

1 [Public Works, Administrative Codes - Street Encroachment Permits and Maintenance Fund
2 for Certain Permits]

3 **Ordinance amending the Public Works Code to update provisions on street**
4 **encroachment permits, establish appeals procedures and fees for such appeals, waive**
5 **the annual public right-of-way occupancy assessment fee in lieu of the waiver for**
6 **permit fee payment for certain permits, modify the street encroachment permit process**
7 **for governmental entities, and create a temporary street encroachment permit for a**
8 **maximum period of 30 months; amending the Administrative Code to establish an**
9 **encroachment maintenance fund for permits where the permittee is not an adjacent**
10 **property owner; and affirming the Planning Department's determination under the**
11 **California Environmental Quality Act.**

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.

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

20 Section 1. Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 170761 and is incorporated herein by reference. The Board affirms
25 this determination.

1 (b) The Board of Supervisors authority to regulate use of the public right-of-way,
2 including streets and sidewalks, is derived from the California Street and Highways Code and
3 other State laws. The Board of Supervisors has established a variety of public right-of-way
4 use regulatory and permit programs in the San Francisco Public Works Code and other
5 Municipal Codes. In many of the Public Works Code sections on permits, the Board of
6 Supervisors explicitly identified appeal procedures for the approval, denial, and revocation of
7 permits; however, some permit programs have no identified appeal procedures. When no
8 appeal procedures for permits are included in the Public Works Code, there is confusion as to
9 whether an appeal is available or not, who has the right to appeal, and what the appeal
10 procedures are.

11 (c) Public Works Code Sections 786 et seq., governing street encroachment permits,
12 is one example where the Public Works Code that has no identified appeal process. As part
13 of this legislation's update to the street encroachment permit sections, the Board of
14 Supervisors is establishing two different appeal mechanism depending on the form of street
15 encroachment permit.

16 (1) For conventional street encroachment permits, where the Board of
17 Supervisors itself approves or denies the permit after getting a permit recommendation from
18 the Public Works Director, there is no appeal and the Board of Supervisors decision is final.
19 However, if the Public Works Director recommends denial of a permit solely for non-
20 engineering reasons or the Director recommends revocation of a street encroachment permit,
21 then the applicant or permittee, respectively, may appeal that decision to the Board of
22 Supervisors.

23 (2) For a temporary encroachment permit or an encroachment permit issued to
24 a City department or other governmental entity as set forth in this ordinance, the Public Works
25 Director's decision to approve or conditionally approve a permit may be appealed by a

1 member of the general public or the applicant to the Board of Appeals. If the Public Works
2 Director denies a permit solely for non-engineering reasons or the Director revokes a
3 temporary street encroachment, then the applicant or permittee, respectively, may appeal that
4 decision to the Board of Appeals.

5
6 Section 2. The Public Works Code is hereby amended by revising Sections 786,
7 786.2, 786.3, 786.4, 786.5, and 786.7 and adding Section 786.8 and 786.9, to read as
8 follows:

9 **SEC. 786. STREET (MAJOR) ENCROACHMENT PERMIT.**

10 *No revocable permit for an encroachment on a public street or place as defined in Section 244*
11 *of this Code authorized by resolution of the Board of Supervisors shall be issued unless application*
12 *therefor is made to the Director of Public Works and a processing fee, in the amount of \$800 shall have*
13 *been paid; provided, however, that the Board of Supervisors may waive payment of the fee provided for*
14 *herein if it finds that a benefit will accrue to the public from a proposed encroachment.*

15 *Annually, on or before the fifteenth day of May in each year, the Controller shall determine and*
16 *report to the Board of Supervisors an estimate of the average unit cost to be incurred by departments,*
17 *boards and commissions of the City and County in processing said applications and in issuing said*
18 *permits for the ensuing fiscal year. The Board of Supervisors may thereupon by resolution revise the*
19 *amount of the fee heretofore fixed for said permits.*

20 *(a) The Board of Supervisors by resolution may approve, conditionally approve, or deny*
21 *applications for a street encroachment permit, also known as a major encroachment permit, to occupy*
22 *the public right-of-way, as defined in Section 2.4.4, after the Public Works Director processes the*
23 *permit application in accordance with the requirements of Sections 786 et seq. The Director's*
24 *processing of permits shall include a recommendation on the application to the Board of Supervisors.*
25 *The Board of Supervisors decision on such permits is final and there is no appeal.*

1 (b) For multi-phase or large-scale development projects, the Board of Supervisors may
2 approve, conditionally approve, or deny an application for a master street encroachment permit that
3 applies to all or a portion of the development project site. As part of the Board of Supervisors approval
4 or conditional approval of such master permit, the Board may provide for the contiguous and non-
5 contiguous annexation of new areas of the project site into the master permit and assignments of
6 obligations from the original permittee to the permittee's agent or assignee. The Board also may
7 delegate to the Director of Public Works the ability to divide the master permit into separate master
8 permits or individual street encroachment permits. Notwithstanding Public Works Code Section 706 or
9 other Municipal Codes that place sidewalk maintenance responsibility on fronting property owners, the
10 Board of Supervisors may authorize the master street encroachment permittee or the permittee's agent
11 or assignee, such as a homeowners' association, to comply with the terms of the Section 706 in lieu of
12 the fronting property owner.

13 (c) All street encroachment permits are non-exclusive and revocable.

14 (d) The Director, in his or her discretion, may recommend denial of a street encroachment
15 permit application. The Director shall notify the applicant in writing of this decision. The Director
16 shall hold an administrative hearing on his or her decision to recommend denial of the application. If
17 the basis for the denial recommendation relates solely to engineering design and the Director's
18 recommendation remains unchanged after the administrative hearing, the Director's denial decision
19 constitutes the final decision and there is no appeal. If the basis for the denial recommendation is
20 solely for reasons unrelated to engineering design, the applicant may appeal the Director's
21 recommendation to the Board of Supervisors within 30 days of the date of the Director's written
22 decision after the administrative hearing. The applicant's appeal shall be filed in writing with the
23 Clerk of the Board of Supervisors and accompanied with checks in the amount of \$635 for the Clerk of
24 the Board of Supervisors and \$400 for Public Works to compensate the City for its cost related to the
25 appeal. The Board of Supervisors shall conduct the appeal hearing in a similar manner to other

1 appeals on land use matters. The Board of Supervisors decision on appeal is final and there is no
2 appeal.

3 (e)(1) The Director, in his or her discretion, may recommend revocation of a street
4 encroachment permit. The Director shall notify the permittee in writing of this decision. The Director
5 shall hold an administrative hearing on his or her decision to recommend revocation. The Permittee
6 may appeal the Director's decision to revoke to the Board of Supervisors within 30 days of the date of
7 the Director's written decision after the administrative hearing. The Permittee's appeal shall be filed
8 in writing with the Clerk of the Board of Supervisors and accompanied with checks in the amount of
9 \$635 for the Clerk of the Board of Supervisors and \$400 for Public Works to compensate the City for
10 its cost related to the appeal. The Board of Supervisors shall conduct the appeal hearing in a similar
11 manner to other appeals on land use matters. The Board of Supervisors decision on appeal is final and
12 there is no appeal.

13 (2) Beginning with fiscal year 2018-2019, the appeal fees in subsection (e)(1) may be
14 adjusted each year, without further action by the Board of Supervisors, to reflect changes in the
15 relevant Consumer Price Index, as determined by the Controller. No later than April 15th of each year,
16 the Director and Clerk of the Board of Supervisors shall submit the Department's and Clerk's current
17 fee to the Controller, who shall apply the price index adjustment to produce a new fee for the following
18 year. No later than May 15th of each year, the Controller shall file a report with the Board of
19 Supervisors reporting the new fee and certifying that: (a) the fees produce sufficient revenue to support
20 the costs of providing the services for which the fee is charged and (b) the fees do not produce revenue
21 that exceeds the costs of providing the services for which each permit fee is charged. Notwithstanding
22 the procedures set forth in this subsection (e)(2), the Board of Supervisors, in its discretion, may modify
23 the fees by ordinance at any time.

24 (f) For purposes of Sections 786 et seq., a street encroachment permit shall include, but is not
25 limited to, an encroachment above and/or below ground that extends beyond the centerline of the

1 public right-of-way, one or more encroachments that occupy the public right-of-way adjacent to more
2 than one property owner and the applicant(s)/permittee(s) proposes it collectively as a single permit,
3 an encroachment where the applicant/permittee is not the property owner adjacent to the
4 encroachment, an encroachment that exceeds one or both of the occupation limits specified in Section
5 723.2 governing minor sidewalk encroachments or its successor Section; and any encroachment that
6 the Director determines to have significant impacts to the public right-of-way.

7 (g) If a street encroachment permit involves street reconstruction and occupancy of the
8 majority of a through street segment or an intersection, the design shall provide for communication
9 services as defined in Subdivision Code Section 1336 if the permittee is not providing such services as
10 part the development of real property adjacent to the street encroachment permit. After the permittee
11 provides such communication services, such services shall be excluded from the terms of the street
12 encroachment permit and any associated agreements concerning the permit, and the permittee shall
13 have no further responsibility in regard to such services. The Public Works Director is authorized to
14 waive this requirement if the cost of providing such services is excessive in comparison to the cost of
15 the street encroachment permit, the design of the street encroachment permit would be undermined by
16 inclusion of the services, or for other reasons that the Director determines would adversely affect the
17 permit or its design. This Subsection (g) shall not apply to a temporary street encroachment permit
18 under Section 786.9.

19 (h) The Director, after a public hearing, may adopt such orders, policies, regulations, rules, or
20 standard plans and specifications in regard to street encroachment permits and applications as he or
21 she deems necessary to preserve and maintain the public health, safety, welfare, and convenience. Such
22 orders, policies, regulations, rules, or standard plans and specifications may include, but are not
23 limited to, permit application materials, implementation and annexation procedures for master major
24 encroachment permits, standards for establishing annual maintenance costs for encroachments, site
25 conditions, and accessibility of sidewalks and streets.

1 **SEC. 786.2. REPORTS.**

2 (a) The Director of Public Works shall forward copies of the application for a
3 ~~revocable~~street encroachment permit ~~for an encroachment on a public street or place~~ to the Director
4 of Planning, the Director of Property, the Chief of the Police Department, the Chief of the Fire
5 Department, the ~~General Manager~~Transportation Director of the Municipal ~~Railway~~Transportation
6 Agency, the General Manager of the Public Utilities Commission, the Art Commission, and to the
7 City Engineer. The Director of Public Works shall request a report from each of the listed
8 departments concerning the effect of the proposed encroachment in relation to their duties
9 and responsibilities. The completed reports shall be returned to the Director of Public Works
10 within 60 days of the receipt of the copies of the application by the listed departments. The
11 departments listed above may request one extension of time not to exceed 30 days from the
12 Director of Public Works, which extension of time shall be granted.

13 (b) Upon the Department's receipt of City department reports and any Department required
14 permit application revisions, the Department shall forward the application to an interagency committee
15 for review and a written report of its findings. The interagency committee shall be the Transportation
16 Advisory Staff Committee (TASC) or successor committee. The interagency committee shall act on the
17 application within a reasonable period after its receipt from the Department.

18 **SEC. 786.3. SCHEDULE OF HEARINGS.**

19 Upon receipt of the ~~reports from the departments listed~~interagency committee review findings
20 as specified in Section 786.2(b), regarding an application for a ~~revocable~~street encroachment
21 permit ~~for an encroachment on a public street or place~~, the Director of Public Works shall set a
22 time and place for a hearing thereon within a reasonable period, not to exceed 90 days from
23 the date ~~on which the application is made to the Director of Public Works~~when the interagency
24 committee performed its review. The Director of Public Works ~~shall be granted an additional period~~
25 ~~of 30 days from the date on which the application is made~~may extend to hold the public hearing date

1 if ~~a time extension has been requested as provided~~any City department listed in Section 756.2 of this
2 ordinance 786.2, the Department itself, or the applicant requests such extension. The Director shall
3 send written notice of the basis for the extension and a proposed date for the hearing to the City
4 departments listed in Section 786.2 and the applicant.

5 **SEC. 786.4. NOTICE OF HEARING.** The Director of Public Works shall give ~~A~~notice of
6 time, place and purpose of the hearing on an application for a ~~revocable~~street encroachment
7 permit ~~for an encroachment on a public street or place shall be given by the Director of Public Works~~
8 as follows:

9 (1a) By mail, not less than 10 days prior to the date of the hearing, to the applicant or
10 other person or agency making the application.

11 (2b) By mail, not less than 10 days prior to the date of the hearing, to the owners of all
12 real property within 300 feet of all exterior boundaries of the proposed encroachment, using
13 for this purpose the names and addresses of the owners as shown on the latest city-wide
14 assessment roll in the office of the Tax Collector. Failure to send notice by mail to any such
15 property owner where the address of such owners is not shown on such assessment roll shall
16 not invalidate any proceedings in connection with such application.

17 (3c) By posting, not less than 10 days prior to the date of the hearing in a public place
18 near the boundaries of the proposed encroachment.

19 (4d) Such other notice as the Director of Public Works shall deem appropriate.

20 **SEC. 786.5. CONDUCT OF HEARINGS.**

21 (a) **Reports and Application Revisions.** The Department shall compile the reports of the
22 departments listed in Section 786.2(a), the TASC findings specified in Section 786.2(b), and any
23 application revisions, shall be submitted and make them available at the hearing ~~on an application~~ for
24 a ~~revocable~~street encroachment permit ~~for an encroachment on a public street or place.~~

1 (b) **Record.** A record shall be kept of the pertinent information presented at the
2 hearing on ~~any application for a revocable~~street encroachment permit ~~for an encroachment on a~~
3 ~~public street or place~~, and such record shall be maintained as part of the permanent public
4 records of ~~the Department of~~ Public Works.

5 (c) **Continuances.** The Director of Public Works shall determine the instances in
6 which cases scheduled for hearing may be continued or taken under advisement. In such
7 cases, new notice need not be given provided the date of any further hearing is announced at
8 the previously scheduled hearing and public notice of the continued hearing is issued.

9 **SEC. 786.7. PUBLIC RIGHT-OF-WAY OCCUPANCY ASSESSMENT FEE FOR**
10 **STREET ENCROACHMENTS.**

11 * * * *

12 (b) In accordance with Subsection (a) the public right-of-way occupancy assessment
13 fee for street encroachments, whether permitted or unpermitted, shall be an annual fee of
14 \$3.00 per square foot of occupancy of the street or other public right-of-way space. For
15 purposes of calculating the assessment fee, the Department shall charge no less than
16 \$100.00 per ~~p~~year even though the calculated square footage charge for the encroachment
17 may result in a smaller assessment fee.

18 * * * *

19 (f) Notwithstanding Subsection (b), no public right-of-way occupancy assessment fee
20 shall be charged against the ~~owner of a property~~ permittee for elements installed: (1) as a
21 requirement under Planning Code Section 138.1, or (2) that the Department determines are
22 consistent with any Board of Supervisors adopted Neighborhood Plan or streetscape plan as identified
23 in the General Plan or Planning Code, or (3) as a condition of a City-approved development agreement
24 or a disposition and development agreement authorized by the City or the former San Francisco
25 Redevelopment Agency, or (4) for improvements associated with a Planning Commission approved in-

1 kind agreement in accordance with the Planning Code, or (5) pursuant to a street encroachment permit
2 issued under Section 786.9(a) or (b), or (6) for a People Place permit associated with the Places for
3 People Program established under Administrative Code Chapter 94A.

4 **SEC. 786.8. MAINTENANCE ENDOWMENT FOR STREET ENCROACHMENT**
5 **PERMITS WHERE THE PERMITTEE IS NOT THE OWNER OF ADJACENT PROPERTY.**

6 (a) If a permittee is not the owner of real property adjacent to the street encroachment permit,
7 the permit is not recorded against the real property adjacent to the street encroachment permit, or
8 both, then the permittee shall pay the Department a maintenance endowment to ensure adequate funds
9 are available for ongoing and future maintenance of the street encroachment permit area and any
10 future modification or restoration of the permit area to a condition satisfactory to the Director of
11 Public Works if the permittee abandons or terminates the permit or the Director revokes the permit.

12 (b) The Department shall deposit all funds collected for the maintenance endowment into the
13 Public Works Encroachment Maintenance Fund as established under Administrative Code Section
14 10.100-229.

15 (c) The permittee shall pay the maintenance endowment in annual installments that are the
16 equivalent each year of 20% of the estimated annual maintenance cost. The permittee shall pay the
17 annual maintenance endowment installment for 10 years with the first payment due at the time of
18 permit issuance. As part of the permit application, the permittee shall include an estimate of the annual
19 maintenance cost and the City Engineer shall verify said cost for purposes of the maintenance
20 endowment required under this Section 786.8.

21 (d) If the Board of Supervisors authorizes or approves the transfer or assignment of a street
22 encroachment permit to an individual or entity that is not the owner of real property adjacent to the
23 street encroachment permit area, then the transferee or assignee shall pay the annual maintenance
24 endowment installment under the terms specified in subsection (c) during the time they are the
25 permittee. The transferee's or assignee's first installment payment is due on or before the effective date

1 of the transfer or assignment. If there are multiple transfers or assignments, the Department shall not
2 charge an amount that would exceed the total remaining payments it would collect for the subject street
3 encroachment permit under the 10-year term for the Maintenance Endowment Fund specified in
4 Section 786.8(c).

5 (e) If the Department or any other City agency, department, or commission, including the City
6 Attorney's Office, incurs costs in performing the permittee's maintenance obligation or abating a
7 violation, including any City required modification or restoration, and the permittee has paid the
8 maintenance endowment required under this Section 786.8 in full, then the permittee shall reimburse
9 the Department for all such City costs. If the permittee still is paying the maintenance endowment
10 required under this Section 786.8, then the permittee shall: (1) reimburse the Department for all such
11 City costs and (2) continue to make the required payments into the Public Works Maintenance
12 Endowment Fund.

13 (f) In accordance with the reimbursement process of Section 786.8(e), the Director, in his or
14 her discretion, may arrange for a reimbursement plan for the City maintenance and abatement with the
15 permittee that takes into account the permittee's history of past permit compliance and other factors the
16 Director deems appropriate, including but not limited to, the permittee's budget and number of
17 employees. If the Department is reimbursed for the City's incurred costs, then the Department shall
18 send the affected departments their share of the reimbursement.

19 (g) This Section 786.8 shall not apply to a street encroachment permit: (1) where the Board of
20 Supervisors authorizes or approves the transfer or assignment of the permit from the original permittee
21 to an individual or entity that is the successor owner(s) of real property adjacent to the street
22 encroachment permit and the permit is recorded against the successor owner(s) real property, or (2)
23 that the Board issues in accordance with the terms of Section 786(b), or (3) that the Board issues for a
24 street plaza in accordance with Section 792 where the street plaza permittee is a different individual or
25 entity than the holder of the underlying street encroachment permit or Public Works retains

1 responsibility for the underlying public right-of-way, or (4) that the Director issues to a City agency,
2 department, or commission, a State agency, or the federal government, or (5) that comprises a People
3 Place permit associated with the Places for People Program established under Administrative Code
4 Chapter 94A.

5 **SEC. 786.9. PERMITS FOR CITY DEPARTMENTS OR OTHER GOVERNMENTAL**
6 **ENTITIES AND TEMPORARY ENCROACHMENTS.**

7 (a) If a City agency, department, or commission, a State agency, or the federal government
8 applies for a street encroachment permit, the Public Works Director may approve, conditionally
9 approve, or deny in writing the application administratively without action from the Board of
10 Supervisors after the applicant satisfies the requirements of Sections 786 et seq.

11 (b) The Public Works Director, in his or her discretion, may approve, conditionally approve, or
12 deny in writing a temporary street encroachment permit administratively without action from the Board
13 of Supervisors after the applicant satisfies the requirements of Sections 786 et seq. For purposes of this
14 subsection (b), a temporary street encroachment permit is for a project that: (1) a City agency,
15 department, or commission has co-sponsored and approved or authorized through an officially-
16 adopted City program and (2) shall occupy the street or other type of public right-of-way for no longer
17 than two years. The Director, in his or her sole discretion, may extend the permit term for a temporary
18 street encroachment for a period not to exceed six additional months. This temporary street
19 encroachment permit is not intended to conflict with a People Place permit associated with the Places
20 for People Program established under Administrative Code Chapter 94A, but rather be a separate and
21 distinct permit.

22 (c) The Director's approval or conditional approval of a permit under this Section 786.9 is
23 appealable by a member of the general public or the applicant to the Board of Appeals within 15 days
24 of the date of the Director's final written decision on the permit.

1 (d) If the Director denies an application under Section 786.9(a) or (b), the Director shall notify
2 the applicant in writing of this decision. The Director shall hold an administrative hearing on his or
3 her decision to deny the application. If the basis for the denial relates solely to engineering design and
4 the Director's decision remains unchanged after the administrative hearing, the Director's decision to
5 deny the application constitutes the final decision and there is no appeal. If the basis for denial is
6 solely for reasons unrelated to engineering design, the applicant may appeal the Director's decision to
7 the Board of Appeals within 15 days of the date of the Director's final written decision after the
8 administrative hearing.

9 (e) The Director, in his or her discretion, may revoke a permit issued under this Section 786.9.
10 The Director shall notify the permittee in writing of this decision. The Director shall hold an
11 administrative hearing on his or her decision to revoke. The Permittee may appeal the Director's
12 decision to revoke to the Board of Appeals within 15 days of the date of the Director's final written
13 decision after the administrative hearing.

14
15 Section 3. The Administrative Code is hereby amended by adding Section 10.100-229,
16 to read as follows:

17 **SEC. 10.100-229. PUBLIC WORKS ENCROACHMENT MAINTENANCE FUND.**

18 (a) **Establishment of Fund.** The Public Works Encroachment Fund is established as a
19 category 8 fund to receive the maintenance endowment payments that permittees make in accordance
20 with Public Works Code Section 786.8.

21 (b) **Use of Fund.** If any street encroachment permittee fails to perform maintenance in
22 accordance with the terms of a street encroachment permit or abate any violation of permit terms,
23 including any City required modification or restoration, under Public Works Code Sections 786 et seq.,
24 Public Works may use the Encroachment Maintenance Fund to cover any costs that Public Works or
25 any other City agency, department, or commission, including the City Attorney's Office, incurs in

1 performing any street encroachment permittee’s maintenance obligation or abating a violation of any
2 street encroachment permit. If the City incurs such costs while a permittee is paying the maintenance
3 endowment required under Public Works Code Section 786.8 and the Department uses the
4 Maintenance Endowment Fund to address such costs at the subject permittee’s street encroachment
5 permit location, then the Department shall place any permittee reimbursed funds under Section
6 786.8(e) and (f) back into the Public Works Encroachment Maintenance Fund in an amount equivalent
7 to such City costs, but in no case more than the subject permittee’s required maintenance endowment
8 payment would have been at the time the City incurred such costs.

9 (c) **Administration of Fund.** Public Works shall submit to the Board of Supervisors an annual
10 written report of revenues to and expenditures from the Fund established in this Section.

11
12 Section 4. Effective Date and Operative Dates. This ordinance shall become effective
13 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
14 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
15 or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance shall
16 be operative as of June 1, 2017.

17
18 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the “Note” that appears under
23 the official title of the ordinance.

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

By: _____
John D. Malamut
Deputy City Attorney

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