File No. 120405 Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Board of Supervisors Meeting **Date** _____

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Completed by: Alisa Miller **Date** May 11, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Police Code - Regulating the Use of Amplified Sound on Unenclosed Tour Buses and Establishing Fee]

Ordinance amending San Francisco Police Code Sections 46, 2901, 2916, and 2922, and adding Section 2913, to: 1) clarify that the definition of "Sound Truck" in Section 46 does not include unenclosed tour buses; 2) clarify that the noise restrictions imposed by Article 29 do not apply to the City and County of San Francisco; 3) prohibit the use of amplified sound systems on unenclosed tour buses unless such systems have been certified by the San Francisco Department of Public Health as not being audible from a distance of 50 or more feet from the vehicle or contain volume limiting electronics to meet that requirement; 4) adding a reporting requirement for the Department of Public Health; 5) adding fees for the Department of Public Health approval and issuance of a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Bus; 6) authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913; 7) clarify that Article 29 should not be construed to conflict with Federal or State laws; and 8) adopt findings, including environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

a. The Board of Supervisors finds that in order to protect public health, it is and has been the policy of San Francisco to prevent unwanted, excessive and avoidable noise.

b. There are a number of sightseeing bus operators in San Francisco who use amplified sound on unenclosed tour buses to communicate with their passengers as the buses travel along regular routes throughout the day. At excessive volumes, this amplified sound disturbs people in their homes and on the streets along the sightseeing bus route. The number of unenclosed tour buses in San Francisco has increased substantially in recent years.

c. The routes for most unenclosed tour buses include popular tourist destinations, which disproportionately impact a select group of local residences along the route. These unenclosed tour buses are typically operated eight hours per day, seven days per week.

d. The San Francisco Department of Public Health has observed that unenclosed tour buses frequently exceed the California Vehicle Code standard for amplified sound in multiple areas of San Francisco, particularly near tourist attractions. These noise violations have a disproportionate impact due to the repetitive nature of tour bus scheduling and routing. The continuous and routine nature of these noise violations requires a more directed and systemic approach than could be accomplished with standard motor vehicle enforcement methods by the San Francisco Police Department.

e. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120405 and is incorporated herein by reference.

Section 2. The San Francisco Police Code is hereby amended by amending Sections 46, 2901, 2916, and 2922, and adding a new Section 2913 to read as follows:

SEC. 46. DEFINITIONS.

(a) "Sound Truck." The words "sound truck" as used in this Code shall mean any motor vehicle, horse drawn vehicle or other means of conveyance, having mounted thereon, attached thereto or carrying any sound amplifying equipment*, except that an "Unenclosed Tour Bus" as defined in Section 2913 of this Code shall not be considered a "sound truck" for purposes of this Article.*

(b) "Sound Amplifying Equipment." The words "sound amplifying equipment" as used in this Code, shall mean any machine or device for the reproduction or amplification of the human voice, music or other sound. "Sound amplifying equipment" shall not be construed as including standard automobile radios, television receiving sets or mobile radio telephone equipment or other mechanical sound or voice-reproducing devices when used and heard only by occupants of the vehicle in which installed, or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.

SEC. 2901. DEFINITIONS.

(a) "Ambient" means the lowest sound level repeating itself during a minimum ten-minute period as measured with a type 1, precision sound level meter, using slow response and "A " weighting. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the ambient be considered or determined to be less than: (1) Thirty-five dBA for interior residential noise, and (2) Forty-five dBA in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level and may be operating continuously during the minimum ten-minute measurement period,

determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level.

(b) "Director" means the Director or department head of any City department having administrative or enforcement responsibilities under this Article or any other provision of the Municipal Code regarding noise control, as well as his or her designee.

(c) "Dwelling Unit" means (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping; (2) a room in group housing, even if such room lacks private cooking facilities and private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or residential hotels, dorms, hostels, or shelters; or, (3) a housekeeping room as defined in the Housing Code.

(d) "Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service. This term shall not include testing of emergency equipment.

(e) "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including but not limited to: industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.

(f) "Low frequency ambient" means the lowest sound level repeating itself during a ten-minute period as measured with a sound level meter, using slow response and "C" weighting. The minimum sound level shall be determined with the music or entertainment noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than: (1) Forty-five dBC for interior

residential noise, and (2) Fifty-five dBC in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources that would otherwise be operating continuously during the minimum ten-minute measurement period, determination of the low-frequency ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound.

(g) "Noise level" means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter. In order to measure a noise level, the controls of the sound level meter should be arranged to the setting appropriate to the type of noise being measured. For example, the settings should be slow response for continuous noise sources and fast response for noises with rapid onset and decline.

(h) "Person" means a person, firm, association, copartnership, joint venture, corporation, or any entity, public or private in nature*, but shall not include the City and County of San Francisco.*

(i) "Place of Entertainment" has the same meaning as the term is defined in San Francisco Police Code Section 1060.

(j) "Powered construction equipment" means any tools, machinery, or equipment used in connection with construction operations which can be driven by energy in any form other than manpower, including all types of motor vehicles when used in the construction process of any construction site, regardless of whether such construction site be located on-highway or off-highway, and further including all helicopters or other aircraft when used in the construction process except as may be preempted for regulation by State or Federal law.

(k) "Property plane" means a vertical plane including the property line that determines the property boundaries in space.

(l) "Public Property " means property leased or owned by a governmental entity, to which the public or a substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground located within the City and County of San Francisco.

(m) "Residential Property" means any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco.

(n) "Sound level," expressed in decibels (dB), means a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Terminology," paragraph 2.9, or successor reference. All references to dB in this chapter refer to the A-level or C-level weighting scale, abbreviated dBA or dBC, measured as set forth in this section.

SEC. 2913. USE OF AMPLIFIED SOUND ON UNENCLOSED TOUR BUSES.

(a) For purposes of this Section, "Unenclosed Tour Bus" shall mean a privately-owned passenger vehicle for hire with a capacity of nine or more passengers, including the driver, that:

(1) is used primarily for the conveyance of passengers over the public streets, for the purpose of visiting or viewing places of interest; and

(2) lacks either a permanently attached solid roof covering all seating areas of the vehicle or permanently attached side panels, which with any doors or windows closed, fully enclose the sides of the vehicle.

(b) Effective June 1, 2012, it shall be a violation of this Section for any Person to operate an Unenclosed Tour Bus using electronically amplified sound to communicate with passengers without having received authorization from the Director of the Department of Public Health or his or her

designee ("Director of Public Health") that the sound system is in compliance with the requirements of this Section.

(c) The Director of Public Health may approve the electronically amplified sound system on an Unenclosed Tour Bus and issue a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Buses ("Certificate") where the Director of Public Health determines that either:

(1) At maximum volume and without modification, the sound system is not audible at a distance of 50 or more feet outside the vehicle with the vehicle windows open and any operable or removable roof or side panels opened or removed; or

(2) The sound system includes volume limiting technology, which in its default mode prevents the sound system from being heard at a distance of 50 or more feet outside the vehicle. Such a system may include an override mode for use in emergencies.

(d) Following a hearing, the Director of Public Health may suspend or revoke a Certificate for any violation of this Section. The Director of Public Health may base such action on 1) the Director of Public Health's determination that the Certificate holder has violated this Section; or 2) a citation from the San Francisco Police Department for any violation of this Section or California Vehicle Code Section 27007, or any successor provisions. A Certificate holder may appeal the suspension or revocation of a Certificate to the Board of Appeals.

(e) The Owner or Operator of the Unenclosed Tour Bus shall post the Certificate in a clearly visible location on the exterior of the vehicle.

(f) The Director of Public Health shall review the compliance history of each approved Unenclosed Tour Bus and reinspect the Unenclosed Tour Bus annually, and upon any change in ownership, and if found in compliance with this Section and any implementing regulations, the Director of Public Health may reissue the Certificate.

(g) The Director of Public Health shall report to the Board of Supervisors one year from the effective date of this ordinance and every two years thereafter:

(1) the number of Certificates issued to Unenclosed Tour Buses;

(2) the number of complaints received by the Director of Public Health regarding Unenclosed Tour Buses; and

(3) the effectiveness of the Department of Public Health's program to regulate amplified sound from Unenclosed Tour Buses and any suggested changes to the program.

(h) Decisions by the Director of Public Health regarding the issuance or reissuance of Certificates may be appealed to the Board of Appeals.

(i) The fee for the initial application to obtain a Certificate and for each yearly renewal shall be $394, payable to the Director of Public Health. The initial application fee shall be due at the time of application. The annual fee to renew the Certificate shall be due on July 1.

Beginning with fiscal year 2013-2014, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director of Public Health shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue that is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing

revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(j) The requirements of this Section shall not apply to an Unenclosed Tour Bus equipped with and using electronically amplified sound to communicate with passengers where all non-emergency communications through the system are audible to passengers only through technology designed to make such communications audible only to the individual listener, such as individual headsets or headphones.

(k) The noise standards set forth in Section 2909 shall not apply to Unenclosed Tour Buses.

SEC. 2916. ENFORCEMENT

The Director of Public Health may enforce the provisions of Section 2904, 2909, 2912 and 2913 of this Article.

The Department of Building Inspection may enforce the provisions of Sections 2907 and 2908 of this Article insofar as said provisions relate to construction operations conducted on private property under appropriate permits issued pursuant to the San Francisco Building Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate to construction operations conducted on publicly-owned property subject to the police power of the City and County of San Francisco, the Department of Public Worlds may enforce the provisions of Sections 2907 and 2908 of this Article. The Executive Director of the Entertainment Commission may enforce noise standards associated with licensed Places of Entertainment.

The Chief of Police or his or her designee ("Chief of Police")shall also enforce the provisions of Section 2913. The Chief of Police shall make law enforcement activities related to Unenclosed Tour Buses under Section 2913 a priority for one year after the effective date of the ordinance enacting that Section.

The Chief of Police may enforce the provisions of this Article that relate to noise created by humans or any other noise source not specifically assigned or designated to another Department or Agency.

SEC. 2922. PREEMPTION

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by Federal or State law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by Federal or State law. *This Article shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations. Nothing in this Article shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such agency or department action is taken.*

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 4. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Police Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Cecilia T. Mangoba
CECILIA T. MANGOBA
Deputy City Attorney

FILE NO. 120405

LEGISLATIVE DIGEST

[Police Code - Regulating the Use of Amplified Sound on Unenclosed Tour Buses and Establishing Fee]

Ordinance amending San Francisco Police Code Sections 46, 2901, 2916, and 2922, and adding Section 2913, to: 1) clarify that the definition of "Sound Truck" in Section 46 does not include unenclosed tour buses; 2) clarify that the noise restrictions imposed by Article 29 do not apply to the City and County of San Francisco; 3) prohibit the use of amplified sound systems on unenclosed tour buses unless such systems have been certified by the San Francisco Department of Public Health as not being audible from a distance of 50 or more feet from the vehicle or contain volume limiting electronics to meet that requirement; 4) adding a reporting requirement for the Department of Public Health; 5) adding fees for the Department of Public Health approval and issuance of a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Bus; 6) authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913; 7) clarify that Article 29 should not be construed to conflict with Federal or State laws; and 8) adopt findings, including environmental findings.

Existing Law

San Francisco does not currently have a certification system for the use of amplified sound on unenclosed tour buses. In addition, while the City's noise ordinance does not apply to City agencies, the text of that ordinance does not make this exclusion explicit.

Amendments to Current Law

The proposed ordinance would amend the City's noise ordinance in Article 29 of the Police Code to regulate the use of amplified sound on unenclosed tour buses. The legislation would require prior authorization from the City's Department of Public Health ("DPH") before an unenclosed tour bus may be operated in San Francisco. DPH would certify a tour bus if either 1) the vehicle has a sound system that is not audible from 50 or more feet away; or 2) is equipped with volume-limiting technology that limits the sound level to this standard except in emergencies. An "unenclosed tour bus" would be defined as a privately-owned vehicle carrying nine or more passengers and used primarily to view or visit places of interest, and which lacks a permanently attached roof and windows. Violations of the ordinance could be enforced by either the Department of Public Health or the Police Department. The Department of Public Health would report on the program to the Board of Supervisors one year after the effective date of the ordinance and every two years thereafter.

The proposed ordinance would also clarify that the definition of "Sound Truck" in the Police Code provisions regulating sound trucks does not include an open top sightseeing bus.

Finally, the proposed ordinance would clarify and reaffirm the long-standing law that the noise ordinance (Police Code Article 29) does not apply to City agencies.

Background Information

The City has received complaints from residents who are disturbed by the sound levels and repetitive nature of the amplified sound from unenclosed tour buses. The sound restriction contained in the proposed ordinance (inaudible at a distance of 50 or more feet outside the vehicle) is consistent with that found in Cal. Vehicle Code Sec. 27007. This ordinance would add the DPH certification requirement to ensure that unenclosed tour buses comply with this standard.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 1, 2012

File No. 120405

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On April 24, 2012, Supervisor Chiu introduced the following proposed legislation:

File No. 120405

Ordinance amending San Francisco Police Code Sections 46, 2901, 2916, and 2922, and adding Section 2913, to: 1) clarify that the definition of "Sound Truck" in Section 46 does not include unenclosed tour buses; 2) clarify that the noise restrictions imposed by Article 29 do not apply to the City and County of San Francisco; 3) prohibit the use of amplified sound systems on unenclosed tour buses unless such systems have been certified by the San Francisco Department of Public Health as not being audible from a distance of 50 or more feet from the vehicle or contain volume limiting electronics to meet that requirement; 4) adding a reporting requirement for the Department of Public Health; 5) adding fees for the Department of Public Health approval and issuance of a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Bus; 6) authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913; 7) clarify that Article 29 should not be construed to conflict with Federal or State laws; and 8) adopt findings, including environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

SAN FRANCISCO DEPARTMENT OF CITY PLANNING
EXEMPT FROM ENVIRONMENTAL REVIEW
CEQA Section 15060 (c)(2)
NON-PHYSICAL EXEMPTION
5/3/2012
JOY NAVARRETE

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will a hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard

Date: **Monday, May 14, 2012**

Time: **1:00 p.m.**

Location: **Committee Room 263 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA**

Subject: **File No. 120405.** Ordinance amending San Francisco Police Code Sections 46, 2901, 2916, and 2922, and adding Section 2913, to: 1) clarify that the definition of "Sound Truck" in Section 46 does not include unenclosed tour buses; 2) clarify that the noise restrictions imposed by Article 29 do not apply to the City and County of San Francisco; 3) prohibit the use of amplified sound systems on unenclosed tour buses unless such systems have been certified by the San Francisco Department of Public Health as not being audible from a distance of 50 or more feet from the vehicle or contain volume limiting electronics to meet that requirement; 4) adding a reporting requirement for the Department of Public Health; 5) adding fees for the Department of Public Health approval and issuance of a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Bus; 6) authorize the Department of Public Health and the Police Department to enforce the requirements of Section 2913; 7) clarify that Article 29 should not be construed to conflict with Federal or State laws; and 8) adopt findings, including environmental findings.

If the legislation passes, a new fee would be established for the issuance of a "Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Buses," payable to the Director of Public Health. The initial application fee and each yearly renewal would be $394, due at the time of application and on July 1st each

year. The Controller shall adjust the fee as appropriate each fiscal year to ensure the recovery of costs without producing revenue that is significantly more than the costs.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public record in this matter, and shall be brought to the attention of the Members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, 94102. Information relating to the proposed fee is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, May 11, 2012.

Angela Calvillo, Clerk of the Board

DATED: May 2, 2012
PUBLISHED: May 4 & 9, 2012

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Alisa Miller
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SAN FRANCISCO, CA 94102

COPY OF NOTICE

Notice Type: GPN GOVT PUBLIC NOTICE

Ad Description AM - 120405 Fee Ad

To the right is a copy of the notice you sent to us for publication in the SAN FRANCISCO CHRONICLE. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the Clerk of the Board. Publication date(s) for this notice is (are):

05/04/2012 , 05/09/2012

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NOTICE OF PUBLIC HEARING
LAND USE & ECONOMIC DEVELOPMENT COMMITTEE
SAN FRANCISCO BOARD OF SUPERVISORS
MAY 14, 2012 - 1:00 PM
COMMITTEE ROOM 263,C ITY HALL,
1 DR. CARLTON B. GOODLETT PL, SF,C A

NOTICE IS HEREBY GIVEN THAT the Land Use and Economic Development Committee will a hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard. **File No. 120405.** Ordinance amending San Francisco Police Code Sections 46, 2901, 2916, and 2922, and adding Section 2913, to: 1) clarify thatt he definition of "Sound Truck" in Section 46 does not include unenclosed tour buses;2) clarify that then oiser estrictions imposedb y Article 29 do not apply to the City and County of San Francisco; 3) prohibit the use of amplified sound systems on unenclosed tour busesu nlesss uchs ystems have been certified by the San Francisco Department of Public Health as not being audible from a distance of 50 or more feet from the vehicle or contain volume limiting electronics to meet that requirement; 4) adding a reporting requirement for the Department of Public Health; 5) addingf ees for theD epartment of Public Health approval and issuanceo f a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Bus; 6)a uthorize the Department of Public Health and theP oliceD epartment toe nforce the requirements of Section 2913; 7) clarify that Article 29 should not be construed to conflict with Federal or State laws; and 8) adopt findings, including environmental findings.

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Angela Calvillo, Clerk of the Board

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