

1 [Environment Code - Food Service Waste Reduction]

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3 **Ordinance amending the Environment Code to prohibit the sale or use in the City of**
4 **single use food service ware made with fluorinated chemicals and certain items made**
5 **with plastic; requiring that food service ware accessories be provided only on request**
6 **or at self-service stations; requiring reusable beverage cups at events on City property;**
7 **removing waiver provisions; setting operative dates; and affirming the Planning**
8 **Department’s determination under the California Environmental Quality Act.**

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

13

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

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16 Section 1. The Planning Department has determined that the actions contemplated in
17 this ordinance comply with the California Environmental Quality Act (California Public
18 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
19 Board of Supervisors in File No. 180519 and is incorporated herein by reference. The Board
20 affirms this determination.

21

22 Section 2. Findings.

23 (a) The production and management associated with single-use food and beverage
24 service ware, typically used for only a few minutes before being discarded, has significant
25 environmental impacts, including environmental contamination; consumption of energy, water,

1 and non-renewable polluting fossil fuels; emissions of greenhouse gases; air and water
2 pollutants; depletion of natural resources; litter on streets and in waterways; plastic pollution;
3 and increased litter clean-up and discard management costs.

4 (b) Single-use service ware may threaten public health because many types contain
5 many additives that are known or suspected carcinogens or endocrine disruptors, such as
6 phthalates, perchlorate, and fluorinated chemicals. These additives are known to leach from
7 food service ware into the food and beverages they contain.

8 (c) Fluorinated chemicals, also known as per- and polyfluorinated alkyl substances
9 (“PFAS”), are synthetic chemicals commonly used in and on single-use service ware products
10 to repel water and grease. A 2018 Center for Environmental Health study found that 57% of
11 tested food service ware contained significant levels of fluorinated chemicals. Fluorinated
12 chemicals are extremely persistent in the environment, leach into food, and can be taken up
13 from soil into food. In 2016, the FDA rescinded its approval for use of three such fluorinated
14 chemicals from food contact materials due to associated heightened risks of cancer, toxicity,
15 and other health effects. Other PFAS chemicals have similar chemical structures, and may
16 pose similar risks.

17 (d) Plastic straws were among the top 10 items collected during the California
18 Coastal Cleanup Day from 1989 to 2014, and seven of the 10 were single-use food and
19 beverage service ware items. These items accounted for 34% of total trash collected.

20 (e) In a 2011 Bay Area study of street litter in areas impacting urban runoff to the
21 San Francisco Bay, 67% of all 12,000 litter items counted were single-use food or beverage
22 packaging. Fifty percent of the items came from fast food service.

23 (f) Eighty percent of marine debris originates on land, primarily as trash in urban
24 runoff. Marine plastic degrades into pieces and particles of all sizes, and is present in the
25 world’s oceans at all levels (surface, water column, and bottom). It attracts ambient

1 pollutants, particularly persistent organic pollutants, which collect on the surface of plastic
2 particles. Marine plastic also causes animal disease and mortality, as ocean species ingest
3 the plastic or become entangled in it. Furthermore, marine plastic has been detected in
4 seafood sold for human consumption.

5 (g) Researchers have also detected plastics in bottled water, sea salt, honey, and
6 indoor and outdoor air.

7 (h) As of 2012, 120 billion single-use cups are used per year in the United States,
8 equal to 370 per person per year. By this measure, San Franciscans use more than 300
9 million cups per year, with a total estimated weight of 10 million pounds. Since the average
10 CO2 footprint of a paper cup is 0.033 pounds of carbon dioxide emissions, San Francisco
11 single-use cup use equals to nearly 5000 tons of greenhouse gas emissions.

12 (i) 500 million straws are used each day in the U.S., equal to 1.5 per person per
13 day. This adds up to more than a million straws per day in San Francisco.

14 (j) The San Francisco Public Utilities Commission (SFPUC) operates the City's
15 combined sewer system, which serves over 90% of the City. The system collects, treats, and
16 safely manages both sanitary sewage and stormwater runoff in the same pipes and facilities.
17 To maintain the system's function, it is critical to keep key infrastructure like catch basins free
18 of trash and debris. When filled with trash, these catch basins must be cleaned by staff –
19 increasing operations and maintenance costs. The SFPUC removes over 4,700 cubic yards
20 of trash per year (approximately 14,000 trash bags of trash) from the three wastewater
21 treatment plants located within the City. On an annual basis, trash removal from wastewater is
22 costly and time consuming for the SFPUC. The SFPUC Wastewater Enterprise spends
23 roughly \$230,000 a year on waste (trash and recycling) removal at its three in-city wastewater
24 treatment plants. Approximately 50% of the trash at the largest treatment plant in the city, the
25 Southeast Treatment Plant, is plastic items. There has been a noticeable decline in single-use

1 plastic bags received by the Southeast Treatment Plant since San Francisco's ban on single-
2 use plastic checkout bags in 2012.

3 (k) In certain areas of the city, the SFPUC operates a municipal separate storm
4 sewer system (MS4) where stormwater is released directly into waterways, while sanitary
5 sewage is directed to SFPUC treatment plants. In MS4 areas, the SFPUC is required to
6 capture litter conveyed by stormwater runoff. Banning single use plastic items, such as
7 straws, will reduce the amount of litter discharged into waterways and support MS4 permit
8 compliance with state regulations.

9 (l) Policies that promote reusable food service ware encourage both reuse of
10 materials, and reduction of pollutants. These twin strategies are crucial for conserving
11 resources and protecting the environment. They are thus integral to San Francisco's goal of
12 zero waste.

13 (m) The Clean Water Fund Rethink Disposable program, in partnership with San
14 Francisco and other Bay Area cities, found over the last four years that reusable food and
15 beverage service ware offers environmental and economic advantages over single-use
16 products, and that the benefits multiply with each use. Switching to reusables was found to
17 save food service businesses costs, even with dishwashing, energy, and labor expenses
18 factored in. Food establishments that have participated in the ReThink Disposable program to
19 reduce the use of single-use food service ware and beverage cups have demonstrated that
20 businesses can save thousands of dollars per year while providing their customers with a
21 more enjoyable dining experience.

22 (n) The practice of freely giving customers single-use food service ware encourages
23 customers and food vendors to pay little attention to the quantity of disposable packaging
24 products they consume and the associated environmental impact.

1 (o) The City and County of San Francisco has adopted a citywide goal of zero
2 waste. Single-use food service ware poses difficulties for composting or recycling, because
3 these items are often too small to sort for recycling, or are made from a combination of
4 materials, such as plastic-coated fiber. Such combinations risk contamination problems, and
5 increase discard management costs, hampering San Francisco from achieving zero waste.

6 (p) San Francisco is a recognized leader in developing model zero waste policies
7 and programs. It was the first city to ban single-use plastic checkout bags in 2007, a step that
8 triggered a widespread movement to ban such plastic bags and to charge for other checkout
9 bags. Similar policies have since been embraced across California and beyond. In continuing
10 to strive for zero waste, San Francisco must now take the lead to reduce use of single-use
11 food and beverage service ware.

12
13 Section 3. The Environment Code is hereby amended by revising Sections 1602, 1603
14 and 1604, to read as follows:

15 **SEC. 1602. DEFINITIONS.**

16 * * * *

17 “City Facility Food Provider” means an entity that provides, but does not sell, Prepared
18 Food in City Facilities, including without limitation, San Francisco General Hospital, Laguna
19 Honda Hospital, the San Francisco County Jail, and the San Bruno Jail Complex.

20 “Compostable” means that an item or material is accepted in San Francisco’s available
21 composting collection program as determined by the Department of the Environment, is listed on the
22 Department’s website, and is certified compostable by the Biodegradable Product Institute or other
23 third party as recognized by the Department.~~means material that can be broken down into, or~~
24 ~~otherwise become part of, usable compost (e.g., soil-conditioning material) in a safe and timely manner~~
25 ~~and as accepted in San Francisco’s compostables collection program. “Compostable” also includes a~~

1 ~~plastic-like material if the material meets the ASTM Standard Specification for compostability and the~~
2 ~~product is labeled in accordance with California Public Resources Code Section 42357 et seq. and~~
3 ~~Department of the Environment regulations for easy identification of Compostable products meeting~~
4 ~~the ASTM Standard Specification for compostable plastics.~~

5 * * * *

6 “Egg Carton” means a carton for raw eggs sold to consumers from a refrigerator case
7 or similar retail appliance.

8 “Event” means any indoor event on City property, or any outdoor event subject to a City
9 permit, where more than 100 people attend or participate.

10 “Event Food Vendor” means any business selling, or providing based on ticket purchase or
11 entrance fee, Prepared Food at an Event.

12 “Event Producer” means a person or company who is responsible for the overall management
13 of an Event.

14 “Fluorinated Chemical” means a class of fluorinated organic compounds containing at least
15 one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or
16 PFAS chemicals.

17 “Fluorinated Chemical Free” means an item contains no intentionally added Fluorinated
18 Chemicals beyond a Department-determined acceptable threshold, as determined by the Department of
19 the Environment, as listed on the Department’s website, and as certified by the Biodegradable Product
20 Institute or other third party as recognized by the Department.

21 “Food Service Ware” means all containers, bowls, plates, trays, cups, lids, straws,
22 forks, spoons, knives, napkins, and other like items that are designed for ~~one-time~~ a single use
23 use for Prepared Foods, including without limitation, service ware for takeout foods and/or
24 leftovers from partially consumed meals prepared by Food Vendors. The term “Food Service
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1 Ware” includes Food Service Ware Accessories and does not include items composed entirely of
2 aluminum, or polystyrene foam coolers and ice chests.

3 “Food Service Ware Accessory” means all types of single use items usually provided alongside
4 Prepared Food in single use plates or cups, including but not limited to utensils, chopsticks, napkins,
5 cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash
6 sticks, cocktail sticks, and toothpicks designed for a single use for Prepared Foods.

7 “Food Vendor” means any Restaurant, ~~or~~ Retail Food Vendor, or Event Food Vendor
8 located or operating within the City.

9 * * * *

10 “Restaurant” means any establishment located within the City that sells Prepared Food
11 for consumption on, near, or off its premises. The term includes a Restaurant operating from a
12 temporary facility, cart, vehicle, or mobile unit.

13 “Reusable Beverage Cup” means any vessel or container for a Prepared Food beverage that is
14 specifically designed and manufactured for repeated cleaning, disinfecting, and reuse at least 100
15 times, and is dishwasher safe.

16 **SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE**
17 **WARE PROHIBITED.**

18 (a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any
19 Food Service Ware that is not either Compostable or Recyclable ~~using the City’s then available~~
20 ~~collection programs, or~~ (2) any Food Service Ware made, in whole or in part, from Polystyrene
21 Foam, (3) any straws, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, or (4)
22 beginning January 1, 2020, any Food Service Ware that is not Fluorinated Chemical Free.

23 (b) The Director ~~shall, after a noticed public hearing,~~ may adopt a list of suitable
24 alternative Compostable or Recyclable Food Service Ware products. “Suitable alternative
25 Compostable or Recyclable Food Service Ware products” means Food Service Ware

1 products that the Director determines serve the same intended purpose as non-compliant
2 products, meet the standards for what is Compostable and/or Recyclable set under this
3 Chapter 16, and are reasonably affordable. The Director shall regularly update the list.

4 (c) Beginning January 1, 2020, no person may sell, offer for sale, or otherwise Distribute
5 within the City Food Service Ware that does not contain a minimum post-consumer recycled content
6 that may be specified by the Director in regulations according to the Director's assessment of market
7 availability and costs.

8 **SEC. 1604. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.**

9 (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food
10 (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, ~~or~~(2) in Food
11 Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food
12 Service Ware that is not Fluorinated Chemical Free.

13 (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1)
14 in Food Service Ware made, in whole or in part, from Polystyrene Foam, ~~or~~(2) in Food
15 Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food
16 Service Ware that is not Fluorinated Chemical Free.

17 (c) City Departments may not purchase, acquire, or use Food Service Ware for
18 Prepared Food (1) where the Food Service Ware is made, in whole or in part, from
19 Polystyrene Foam, ~~or~~(2) where the Food Service Ware is not Compostable or Recyclable, or
20 (3) beginning January 1, 2020, where the Food Service Ware is not Fluorinated Chemical Free.

21 (d) City contractors and lessees may not use Food Service Ware for Prepared Food
22 in City Facilities and while performing under a City contract or lease (1) where the Food
23 Service Ware is made, in whole or in part, from Polystyrene Foam, ~~or~~(2) where the Food
24 Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, where the
25 Food Service Ware is not Fluorinated Chemical Free.

1 (e) The Director ~~shall, after a noticed public hearing, may~~ adopt a list of suitable
2 alternative Compostable or Recyclable Food Service Ware products. “Suitable alternative
3 Compostable or Recyclable Food Service Ware products” means Food Service Ware
4 products that the Director determines serve the same intended purpose as non-compliant
5 products, meet the standards for what is Compostable and/or Recyclable set under this
6 Chapter 16, and are reasonably affordable. The Director shall regularly update the list.

7 If a product is included on the Director’s list, it will be deemed to comply with this
8 Section 1604. If a product is not included on the Director’s list, the person using the product
9 as Food Service Ware will have the burden of establishing to the Director’s satisfaction that
10 the product complies with this Section.

11 (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase
12 Prepared Food packaged in Food Service Ware otherwise prohibited by subsections (a)
13 through (c), or to use Food Service Ware otherwise prohibited by subsection (d), if the
14 Prepared Food is packaged outside the City and is sold or otherwise provided to the
15 consumer in the same Food Service Ware in which it originally was packaged. Businesses
16 packaging Prepared Food outside the City are encouraged to use Food Service Ware that is
17 Compostable or Recyclable, is Fluorinated Chemical Free, and is not made, in whole or in part,
18 from Polystyrene Foam.

19 (g) Food Vendors, City Facility Food Providers, and City contractors and lessees acting
20 pursuant to a City contract or lease at a City Facility shall not provide, sell, use, or otherwise
21 Distribute, and City Departments shall not purchase or acquire, any straws, stirrers, splash sticks,
22 cocktail sticks, or toothpicks made with plastic.

23 (h) Food Vendors, City Facility Food Providers, City Departments, and City contractors and
24 lessees acting pursuant to a City contract or lease at a City Facility shall only provide, sell, use, or

1 otherwise Distribute only those Food Service Ware Accessories that comply with this Chapter 16, and
2 only upon a consumer's specific request for such items, or in a self-service area or dispenser.

3 (i) Beginning January 1, 2020, Food Vendors, City Facility Food Providers, and City
4 contractors and lessees acting pursuant to a City contract or lease at a City Facility shall not provide,
5 sell, use, or otherwise Distribute, and City Departments shall not purchase or acquire, Food Service
6 Ware that does not contain a minimum post-consumer recycled content, that may be specified by the
7 Director in regulations according to the Director's assessment of market availability and costs.

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9 Section 4. The Environment Code is hereby amended by revising Sections 1606 and
10 1607, to read as follows:

11 **SEC. 1606. IMPLEMENTATION.**

12 (a) The Director shall create, maintain, and regularly update the product lists
13 referenced in Sections 1603(b) and 1604(e).

14 (b) The Director is authorized to promulgate regulations, guidelines and forms and
15 to take any and all other actions reasonable and necessary to implement and enforce this
16 Chapter.

17 (c) Strict compliance with this Chapter 16 is not required in instances where it would
18 interfere with accommodating for any person's medical needs.

19 ~~(c) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b),~~
20 ~~and (c) due to a feasibility-based hardship. The person seeking the waiver must demonstrate to the~~
21 ~~Director's satisfaction that no reasonably feasible alternative exists to a specific non-compliant~~
22 ~~product.~~

23 ~~—(d) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b),~~
24 ~~and (c) due to a financial hardship. The person seeking the exemption must demonstrate to the~~
25 ~~Director's satisfaction both (1) that the applicant has a gross income of less than \$500,000 on the~~

1 applicant's annual income tax filing for the most recent tax year, and (2) that with respect to each
2 specific non-compliant product, there is no suitable and reasonably affordable alternative product
3 available.

4 ~~—(e) A person seeking a waiver under subsections (c) or (d) of this Section 1606 must submit a~~
5 ~~written application on a form approved by the Director. The Director may require the applicant to~~
6 ~~submit additional information or documentation to make a determination regarding the waiver~~
7 ~~requested. The Director shall review requests for waivers on a case-by-case basis, and may grant the~~
8 ~~waiver in whole or in part, with or without conditions, for a period of up to 36 months. An applicant for~~
9 ~~renewal of a waiver must apply for a new waiver period no later than 60 days prior to the expiration of~~
10 ~~the then-current period to preserve a continuous waiver status. The Director shall review each~~
11 ~~application anew and base his or her determination on the most current information available. The~~
12 ~~Director's determination shall be final and shall not be subject to appeal.~~

13 ~~—(f) A City officer, employee, or department may seek a waiver from the requirements of~~
14 ~~subsections (b), (c), or (d) of Section 1604 by filing a request on a form approved by the Director. The~~
15 ~~Director may grant a waiver in whole or in part, with or without conditions, for a period of up to 36~~
16 ~~months if the officer, employee, or department seeking the waiver has demonstrated to the Director's~~
17 ~~satisfaction that strict application of the specific requirement would create an undue hardship or~~
18 ~~practical difficulty not generally applicable to other persons in similar circumstances, or the waiver is~~
19 ~~otherwise justified.~~

20 ~~—(g) In addition to individual waivers provided for under subsections (c), (d), and (f) of this~~
21 ~~Section 1606, the Director may waive the provisions of Section 1605 with respect to particular~~
22 ~~categories of uses of Packing Materials or of Egg Cartons or Meat and Fish Trays made, in whole or in~~
23 ~~part, from Polystyrene Foam, or other non-Compostable or non-Recyclable material. The Director may~~
24 ~~grant a waiver under this subsection (g) in whole or in part, with or without conditions, for a period of~~
25 ~~up to 36 months, upon finding that no suitable and reasonably affordable alternative to use of the non-~~

1 *compliant product is feasible. The Director's determination shall be final and shall not be subject to*
2 *appeal.*

3 **SEC. 1607. ENFORCEMENT AND PENALTIES.**

4 (a) The Director shall issue a written warning to any person he or she determines is
5 violating Sections 1603(a) or (c), 1604(a), (b), ~~(d)~~, (g), (h), or (i), or 1605(a), (b), or (c), or
6 1611(a) of this Chapter. If after issuing a written warning of violation from the Director, the
7 Director finds that person continues to violate the provisions of 1603(a) or (c), 1604(a), (b), ~~(d)~~,
8 (g), (h), or (i), or 1605(a), (b), or (c), or 1611(a), the Director may apply for or impose the
9 various sanctions provided in this Section.

10 (b) Any person who violates the provisions 1603(a) or (c), 1604(a), (b), ~~(d)~~, (g),
11 (h), or (i), or 1605(a), (b), or (c)), or 1611(a) of this Chapter shall be guilty of an infraction. If
12 charged as an infraction, upon conviction thereof, said person shall be punished for the first
13 offense by a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a
14 second violation in the same year and not more than \$500.00 for each subsequent violation in
15 the same 12-month period.

16 (c) The Director may issue an administrative fine to any person violating 1603(a) or
17 (c), 1604(a), (b), ~~(d)~~, (g), (h), or (i), or 1605(a), (b), or (c)), or 1611(a) in accordance with
18 Administrative Code Chapter 100, which is hereby incorporated by reference.

19 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce
20 this Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00
21 for the first violation, \$200.00 for the second violation, and \$500.00 for each subsequent
22 violation in any given 12-month period.

23 (e) The City may not recover both administrative and civil penalties pursuant to
24 subsections (c) and (d) for the same violation. Penalties collected under subsections (c) and
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1 (d), which may include recovery of enforcement costs, shall be used to fund implementation
2 and enforcement of this Chapter.

3
4 Section 5. The Environment Code is hereby amended by adding Section 1611, to read
5 as follows:

6 **SEC. 1611. PROVIDING REUSABLE BEVERAGE CUPS AT EVENTS ON CITY**

7 **PROPERTY.**

8 (a) Event Food Vendors providing Prepared Food beverages at Events must either make
9 Reusable Beverage Cups available to no less than 10% of their attendees, or be able to demonstrate to
10 the Director that reasonable effort has been made to ensure that at least this percentage of attendees or
11 visitors brought or will bring their own cups. The Director may pass regulations to increase this
12 percentage in furtherance of the objectives of this Chapter.

13 (b) To meet the requirement in subsection (a), Event Producers may give, lend, or sell Reusable
14 Beverage Cups to Event attendees. Reusable Beverage Cups must be taken back after use to clean and
15 sanitize onsite or offsite for subsequent reuse, or be subject to an alternative cup reuse system approved
16 by the Department.

17 (c) Waivers. Any Event Producer may petition the Director for a full or partial waiver of the
18 requirements of this Section as they apply to a particular Event, if the Event Producer can (1)
19 demonstrate that the Event Producer is not able to access Reusable Beverage Cups for the Event, or (2)
20 that the application of this Section would create undue hardship or practical difficulty for the Event
21 Producer that is not generally applicable to other Event Producers in similar circumstances.

22 (d) New City contracts or leases executed with Event Producers after the operative date of this
23 Section 1611, not including contract or lease renewals, where the Event Producer shall sell, provide, or
24 otherwise Distribute Prepared Food beverages at an Event as part of the contract or lease, shall
25 include language stating the requirements of this Section 1611.

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Section 6. Effective and Operative Dates. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance. Unless otherwise specifically noted, this ordinance shall become operative on July 1, 2019.

Section 7. 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: _____
NEHA GUPTA
Deputy City Attorney

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