforce the transparency non-conformance amnesty. The Department believes allowing three years for businesses to file for a permit to establish their legal-nonconforming gate is essential to the success of the amnesty program. Small businesses will need time to first learn about the program, and then gather the required materials to apply for a permit. The Department additionally recommends that the Supervisor work with the Office of Small Business and Office of Economic and Workforce Development to conduct proactive outreach to small businesses about the program.

Recommendation 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. Certain requirements on the modification of historic buildings ("A" – Known Historic Resources) are controlled via state law (CEQA) and therefore cannot be bypassed. In addition, certain requirements on the modification of landmarks or buildings within conservation districts are subject to controls in Article 10 & 11 of the Planning Code. This includes certain permit and review requirements for installation of security gates on buildings deemed to be historic. The Ordinance should add language to clarify that properties that are historic buildings ("A" - Known Historic Resources) will comply with review

² For examples, see images labeled "Gates Allowed Under Current Law" on page 2.

pursuant to CEQA for historic resources and that buildings subject to Articles 10 & 11 will still be subject to all applicable requirements contained in Sec. 1006 and Sec. 1110.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Small Business Commission Response to Board File No. 220971
- Exhibit C: Board of Supervisors File No. 220971



PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: December 8, 2022

- Project Name:** Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses
- Case Number:** 2022-009700PCA [Board File No. 220971]
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aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO EXEMPT CERTAIN 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 WLEFARE FINDINGS PURSUANT TO PLANNING CODE, SECTION 302.

WHEREAS, on September 13, 2022 Supervisor Safai introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 220971, which 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 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;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 8, 2022; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission’s proposed recommendation(s) is/are as follows:

1. Do not create a separate set of requirements for Cannabis Retail uses to install security gates that are less than 75% open to perpendicular view.
2. Allow 3 years from the introduction date of the legislation 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 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 shall 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.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Department understands that non-compliant security gates are common in the City. It also recognizes the many economic hardships that our small business community currently faces, and that an additional burden of replacing often long-standing security gates will only add to that hardship. At the same time, the Department also believes transparency requirements are beneficial to the City for both aesthetic and public

safety reasons. Completely opaque rolldown gates can create a hostile environment for pedestrians when stores are closed and provide a tempting canvas for graffiti vandals. Additionally, the Fire Department has expressed concern that completely opaque gates may pose an increased fire risk. Weighing all these factors, the Department finds that allowing an amnesty program for existing non-compliant security gates balances the City's desire to support small businesses while still promoting vibrant public spaces. However, the Department has concerns over singling out Cannabis Retail, and implementations concerns. The following recommendations are intended to address those two issues.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance, with all recommended modifications, will assist small businesses in the City by giving those with non-compliant security gates time to come into compliance, removing the financial burden or fear of enforcement fines so long as they apply for a building permit to establish their legal-nonconforming gate within three years. It will also ensure that these types of gates are eventually replaced with those that comply with the City's transparency requirements, thereby ensuring a more inviting and safer street front in the long term.

URBAN DESIGN ELEMENT

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4.3

Provide adequate lighting in public areas.

Policy 4.13

Improve pedestrian areas by providing human scale and interest.

In commercial areas, continuous and well-appointed shop windows and arcades are invitations to movement. The light generated from shop windows greatly increases a feeling of safety and security to pedestrians. Allowing fully opaque gates on a permanent basis would create a dark wall along street frontages. The proposed Ordinance, with all recommended modifications, will succeed in balancing the immediate economic needs of small business owners, while also preserving the transparency requirements for storefronts once legal-noncomplying gates need to be replaced. The modifications will also succeed in ensuring no new opaque gates are installed.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 8, 2022.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: December 8, 2022



EXHIBIT B

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
DIRECTOR KATY TANG

November 28, 2022

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 220971 – Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses - SUPPORT

Dear Ms. Calvillo,

On November 14, 2022 the Small Business Commission (the Commission) heard BOS File No. 220971 – Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses. Jeff Buckley, Legislative Aide to Supervisor Safai, presented the legislation.

Mr. Buckley explained that this proposal would exempt Cannabis retail and existing non-residential uses from transparency requirements for gates, railings, and grillwork in front of ground floor windows when the business is closed. He clarified that currently, businesses must have 25% transparency in all storefront gates, railings, and grillwork to provide for emergency access and to deter neighborhood blight.

The Commission unanimously voted to support this legislation noting that small businesses frequently experience vandalism and burglary, and non-transparent gates protect storefront windows and deter break-ins. The Commission noted that Cannabis retail in particular is a target for burglary because some federal laws prevent the business from using banking services, and they typically utilize cash. The Commission emphasized the need to make any requirements for gates, railings, and grillwork to be easily comprehensible. The Commission urged Mr. Buckley, and Supervisor Safai, to allow for future modifications to these rules and to consider new businesses in this proposal.

The Commission commends Supervisor Safai and his staff for their willingness to support small businesses as they recover from the COVID-19 pandemic. Thank you for considering the Commission's recommendations. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Katy Tang". The signature is written in a cursive, flowing style.

Katy Tang
Director, Office of Small Business

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. 220971 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
25

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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