

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Kate Hartley, Director, Mayors Office of Housing and Community Development (MOHCD)  
Andrico Penick, Director, Real Estate Division

FROM: Victor Young, Assistant Clerk *Victor Young*  
Rules Committee

DATE: June 19, 2019

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following proposed legislation on June 11, 2019:

**File No. 190679**

**Ordinance amending the Administrative Code to establish uniform procedures for the administration of City loans and grants for the acquisition, development, construction, rehabilitation, and preservation of affordable housing; authorize the Director of the Mayor's Office of Housing and Community Development (MOHCD) to execute certain loan or grant agreements for affordable housing; and authorize the Director of MOHCD and the Director of Property to acquire certain real property without an appraisal and accept a deed for the purpose of preserving affordable housing.**

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

c: Eugene Flannery, MOHCD

1 [Administrative Code - Administration of Loans and Grants for Affordable Housing]

2  
3 **Ordinance amending the Administrative Code to establish uniform procedures for the**  
4 **administration of City loans and grants for the acquisition, development, construction,**  
5 **rehabilitation, and preservation of affordable housing; authorize the Director of the**  
6 **Mayor’s Office of Housing and Community Development (MOHCD) to execute certain**  
7 **loan or grant agreements for affordable housing; and authorize the Director of MOHCD**  
8 **and the Director of Property to acquire certain real property without an appraisal and**  
9 **accept a deed for the purpose of preserving affordable housing.**

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

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

18 Section 1. Findings and Purpose.

19 (a) The real estate analyst Rent Jungle reports that the average monthly rent for a two-  
20 bedroom apartment in San Francisco jumped from \$2,611 in 2011 to \$4,550 in 2019, an  
21 increase of almost 75% in eight years. For a family of four with an annual income equaling  
22 San Francisco’s 2018 area median income (“AMI”) of \$118,400, a monthly rent payment of  
23 \$4,550 consumes 46% of the family’s monthly income.

24 (b) While low income San Francisco households earning less than 50% of AMI have  
25 faced significant rent burdens for decades, the City’s high cost of housing now burdens even  
26 moderate income households with an annual income of up to 200% of AMI.

1 (c) High housing costs across the Bay Area have caused displacement, the loss of  
2 cultural and ethnic diversity in some communities, transportation pressures, and overall social  
3 and economic hardship.

4 (d) Policy makers throughout the state have made the creation and preservation of  
5 affordable housing a top priority. The City and County of San Francisco, through the Mayor's  
6 Office of Housing and Community Development ("MOHCD"), is a leader in the field, offering a  
7 variety of loan and grant programs to individuals, community-based organizations, and  
8 housing developers to create and maintain affordable housing and provide essential  
9 community and supportive services. The funding for these loans and grants comes from a  
10 variety of sources, all of which are restricted to affordable housing and are subject to various  
11 housing program restrictions, including strict federal and state regulatory requirements.

12 MOHCD currently provides loans or grants in the following categories:

13 (1) Grants to community-based organizations to fund social services,  
14 community building, or capital improvements at community facilities;

15 (2) Loans for down payment assistance to income-eligible, first-time  
16 homebuyers, and loans to income-eligible homeowners to assist with home repairs;

17 (3) Loans and grants to build new multi-family apartment buildings or  
18 rehabilitate existing affordable multi-family housing, including predevelopment activities;

19 (4) Loans to acquire and rehabilitate existing multi-family apartment buildings  
20 and preserve as affordable housing;

21 (5) Loans and grants to revitalize the four HOPE SF communities (i.e., Hunters  
22 View, Alice Griffith, Potrero, Sunnydale) by updating and replacing existing infrastructure and  
23 public housing units, building new affordable units, and providing supportive community  
24 resources;

1 (6) Grants to help subsidize the cost of operating permanent supportive housing  
2 for formerly homeless persons and families; and

3 (7) Loans and grants to preserve existing affordable housing and fund related  
4 community service needs, including emergency loans for life safety repairs.

5 (f) In 1990, the San Francisco Citywide Affordable Housing Loan Committee (“Loan  
6 Committee”) was established by the Mayor as an advisory body to make recommendations  
7 and coordinate the funding for affordable housing development, as well as insure that the  
8 City’s housing needs and services are prioritized jointly, underwriting standards are uniform,  
9 and applications for funding are reviewed in a streamlined manner. The Loan Committee is  
10 currently composed of the directors of MOHCD, the Office of Community Investment and  
11 Infrastructure, and the Department of Homeless and Supportive Housing, or their delegates.  
12 As a passive body created by and advisory to the Mayor, the Committee holds meetings open  
13 to the public.

14 (g) MOHCD applies professional best practices so that residents and affordable  
15 housing developments are protected and to ensure that MOHCD’s limited resources are used  
16 responsibly and efficiently to maximize benefits for the greatest number of San Franciscans.  
17 MOHCD has administered the City’s affordable housing programs and expended funds in an  
18 open, transparent way and in close collaboration with housing partners, City officials, and the  
19 public, as follows:

20 (1) Engaging in a public and competitive process for all multi-family affordable  
21 housing projects funded through MOHCD, including properties located on City-owned land;

22 (2) Adhering to detailed and publicly available underwriting guidelines and  
23 competitive solicitations;

24 (3) Obtaining approval by the Board of Supervisors for the majority of MOHCD’s  
25 multi-family affordable housing transactions, including tax-exempt bond issuances, long-term

1 ground leases, accept and expend authorizations, and specific contract or program  
2 authorizations;

3 (4) Obtaining approval by the Board of Supervisors of MOHCD's annual budget  
4 and funding priorities;

5 (5) Complying with extensive federal, state, and local regulatory and contractual  
6 requirements for each housing project and funding source, including the requirements of the  
7 United States Department of Housing and Urban Development, the California Debt Limit  
8 Allocation and Tax Credit Allocation Committees, the City's General Obligation Bond  
9 Oversight and Housing Loan Committees, as well as the City's Planning Code, Administrative  
10 Code, and Environmental Code;

11 (6) Imposing affordability restrictions for the longest possible period (55 years or  
12 longer) as a condition of funding; and

13 (7) Obtaining review and recommendation by members of the Loan Committee  
14 of all MOHCD loans and grants for multi-family affordable housing development or  
15 rehabilitation.

16 (g) Under Charter Section 9.118(b), all contracts entered into by a City department  
17 having a term in excess of 10 years or anticipated expenditures of \$10 million or more are  
18 subject to approval of the Board of Supervisors. Nearly all of MOHCD's loans and many of  
19 MOHCD's grants for affordable housing have terms in excess of 10 years, in part to preserve  
20 the affordability restrictions for the longest possible period of time.

21 (h) As the principal funding source for MOHCD's programs has shifted in recent years  
22 from federal and state grants and loans to local sources such as development impact fees  
23 and bond initiatives, and as the need for MOHCD to disburse affordable housing dollars in a  
24 timely and efficient manner has gained a new urgency, MOHCD needs to update its approval  
25 procedures. The purpose of this ordinance is to clarify and update the administration of the

1 City's affordable housing programs and approval of MOHCD's loan and grant agreements.  
2 The Board of Supervisors desires to delegate certain authority to MOHCD consistent with the  
3 Charter to enter into agreements for loans and grants for affordable housing as provided in  
4 this ordinance.

5  
6 Section 2. The Administrative Code is hereby amended by adding Chapter 120,  
7 consisting of Sections 120.1, 120.2, 120.3, 120.4, 120.5, and 120.6, to read as follows:

8  
9 **CHAPTER 120: Administration of Affordable Housing Funds**

10  
11 **SEC 120.1. DEFINITIONS.**

12 *For purposes of this Chapter 120, the following terms shall have the following meanings:*

13 *"Acquisition Programs" means MOHCD programs for the acquisition, rehabilitation, and/or*  
14 *preservation of multi-family residential buildings, including but not limited to the Preservation and*  
15 *Seismic Safety Program under Administrative Code Chapter 66, MOHCD's Small Sites Program, and*  
16 *any successor acquisition, rehabilitation, and preservation programs. Acquisition Programs does not*  
17 *include the acquisition of vacant land.*

18 *"Affordable Housing" means (1) a single-family residential home subject to a recorded*  
19 *restriction to ensure affordability based on income, or (2) a multi-family residential building, including*  
20 *any ancillary commercial space, where 100% of the City-subsidized residential units (not including a*  
21 *manager's unit) are or will be subject to a recorded regulatory restriction to ensure affordability based*  
22 *on income or provide permanent housing for homeless or formerly homeless persons.*

23 *"Board" means the Board of Supervisors.*

24 *"Borrower" means a recipient of a Loan.*

25 *"City" means the City and County of San Francisco.*

1           “Declaration of Restrictions” means an agreement to be executed by the Borrower or Grantee  
2 and recorded against Property as a condition to the receipt of a Loan or Grant, that restricts the use of  
3 the Property as Affordable Housing.

4           “Director” means the Director of MOHCD, or the Director’s designee.

5           “Fund” or “Funds” means the Housing Trust Fund under Charter Section 16.110, any fund  
6 administered by MOHCD under Article XIII of Administrative Code Chapter 10, or any other fund that  
7 is administered by MOHCD for Grants or Loans under this Chapter 120.

8           “Grant” or “Grants” means a grant of Funds made under a Program with a term of 10 years  
9 or longer.

10          “Grantee” means a recipient of a Grant.

11          “Homeownership Programs” means programs administered by MOHCD that provide income  
12 eligible San Francisco residents with Grants or Loans to purchase or rehabilitate single-family homes.

13          “HOPE SF Program” means the program to revitalize the Hunters View, Alice Griffith,  
14 Sunnydale, and Potrero HOPE SF communities by replacing public housing units and building new  
15 affordable units, including related infrastructure and community facilities.

16          “Loan” or “Loans” means a loan of Funds made under a Program, including the modification,  
17 refinancing, or restructuring of a loan, with a term of 10 years or longer.

18          “Loan Committee” means the Citywide Affordable Housing Loan Committee established by and  
19 advisory to the Mayor to make recommendations related to affordable housing development, as well as  
20 insuring that underwriting standards are uniform, review of funding applications are streamlined, and  
21 funding allocations are coordinated. The members of the Loan Committee include the directors or  
22 their designees from MOHCD, the Office of Community Investment and Infrastructure, the Department  
23 of Homelessness and Supportive Housing, and the Controller’s Office, and any successor to such  
24 agencies, and also includes the director of the San Francisco Housing Authority for Loans under the  
25 HOPE SF Program or other members appointed by the Mayor.

1 “LOSP” means the City's Local Operating Subsidy Program that provides operating subsidies  
2 to residential buildings providing supportive housing for homeless individuals and families.

3 “MOHCD” means the Mayor’s Office of Housing and Community Development, or any  
4 successor agency.

5 “Multi-family Programs” means MOHCD programs for the acquisition, development,  
6 construction, rehabilitation, and/or preservation of multi-family residential buildings and related  
7 infrastructure and ancillary commercial space, as Affordable Housing, including but not limited to the  
8 HOPE SF Program.

9 “Program” means an existing or future Affordable Housing program established or funded by  
10 the City and administered by MOHCD, including Acquisition Programs, Homeownership Programs,  
11 and Multi-family Programs.

12 “Program Regulations” means policies, procedures, rules, guidelines, manuals or regulations  
13 published by the Director and designed to implement a Program.

14 “Property” means any real property used for Affordable Housing or to secure a Loan or Grant.

15 **SEC. 120.2. PROGRAM MANAGEMENT AND REGULATIONS.**

16 (a) The Director shall be responsible for the operation and management of all Programs that  
17 designate MOHCD as the administrative agency. The Director shall make Grants and Loans  
18 consistent with all Program requirements. The Controller, in consultation with the Director, shall  
19 disburse Funds consistent with the terms of approved Grants and Loans. The Director and the  
20 Controller may appoint agents and consultants to assist with Program administration.

21 (b) The Director shall publish from time to time Program Regulations as necessary and  
22 appropriate to implement each Program, consistent with applicable law and this Chapter 120. The  
23 Director shall publish all Program Regulations on MOHCD’s website and in such additional places as  
24 the Director deems appropriate, and provide copies or electronic links on request. The Program  
25 Regulations shall address matters such as Program and Fund administration, public and competitive



1 processes to apply for Loans and Grants, compliance with applicable laws and regulations,  
2 affordability restrictions for the longest possible term, eligible uses of Funds, underwriting criteria,  
3 role of the Loan Committee in reviewing Loans and Grants, transaction processing, documentation,  
4 compliance monitoring, and enforcement. With the exception of Homeownership Programs, MOHCD  
5 shall submit any Program Regulations and any material amendments thereto to the Loan Committee  
6 for review and recommendations.

7 **SEC. 120.3. LOAN TERMS.**

8 (a) **Loan Term and Repayment.** The Director shall prepare Loan documents consistent with  
9 Program Regulations. So long as the applicable Property continues to be used for Affordable Housing,  
10 the Loan documents may allow payment from net cash flow, defer some or all payments during the  
11 term, and allow for debt forgiveness at the end of the term, all as determined by the Director.

12 (b) **Security for Loans and Grants.** The Director may require Loans or Grants made under  
13 this Chapter 120 to be secured by a deed of trust and other security instruments for the benefit of the  
14 City consistent with Program Regulations. The Director may record and subordinate deeds of trust  
15 and other security instruments as needed or appropriate to achieve and preserve Affordable Housing.

16 (c) **Declaration of Restrictions.** Any Loan or Grant for the acquisition, development,  
17 construction, rehabilitation, or preservation of Affordable Housing shall be subject to a Declaration of  
18 Restrictions with the longest possible term as determined by the Director, including, but not limited to  
19 terms of 55 years or longer or for the life of the applicable building. MOHCD shall not subordinate a  
20 Declaration of Restrictions to any third party financing instrument, except to the extent required by  
21 federal or state funding sources or financing for the new construction of Affordable Housing.

22 (d) **Combining Loans or Grants.** Subject to the applicable requirements of a Fund, Program,  
23 or Program Regulations, MOHCD may issue one or more Loans or Grants, in any combination, that  
24 the Director deems appropriate to create or preserve Affordable Housing. A Borrower or Grantee  
25 shall comply with the requirements of each applicable Program and funding source, which shall be

1 included in the Grant or Loan documents.

2 (e) **Purchase Option.** To ensure long-term affordability, MOHCD may require Borrowers and  
3 Grantees to execute and record against the Property an agreement that provides the City an option to  
4 purchase the Property at a restricted value.

5 (f) **Compliance with Transaction Documents and Applicable Laws.** Each Loan and Grant  
6 agreement shall require Borrowers and Grantees to comply with applicable laws and regulations,  
7 including federal, state, and City regulations and Program Requirements. In addition, MOHCD shall  
8 work with the Controller, the City Attorney, and non-City funding sources to monitor compliance with  
9 all Loan and Grant agreements, Program Regulations, and applicable laws.

10 **SEC. 120.4. ADMINISTRATION OF LOANS AND GRANTS.**

11 (a) **Agreements.** MOHCD shall prepare standard form Loan and Grant agreements, which  
12 will be subject to negotiation as deemed appropriate by the Director. The Board authorizes and  
13 delegates to the Director the authority to enter into and amend Loan or Grant agreements consistent  
14 with this Chapter 120, including agreements that extend beyond 10 years as well as ancillary  
15 documents and agreements, to create, improve, or preserve Affordable Housing. The Director has the  
16 authority to enter into such agreements for the following, so long as they meet the requirements of this  
17 Chapter 120:

18 (1) Loans or Grants that do not exceed \$10,000,000 under Homeownership Programs,  
19 Multifamily Programs and Acquisition Programs;

20 (2) Grants under LOSP subject to annual appropriation by the Board of Supervisors;  
21 and

22 (3) Loans exceeding \$10,000,000 for Affordable Housing that faces a life safety  
23 emergency where low-income residents are at imminent risk of losing their housing, subject to (A) the  
24 Controller's determination that adequate funds are available and appropriated for the proposed  
25 disbursement, (B) the Director's determination that the owner of such Affordable Housing has fully

1 utilized all other sources of funding or financing available to the owner, and (C) the Mayor and the  
2 Board receiving at least 10 days' advance notice of the Loan.

3 For all other Loans or Grants that exceed \$10,000,000, including any modifications to a Loan  
4 or Grant that would increase the total amount to exceed \$10,000,000, MOHCD shall obtain prior  
5 Board approval by resolution to the extent required under Charter Section 9.118(b).

6 (b) **Loan Committee Recommendation.** MOHCD shall consult with applicable City agencies  
7 and/or departments regarding new Loans and Grants, which may be accomplished through  
8 recommendations made by the Loan Committee. Prior to execution of any agreement, MOHCD shall  
9 have the Loan Committee review new Loans and Grants, including material modifications to existing  
10 Loans and Grants as determined by the Director, under LOSP, Multifamily Programs, and Acquisition  
11 Programs for the purpose of streamlining the review of funding applications and coordinating  
12 affordable housing development and services with other City agencies and/or departments. The  
13 members of the Loan Committee may, in each member's discretion, choose to not recommend any  
14 proposed Loan or Grant, or make recommendations to reduce the amount of or to condition any  
15 proposed Loan or Grant.

16 (c) **Funding Disbursement.** MOHCD shall be responsible for approving the disbursement of  
17 Loan and/or Grant proceeds and monitoring performance of Borrowers and Grantees under this  
18 Chapter 120 and enforcing the applicable agreements. MOHCD shall establish commercially  
19 reasonable protocols to oversee the use and expenditure of Loan and Grant proceeds.

20 (d) **Loan Servicing.** MOHCD shall collect revenues due and owing under Loans and Grants,  
21 maintain records of all such revenues segregated by Program, and maintain annual statements of such  
22 accounts. Loan repayments shall be deposited into the applicable Fund in accordance with Program  
23 Regulations, and the Director shall work with the Controller to apply revenues toward repayment of  
24 bonds as and when required.

1           (e) Fees for Services. MOHCD may charge reasonable fees, including Loan origination and  
2           monitoring fees, and such other necessary fees of consultants and agents retained to administer any  
3           Program. MOHCD shall include a statement of the fees in the Program Regulations for each Program.

4           (f) Refinance and Loan Workouts. To preserve and maintain any Affordable Housing, the  
5           Director is authorized to refinance, restructure, modify, or extend the term of any Loan or Grant and  
6           any related agreements, provided that a new Declaration of Restrictions is recorded against the  
7           Property.

8           (g) Monitoring and Enforcement. MOHCD shall monitor compliance with Loan and Grant  
9           agreements, Declarations of Restrictions, and any other related documents. MOHCD may take such  
10           actions as are reasonably necessary to enforce such agreements and documents and collect on any  
11           security, including the foreclosure of any deed of trust, possession of rents and other revenues, or the  
12           demand and collection under any guaranty or other security instrument. MOHCD may also take action  
13           to protect its security or its interest in a Property, including curing a default under a senior loan or  
14           acquiring property at a tax sale, foreclosure, through a deed in lieu of foreclosure, or through a  
15           judicial process. The Board authorizes and delegates to the Director, following consultation with the  
16           Director of Property and the City Attorney, the right to accept a deed or other security or interest in  
17           property as part of any remedy or as may be needed to preserve Affordable Housing.

18           **SEC. 120.5. REPORTS TO THE BOARD.**

19           The Director shall submit an annual report to the Board, within 180 days following the end of  
20           each fiscal year, with a summary of all Loans and Grants made under this Chapter 120 for the prior  
21           fiscal year. The Director's report shall include the primary purpose of the Loan, principal amount,  
22           term, and interest rates, and other information, if any, regarding this Chapter that the Director chooses  
23           to include in the report. The Director's report may be combined with any other reporting obligations.

1                   **SEC. 120.6. CHAPTER CONTROLLING.**

2  
3                   To the extent that the provisions of this Chapter 120 are inconsistent with the provisions of any  
4 ordinance related to the administration of Funds, the provisions of this Chapter shall control.

5  
6                   Section 3. Chapter 23 of the Administrative Code is hereby amended by revising  
7 Sections 23.2, 23.3, and 23.4, to read as follows:

8                   **SEC. 23.2. CHAPTER DEFINITIONS.**

9                   **Chapter Definitions.** As used in this Chapter 23, the following initially capitalized  
10 terms shall have the meanings ascribed to them in this Section 23.2:

11                   "Acquire" shall mean to acquire, accept, purchase, or exchange an easement or  
12 fee title in Real Property. "Acquisition" shall have a correlative meaning.

13                   "Affordable Housing" shall have the meaning set forth in Administrative Code Section  
14 23A.4.

15                   "Appraisal" shall mean a written opinion of value, as defined by the most recent  
16 version of USPAP, that is prepared for or received by the City, is prepared by a Qualified  
17 Appraiser, and conforms with USPAP appraisal guidelines.

18                   \* \* \* \*

19                   **SEC. 23.3. CONVEYANCE AND ACQUISITION OF REAL PROPERTY.**

20                   \* \* \* \*

21                   If the Director of Property determines the fair market value of Real Property that the  
22 City intends to Acquire or Convey exceeds \$10,000 and the proposed Acquisition is not a  
23 donation, the Director of Property shall obtain an Appraisal for the Real Property. If the  
24 Appraisal determines the fair market value of the Real Property exceeds \$200,000, the  
25 Director of Property shall obtain an Appraisal Review for such Appraisal. Any Appraisal and

1 Appraisal Review shall have an effective date of value that is not earlier than nine months  
2 before the date legislation for the proposed Acquisition or Conveyance is submitted to the  
3 Board of Supervisors. Notwithstanding anything to the contrary in this Section 23.3, to preserve  
4 Affordable Housing, the Director of MOHCD and the Director of Property are authorized to Acquire  
5 any Real Property without an Appraisal (1) through the exercise of rights and remedies under a deed of  
6 trust, deed in lieu of foreclosure, loan agreement, regulatory agreement, or other instrument securing  
7 the City's interest in the Real Property, or (2) through negotiated contract or bid of Real Property that  
8 is to be sold through public auction, a judicial process, tax sale, or trustee sale.

9 \* \* \* \*

10 **SEC. 23.4. ACCEPTANCE OF DEEDS BY DIRECTOR OF PROPERTY AND**  
11 **ASSISTANT.**

12 The Director of Property and the Assistant Director of Property of the City are hereby  
13 each authorized to accept and consent to deeds or other instruments granting Real Property  
14 to the City that are (1) Acquired to preserve Affordable Housing, as set forth in Section 23.3, or (2)  
15 approved by the Board of Supervisors, and to sign the required certificate of acceptance  
16 relating thereto. The Director of Property shall record a certified copy of the resolution from which  
17 this Section was derived in each county wherein any Real Property is owned by or is to be Acquired by  
18 the City.

19  
20 Section 4. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.


7

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

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By:

  
KEITH NAGAYAMA *Charles Sullivan*  
Deputy City Attorney

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