

1 [Planning Code - Inclusionary Affordable Housing Program]

2

3 **Ordinance amending the Planning Code to amend the Inclusionary Housing Ordinance**  
4 **to remove the requirement that on-site and off-site inclusionary units within a new**  
5 **development be ownership units rather than rental units, or alternatively, that the**  
6 **project sponsor submit a contract demonstrating the proposed on-site or off-site units**  
7 **are exempt from the Costa-Hawkins Rental Housing Act; making conforming**  
8 **amendments to Planning Code Section 124; updating references in Planning Code**  
9 **section 406; and affirming the Planning Department’s determination under the**  
10 **California Environmental Quality Act; and making findings of consistency with the**  
11 **General Plan and the eight priority policies of Planning Code Section 101.1.**

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

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

18

19 Section 1.

20 (a) The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. 171193 and is incorporated herein by reference. The Board affirms  
24 this determination.

25

1 (b) On January 11 2018, the Planning Commission, in Resolution No. 20087, Planning  
2 Department found 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. 171193, and is incorporated herein by reference.

6  
7 Section 2. The Planning Code is hereby amended by revising Sections 415.3, 415.4,  
8 415.5, 415.6, and 415.7, to read as follows:

9 **SEC. 415.3. APPLICATION.**

10 \* \* \* \*

11 (b) Any development project that has submitted a complete Environmental Evaluation  
12 application prior to January 12, 2016 shall comply with the Affordable Housing Fee  
13 requirements, the on-site affordable housing requirements or the off-site affordable housing  
14 requirements, and all other provisions of Section 415.1 *et seq.*, as applicable, in effect on  
15 January 12, 2016. For development projects that have submitted a complete Environmental  
16 Evaluation application on or after January 1, 2013, the requirements set forth in Planning  
17 Code Sections 415.5, 415.6, and 415.7 shall apply to certain development projects consisting  
18 of 25 dwelling units or more during a limited period of time as follows:

19 \* \* \* \*

20 (2) If a development project pays the Affordable Housing Fee or ~~*is eligible and*~~  
21 elects to provide off-site affordable housing, the development project shall provide the  
22 following fee amount or amounts of off-site affordable housing during the limited periods of  
23 time set forth below.

1 (A) Any development project that has submitted a complete  
2 Environmental Evaluation application prior to January 1, 2014, shall pay a fee or provide off-  
3 site housing in an amount equivalent to 25% of the number of units constructed on-site.

4 (B) Any development project that has submitted a complete  
5 Environmental Evaluation application prior to January 1, 2015, shall pay a fee or provide off-  
6 site housing in an amount equivalent to 27.5% of the number of units constructed on-site.

7 (C) Any development project that has submitted a complete  
8 Environmental Evaluation application on or prior to January 12, 2016 shall pay a fee or  
9 provide off-site housing in an amount equivalent to 30% of the number of units constructed  
10 on-site.

11 (D) Any development project that submits an Environmental Evaluation  
12 application after January 12, 2016 shall comply with the requirements set forth in Sections  
13 415.5, 415.6, and 415.7, as applicable.

14 (E) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
15 and (C) of this Section 415.3, for development projects proposing buildings over 120 feet in  
16 height, as measured under the requirements set forth in the Planning Code, except for  
17 buildings up to 130 feet in height located both within a special use district and within a height  
18 and bulk district that allows a maximum building height of 130 feet, such development projects  
19 shall pay a fee or provide off-site housing in an amount equivalent to 30% of the number of  
20 units constructed on-site. Any buildings up to 130 feet in height located both within a special  
21 use district and within a height and bulk district that allows a maximum building height of 130  
22 feet shall comply with the provisions of subsections (b)(2)(A), (B) and (C) of this Section 415.3  
23 during the limited periods of time set forth therein.

24 (F) Notwithstanding the provisions set forth in subsections (b)(2)(A), (B)  
25 and (C) of this Section 415.3, if a development project is located in a UMU Zoning District or

1 in the South of Market Youth and Family Zoning District, and pays the Affordable Housing Fee  
2 or ~~is eligible and~~ elects to provide off-site affordable housing pursuant to Section 415.5(g), or  
3 elects to comply with a land dedication alternative, such development project shall comply  
4 with the fee, off-site or land dedication requirements applicable within such Zoning Districts,  
5 as they existed on January 12, 2016, plus the following additional amounts for the Affordable  
6 Housing Fee or for land dedication or off-site affordable units: (i) if the development project  
7 has submitted a complete Environmental Evaluation application prior to January 1, 2014, the  
8 Project Sponsor shall pay an additional fee, or provide additional land dedication or off-site  
9 affordable units, in an amount equivalent to 5% of the number of units constructed on-site; (ii)  
10 if the development project has submitted a complete Environmental Evaluation application  
11 prior to January 1, 2015, the Project Sponsor shall pay an additional fee, or provide additional  
12 land dedication or off-site affordable units, in an amount equivalent to 7.5% of the number of  
13 units constructed on-site; or (iii) if the development project has submitted a complete  
14 Environmental Evaluation application on or prior to January 12, 2016, the Project Sponsor  
15 shall pay an additional fee, or provide additional land dedication or off-site affordable units, in  
16 an amount equivalent to 10% of the number of units constructed on-site. Notwithstanding the  
17 foregoing, a development project shall not pay a fee or provide off-site units in a total amount  
18 greater than the equivalent of 30% of the number of units constructed on-site.

19 (G) Any development project consisting of 25 dwelling units or more that  
20 has submitted a complete Environmental Evaluation application on or prior to January 12,  
21 2016, and ~~is eligible and~~ elects to provide off-site affordable housing, may provide off-site  
22 affordable housing by acquiring an existing building to fulfill all or part of the requirements set  
23 forth in this Section 415.3 and in Section 415.7 with an equivalent amount of units as specified  
24 in this Section 415.3(b)(2), as reviewed and approved by the Mayor's Office of Housing and  
25 Community Development and consistent with the parameters of its Small Sites Acquisition

1 and Rehabilitation Program, in conformance with the income limits for the Small Sites  
2 Program.

3 \* \* \* \*

4  
5 **SEC. 415.4. IMPOSITION OF REQUIREMENTS.**

6 \* \* \* \*

7 (c) **Payment of Affordable Housing Fee or Project Sponsor's** *Eligibility for and*  
8 **Selection of Alternative.** Prior to issuance of first construction document for a development  
9 project subject to the requirements of Section 415.1 *et seq.*, the sponsor of the development  
10 project shall pay the Affordable Housing Fee set forth in Section 415.5 or, *if eligible to meet the*  
11 *requirements through an Alternative,* shall select one of the options listed in Section 415.5(f).

12 \* \* \* \*

13  
14 **SEC. 415.5. AFFORDABLE HOUSING FEE.**

15 \* \* \* \*

16 (g) Alternatives to Payment of Affordable Housing Fee.

17 (1) Eligibility: A project sponsor must pay the Affordable Housing Fee unless it  
18 *qualifies for and* chooses to meet the requirements of the Program through an Alternative  
19 provided in this subsection (g). The project sponsor may choose one of the following  
20 Alternatives:

21 (A) Alternative #1: On-Site Units. Project sponsors may elect to  
22 construct units affordable to qualifying households on-site of the principal project pursuant to  
23 the requirements of Section 415.6.

1 (B) Alternative #2: Off-Site Units. Project sponsors may elect to  
2 construct units affordable to qualifying households at an alternative site within the City and  
3 County of San Francisco pursuant to the requirements of Section 415.7.

4 (C) Alternative #3: Small Sites. Qualifying project sponsors may elect to  
5 fund buildings as set forth in Section 415.7-1.

6 (D) Alternative #4: Combination. Project sponsors may elect any  
7 combination of payment of the Affordable Housing Fee as provided in Section 415.5,  
8 construction of on-site units as provided in Section 415.6, or construction of off-site units as  
9 provided in Section 415.7, provided that the project applicant constructs or pays the fee at the  
10 appropriate percentage or fee level required for that option. Development Projects that have  
11 submitted a complete Environmental Evaluation application after January 12, 2016 that are  
12 providing on-site units under Section 415.6 and that qualify for and receive additional density  
13 under California Government Code Section 65915 et seq. shall use Alternative #4 to pay the  
14 Affordable Housing Fee on any additional units or square footage authorized under Section  
15 65915.

16 ~~(2) Qualifications: If a project sponsor wishes to comply with the Program through one~~  
17 ~~of the Alternatives described in subsection(g)(1) rather than pay the Affordable Housing Fee, they must~~  
18 ~~demonstrate that they qualify for the Alternative to the satisfaction of the Department and MOHCD. A~~  
19 ~~project sponsor may qualify for an Alternative by the following methods:~~

20 ~~(i) Method #1 – Ownership Units. All affordable units provided under~~  
21 ~~this Program shall be sold as ownership units and will remain ownership units for the life of the~~  
22 ~~project. Project sponsors must submit the 'Affidavit of Compliance with the Inclusionary Affordable~~  
23 ~~Housing Program' to the Planning Department prior to project approval by the Department or the~~  
24 ~~Commission; or~~

1 (ii) ~~Method #2 – Government Financial Contribution. Submit to the~~  
2 ~~Department a contract demonstrating that the project’s on- or off-site units are not subject to the Costa~~  
3 ~~Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section~~  
4 ~~1954.52(b), it has entered into an agreement with a public entity in consideration for a direct financial~~  
5 ~~contribution or any other form of assistance specified in California Government Code Sections 65915~~  
6 ~~et seq. and it submits an Affidavit of such to the Department. All such contracts entered into with the~~  
7 ~~City and County of San Francisco must be reviewed and approved by MOHCD and the City Attorney’s~~  
8 ~~Office. All contracts that involve 100% affordable housing projects in the residential portion may be~~  
9 ~~executed by the Mayor or the Director of MOHCD. Any contract that involves less than 100%~~  
10 ~~affordable housing in the residential portion, may be executed by either the Mayor, the Director of~~  
11 ~~MOHCD or, after review and comment by MOHCD, the Planning Director. A Development Agreement~~  
12 ~~under California Government Code Sections 65864 et seq. and Chapter 56 of the Administrative Code~~  
13 ~~entered into between a project sponsor and the City and County of San Francisco may, but does not~~  
14 ~~necessarily, qualify as such a contract.~~

15 (3)(2) The Planning Commission or the Department may not require a project  
16 sponsor to select a specific Alternative. If a project sponsor elects to meet the Program  
17 requirements through one of the Alternatives described in subsection(g)(1), they must choose  
18 ~~it and demonstrate that they qualify~~ 30 days prior to any project approvals from the Planning  
19 Commission or Department. The Alternative will be a condition of project approval and  
20 recorded against the property in an NSR. Any subsequent change by a project sponsor that  
21 results in the reduction in the number of on-site units shall require public notice for a hearing  
22 and approval from the Planning Commission. ~~Notwithstanding the foregoing, if a project sponsor~~  
23 ~~qualifies for an Alternative described in subsection (g)(1) and elects to construct the affordable units~~  
24 ~~on- or off-site, the project sponsor must submit the Affidavit of Compliance with the Inclusionary~~  
25 ~~Housing Program based on the fact that the units will be sold as ownership units. A project sponsor~~

1 ~~who has elected to construct affordable ownership units on- or off-site may only elect to pay the~~  
2 ~~Affordable Housing Fee up to the issuance of the first construction document if the project sponsor~~  
3 ~~submits a new Affidavit establishing that the units will not be sold as ownership units. If a project~~  
4 ~~sponsor fails to choose an Alternative before project approval by the Planning Commission or~~  
5 ~~Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section~~  
6 ~~415.5 shall apply.~~

7 (4)(3) If at any time, the project sponsor eliminates the on-site or off-site  
8 affordable ~~ownership-only~~ units, then the project sponsor must immediately inform the  
9 Department and MOHCD and pay the applicable Affordable Housing Fee plus interest and  
10 any applicable penalties provided for under this Code. If a project sponsor requests a  
11 modification to its conditions of approval for the sole purpose of complying with this Section,  
12 the Planning Commission shall be limited to considering issues related to Section 415 *et seq.*  
13 in considering the request for modification.

14 **SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.**

15 If a project sponsor ~~is eligible and~~ elects to provide on-site units pursuant to Section  
16 415.5(g), the development project shall meet the following requirements:

17 \* \* \* \*

18 (b) Any On-site units provided through this Section 415.6 may be used to qualify for a  
19 density bonus under California Government Code Section 65915, any ordinance  
20 implementing Government Code Section 65915, or one of the Affordable Housing Bonus  
21 Programs contained ~~in Planning Code Section 206 et seq in the ordinance in Board of Supervisors~~  
22 ~~File No. 150969~~. An applicant seeking a density bonus under State Law shall provide  
23 reasonable documentation to establish eligibility for a requested density bonus, incentive or  
24 concession, and waiver or reduction of development standards, as provided for under State  
25



1 Law and as consistent with the process and procedures detailed in a locally adopted  
2 ordinance implementing the State Law.

3 \* \* \* \*

4 (f) Type of Housing.

5 (1) Equivalency of Units. ~~All on-site units constructed under this Section 415.6 shall~~  
6 ~~be provided as ownership units unless the project sponsor meets the eligibility requirement of Section~~  
7 ~~415.5(g).~~ In general, affordable units constructed under this Section 415.6 shall be comparable  
8 in number of bedrooms, exterior appearance and overall quality of construction to market rate  
9 units in the principal project. A Notice of Special Restrictions shall be recorded prior to  
10 issuance of the first construction document and shall specify the number, location and sizes  
11 for all affordable units required under this subsection (f). The affordable units shall be evenly  
12 distributed throughout the building. For buildings over 120 feet in height, as measured under  
13 the requirements set forth in the Planning Code, the affordable units may be distributed  
14 throughout the lower 2/3 of the building, as measured by the number of floors. The interior  
15 features in affordable units should be generally the same as those of the market rate units in  
16 the principal project, but need not be the same make, model or type of such item as long as  
17 they are of good and new quality and are consistent with then-current standards for new  
18 housing. Where applicable, parking shall be offered to the affordable units subject to the terms  
19 and conditions of the Department’s policy on unbundled parking for affordable housing units  
20 as specified in the Procedures Manual and amended from time to time.

21 (2) Minimum Size of Affordable Units. The affordable units are not required to  
22 be the same size as the market rate units. For buildings over 120 feet in height, as measured  
23 under the requirements set forth in the Planning Code, the average size of the unit type may  
24 be calculated for the lower 2/3 of the building, as measured by the number of floors. All units  
25 shall be no smaller than the minimum unit sizes set forth by the California Tax Credit

1 Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios.  
2 The total residential floor area devoted to the affordable units shall not be less than the  
3 applicable percentage applied to the total residential floor area of the principal project,  
4 provided that a 10% variation in floor area is permitted.

5 \* \* \* \*

6 (j) Benefits. If the project sponsor ~~is eligible for and~~ elects to satisfy the affordable  
7 housing requirements through the production of on-site affordable housing in this Section  
8 415.6 , the project sponsor shall be eligible to receive a refund for only that portion of the  
9 housing project which is affordable for the following fees: a Conditional Use authorization or  
10 other fee required by Section 352 of this Code, if applicable; an environmental review fee  
11 required by Administrative Code Section 31.22, if applicable; a building permit fee required by  
12 Section 355 of this Code for the portion of the housing project that is affordable. The project  
13 sponsor shall pay the building fee for the portion of the project that is market-rate. An  
14 application for a refund must be made within six months from the issuance of the first  
15 certificate of occupancy.

16 The Controller shall refund fees from any appropriated funds to the project sponsor on  
17 application by the project sponsor. The application must include a copy of the Certificate of  
18 Occupancy for all units affordable to a qualifying household required by the Inclusionary  
19 Housing Program. It is the policy of the Board of Supervisors to appropriate money for this  
20 purpose from the General Fund.

21 **SEC. 415.7. OFF-SITE AFFORDABLE HOUSING**

22 If the project sponsor ~~is eligible and~~ elects pursuant to Section 415.5(g) to provide off-  
23 site units to satisfy the requirements of Section 415.1 *et seq.*, the project sponsor shall notify  
24 the Planning Department and the Mayor’s Office of Housing and Community Development  
25 (“MOHCD”) of its intent as early as possible. The Planning Department and MOHCD shall

1 provide an evaluation of the project's compliance with this Section 415.7 prior to approval by  
2 the Planning Commission or Planning Department. The development project shall meet the  
3 following requirements:

4 \* \* \* \*

5 (d) Type of Housing: ~~All off-site units constructed under this Section 415.7 shall be provided~~  
6 ~~as ownership housing for the life of the project unless the project applicant meets the eligibility~~  
7 ~~requirement of Section 415.5(g).~~ Nothing in this Section shall limit a project sponsor from  
8 meeting the requirements of this Section through the construction of units in a limited equity or  
9 land trust form of ownership if such units otherwise meet all of the requirements for off-site  
10 housing. In general, affordable units constructed or otherwise provided under this Section  
11 shall be comparable in number of bedrooms, exterior appearance and overall quality of  
12 construction to market rate units in the principal project. The total square footage of the off-  
13 site affordable units constructed or otherwise provided under this Section shall be no less than  
14 the calculation of the total square footage of the on-site market-rate units in the principal  
15 project multiplied by the relevant on-site percentage requirement for the project specified in  
16 this Section. The Notice of Special Restrictions or conditions of approval shall include a  
17 specific number of units at specified unit sizes – including number of bedrooms and minimum  
18 square footage – for affordable units. The interior features in affordable units should generally  
19 be the same as those of the market rate units in the principal project but need not be the  
20 same make, model, or type of such item as long as they are of new and good quality and are  
21 consistent with then-current standards for new housing and so long as they are consistent  
22 with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures  
23 Manual. Where applicable, parking shall be offered to the affordable units subject to the terms  
24 and conditions of the Department's policy on unbundled parking for affordable housing units  
25 as specified in the Procedures Manual and amended from time to time. If the residential units

1 in the principal project are live/work units which do not contain bedrooms or are other types of  
2 units which do not contain bedrooms separated from the living space, the off-site units shall  
3 be comparable in size according to the following equivalency calculation between live/work  
4 and units with bedrooms:

5 \* \* \* \*

6

7 Section 3. The Planning Code is hereby amended by revising Section 124, to read as  
8 follows:

9 **Section 124. Basic Floor Area Ratio**

10 \* \* \* \* \*

11 (f) For buildings in C-3-G and C-3-S Districts, other than those designated as  
12 Significant or Contributory pursuant to Article 11 of this Code, additional square footage above  
13 that permitted by the base floor area ratio limits set forth above may be approved for  
14 construction of dwellings on the site of the building affordable for the Life of the Project, as  
15 defined in Section 401, to households whose incomes are within 150 percent of AMI, as  
16 defined in Section 401, for ownership units and up to 120% of AMI for rental units, in  
17 accordance with the conditional use procedures and criteria as provided in Section 303 of this  
18 Code. For buildings in the C-3-G District designated as Significant or Contributory pursuant to  
19 Article 11 of this Code, additional square footage above that permitted by the base floor area  
20 ratio limits set forth above up to the Gross Floor Area of the existing building may be  
21 approved, in accordance with the conditional use procedures and criteria as provided in  
22 Section 303 of this Code, where: (1) TDRs (as defined by Section 128(a)(5)) were transferred  
23 from the lot containing the Significant or Contributory building prior to the effective date of the  
24 amendment to Section 124(f) adding this paragraph when the floor area transferred was  
25 occupied by a non profit corporation or institution meeting the requirements for exclusion from

1 Gross Floor Area calculation; (2) the additional square footage includes only the amount  
2 necessary to accommodate dwelling units and/or group housing units that are affordable for  
3 the Life of the Project to households whose incomes are within 60 percent of AMI as defined  
4 herein together with any social, educational, and health service space accessory to such  
5 units; and (3) the proposed change in use to dwelling units and accessory space and any  
6 construction associated therewith, if it requires any alternation to the exterior or other  
7 character defining features of the Significant or Contributory Building, is undertaken pursuant  
8 to the duly approved Permit to Alter, pursuant to Section 1110, provided, however, that the  
9 procedures otherwise required for a Major Alteration as set forth in Sections 1111.4 and  
10 1111.5 and shall be deemed applicable to any such Permit to Alter.

11 (1) Any dwelling approved for construction under this provision shall be  
12 deemed a "Designated Unit" as defined below. Prior to the issuance by the Director of the  
13 Department of Building Inspection ("Director of Building Inspection") of a First Construction  
14 Document to construct any Designated Unit subject to this Section, the permit applicant shall  
15 notify the Director of Planning and the Director of MOHCD in writing whether the Designated  
16 Unit will be an owned or rental unit as defined in Section 401 of this Code.—~~If any Designated  
17 Units will be rental units, the project sponsor must follow the procedures in Section  
18 415.5(g)(2). As provided in that subsection, the Planning Director or the Director of MOHCD,  
19 may execute such an agreement under the terms specified in Section 415.5(g)(2).~~

20 \* \* \* \* \*

21 Section 4. The Planning Code is hereby amended by revising Section 406, to read as  
22 follows:

23 **Section 406. Waiver, Reduction, or Adjustment of Development Project**  
24 **Requirements**

25 \* \* \* \* \*

1 (b) Waiver or Reduction, Based on Housing Affordability.

2 (1) An affordable housing unit shall receive a waiver from the Rincon  
3 Hill Community Infrastructure Impact Fee, the Market and Octavia Community Improvements  
4 Impact Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Balboa Park Impact  
5 Fee, the Visitacion Valley Community Facilities and Infrastructure Impact Fee, the  
6 Transportation Sustainability Fee, and the Residential Child Care Impact Fee if the affordable  
7 housing unit:

8 (A) is affordable to a household at or below 80% of the Area  
9 Median Income (as published by HUD), including units that qualify as replacement Section 8  
10 units under the HOPE SF program;

11 (B) is subsidized by MOHCD, the San Francisco Housing  
12 Authority, the Department of Homelessness and Supportive Housing, and/or the Office of  
13 Community Investment and Infrastructure San Francisco Redevelopment Agency or any  
14 future successor agency to those listed herein; and

15 (C) is subsidized in a manner which maintains its affordability  
16 for a term no less than 55 years, whether it is a rental or ownership opportunity. Project  
17 sponsors must demonstrate to the Planning Department staff that a governmental agency will  
18 be enforcing the term of affordability and reviewing performance and service plans as  
19 necessary.

20 \* \* \* \*

21  
22 Section 45. Effective Date. This ordinance shall become effective 30 days after  
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
25 of Supervisors overrides the Mayor's veto of the ordinance.

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Section 56. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

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

By: \_\_\_\_\_  
AUDREY W. PEARSON  
Deputy City Attorney

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