

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: June 20, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 190695

Motion ordering submitted to the voters at an election to be held on November 5, 2019, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional gross receipts tax and administrative office tax on businesses with a ratio of the compensation of the business's highest-paid employee to the median compensation paid to the business's employees based in the City that exceeds 100:1, to fund Mental Health SF (as proposed in the initiative ordinance in Board File No. 190665) or other mental health services; and increasing the City's appropriations limit by the amount collected under the additional tax for four years from November 5, 2019.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ No Comment

_____ Recommendation Attached

Chairperson, Small Business Commission

c: Dominica Donovan, Small Business Commission

1 [Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Additional Tax
2 on Businesses With Disproportionate Executive Pay]

3 **Motion ordering submitted to the voters at an election to be held on November 5, 2019,**
4 **an Ordinance amending the Business and Tax Regulations Code and Administrative**
5 **Code to impose an additional gross receipts tax and administrative office tax on**
6 **businesses with a ratio of the compensation of the business's highest-paid employee**
7 **to the median compensation paid to the business's employees based in the City that**
8 **exceeds 100:1, to fund Mental Health SF (as proposed in the initiative ordinance in**
9 **Board File No. 190665) or other mental health services; and increasing the City's**
10 **appropriations limit by the amount collected under the additional tax for four years**
11 **from November 5, 2019.**

12
13 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
14 voters of the City and County of San Francisco, at an election to be held on November 5,
15 2019.

16
17 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
18 **to impose an additional gross receipts tax and administrative office tax on businesses**
19 **with a ratio of the compensation of the business's highest-paid employee to the**
20 **median compensation paid to the business's employees based in the City that exceeds**
21 **100:1, to fund Mental Health SF (as proposed in the initiative ordinance in Board File**
22 **190665) or other mental health services; and increasing the City's appropriations limit**
23 **by the amount collected under the additional tax for four years from November 5, 2019.**
24
25

1 NOTE: **Unchanged Code text and uncodified text** are in plain font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
4 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
5 parts of tables.

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

7 Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of
8 California, this ordinance shall be submitted to the qualified electors of the City and County of
9 San Francisco at the November 5, 2019, municipal election.

10 Section 2. The Business and Tax Regulations Code is hereby amended by adding
11 Article 33, consisting of Sections 3301 through 3313, to read as follows:

12
13 **ARTICLE 33: MENTAL HEALTH GROSS RECEIPTS TAX**

14
15 **SEC. 3301. SHORT TITLE.**

16 *This Article 33 shall be known as the "Mental Health Gross Receipts Tax Ordinance," and the*
17 *tax it imposes shall be known as the "Mental Health Gross Receipts Tax."*

18
19 **SEC. 3302. DEFINITIONS.**

20 *(a) Unless otherwise defined in this Article 33, the terms used in this Article shall have the*
21 *meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations Code, as*
22 *amended from time to time. For purposes of this Article, the following definitions apply.*

23 *(b) "Compensation" means wages, salaries, commissions, bonuses, property issued or*
24 *transferred in exchange for the performance of services (including but not limited to stock options).*

1 compensation for services to owners of pass-through entities, and any other form of remuneration paid
2 to employees for services.

3 (c) "Executive Pay Ratio" means the ratio of the annual Compensation of the person or
4 combined group's Highest-Paid Employee for a tax year to the median Compensation paid to the
5 person or combined group's full-time and part-time employees based in the City for that tax year. For
6 purposes of this subsection (c), an employee is based in the City for a tax year if the number of the
7 employee's working hours in the City during the tax year exceed the number of the employee's working
8 hours in any other City or municipality during the tax year.

9 (d) "Highest-Paid Employee" means the person or combined group's individual employee or
10 officer that received the most Compensation for a tax year.

11
12 **SEC. 3303. IMPOSITION OF TAX.**

13 (a) Except as otherwise provided in this Article 33, commencing with tax years beginning on or
14 after January 1, 2021, for the privilege of engaging in business in the City, the City imposes an annual
15 Mental Health Gross Receipts Tax on each person engaged in business in the City where the Executive
16 Pay Ratio for the tax year of that person or the combined group of which it is a part exceeds 100:1.

17 (b) The Mental Health Gross Receipts Tax shall be calculated as follows:

18 (1) 0.1% of the person or combined group's taxable gross receipts for a tax year if the
19 person or combined group has an Executive Pay Ratio for that tax year of greater than 100:1, but less
20 than or equal to 200:1;

21 (2) 0.2% of the person or combined group's taxable gross receipts for a tax year if the
22 person or combined group has an Executive Pay Ratio for that tax year of greater than 200:1, but less
23 than or equal to 300:1;

1 (3) 0.3% of the person or combined group's taxable gross receipts for a tax year if the
2 person or combined group has an Executive Pay Ratio for that tax year of greater than 300:1, but less
3 than or equal to 400:1;

4 (4) 0.4% of the person or combined group's taxable gross receipts for a tax year if the
5 person or combined group has an Executive Pay Ratio for that tax year of greater than 400:1, but less
6 than or equal to 500:1;

7 (5) 0.5% of the person or combined group's taxable gross receipts for a tax year if the
8 person or combined group has an Executive Pay Ratio for that tax year of greater than 500:1, but less
9 than or equal to 600:1; or

10 (6) 0.6% of the person or combined group's taxable gross receipts for a tax year if the
11 person or combined group has an Executive Pay Ratio for that tax year of greater than 600:1.

12 (c) Notwithstanding any other subsection of this Section 3303, every person engaging in
13 business within the City as an administrative office, as defined in Section 953.8 of Article 12-A-1, shall
14 pay an annual mental health administrative office tax if the Executive Pay Ratio for the tax year of that
15 person or the combined group of which it is a part exceeds 100:1. This mental health administrative
16 office tax shall be measured by the person's total payroll expense, as defined in Section 953.8(f) of
17 Article 12-A-1, that is attributable to the City. If a person is a member of a combined group, then its
18 tax shall be measured by the total payroll expense of the combined group attributable to the City. Such
19 person or combined group shall pay only the mental health administrative office tax, and not the tax
20 imposed under other subsections of this Section 3303, but a person or combined group may be liable
21 for the administrative office tax imposed by Section 953.8 of Article 12-A-1, the homelessness
22 administrative office tax imposed by Section 2804(d) of Article 28, and the mental health administrative
23 office tax imposed by this subsection (c). Unless specified otherwise, this mental health administrative
24 office tax shall be considered part of the Mental Health Gross Receipts Tax for all purposes. The
25 mental health administrative office tax shall be calculated as follows:

1 (1) 0.4% of the person or combined group's total payroll expense attributable to the
2 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
3 greater than 100:1, but less than or equal to 200:1;

4 (2) 0.8% of the person or combined group's total payroll expense attributable to the
5 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
6 greater than 200:1, but less than or equal to 300:1;

7 (3) 1.2% of the person or combined group's total payroll expense attributable to the
8 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
9 greater than 300:1, but less than or equal to 400:1;

10 (4) 1.6% of the person or combined group's total payroll expense attributable to the
11 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
12 greater than 400:1, but less than or equal to 500:1;

13 (5) 2.0% of the person or combined group's total payroll expense attributable to the
14 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
15 greater than 500:1, but less than or equal to 600:1; or

16 (6) 2.4% of the person or combined group's total payroll expense attributable to the
17 City for a tax year if the person or combined group has an Executive Pay Ratio for that tax year of
18 greater than 600:1.

19 (d) "Taxable Gross Receipts" means a person or combined group's gross receipts, not
20 excluded under Section 3304, attributable to the City. The person or combined group's gross receipts
21 that are attributable to the City shall be determined in the same manner as in Article 12-A-1, as
22 amended from time to time.

1 **SEC. 3304. EXEMPTIONS AND EXCLUSIONS.**

2 (a) An organization that is exempt from income taxation by Chapter 4 (commencing with
3 Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F
4 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
5 amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as
6 amended, shall be exempt from taxation under this Article 33, only so long as those exemptions
7 continue to exist under state or federal law.

8 (b) For only so long as and to the extent that the City is prohibited from imposing the Mental
9 Health Gross Receipts Tax, any person upon whom the City is prohibited under the Constitution or
10 laws of the State of California or the Constitution or laws of the United States from imposing the
11 Mental Health Gross Receipts Tax shall be exempt from the Mental Health Gross Receipts Tax.

12 (c) For purposes of this Article 33, gross receipts shall not include receipts that are excluded
13 from gross receipts for purposes of the gross receipts tax imposed by Article 12-A-1.

14 (d) A person or combined group exempt from the gross receipts tax as a small business
15 enterprise under Section 954.1 of Article 12-A-1 shall also be exempt from taxation under this
16 Article 33.

17
18 **SEC. 3305. COMBINED RETURNS.**

19 (a) Persons subject to the Mental Health Gross Receipts Tax shall file returns at the same time
20 and in the same manner as returns filed for the gross receipts tax imposed by Article 12-A-1, including
21 the rules for combined returns under Section 956.3, as amended from time to time.

22 (b) If a person is subject to the Mental Health Gross Receipts Tax, but is not required to file a
23 gross receipts tax return under Article 12-A-1, such person or combined group's Mental Health Gross
24 Receipts Tax return shall be filed at the same time and in the same manner as if such person or
25 combined group were required to file a gross receipts tax return under Article 12-A-1.

1 (c) For purposes of this Article 33, a lessor of residential real estate is treated as a separate
2 person with respect to each individual building in which it leases residential real estate units,
3 notwithstanding Section 6.2-15 of Article 6, as amended from time to time, or subsection (a) of this
4 Section 3305. This subsection (c) applies only to leasing residential real estate units within a building,
5 and not to any business activity related to other space, either within the same building or other
6 buildings, which is not residential real estate. The Tax Collector is authorized to determine what
7 constitutes a separate building and the number of units in a building.

8
9 **SEC. 3306. TAX COLLECTOR AUTHORIZED TO DETERMINE GROSS RECEIPTS.**

10 The Tax Collector may, in the Tax Collector's reasonable discretion, independently establish a
11 person or combined group's gross receipts within the City and establish or reallocate gross receipts
12 among related entities so as to fairly reflect the gross receipts within the City of all persons and
13 combined groups.

14
15 **SEC. 3307. CONSTRUCTION AND SCOPE OF THE MENTAL HEALTH GROSS RECEIPTS**
16 **TAX ORDINANCE.**

17 (a) This Article 33 is intended to authorize application of the Mental Health Gross Receipts
18 Tax in the broadest manner consistent with its provisions and with the California Constitution, the
19 United States Constitution, and any other applicable provision of federal or state law.

20 (b) The Mental Health Gross Receipts Tax imposed by this Article 33 is in addition to all other
21 City taxes, including the gross receipts tax imposed by Article 12-A-1, as amended from time to time.
22 Accordingly, by way of example and not limitation, persons subject to both the Mental Health Gross
23 Receipts Tax and the gross receipts tax shall pay both taxes. Persons exempt from either the gross
24 receipts tax or the Mental Health Gross Receipts Tax, but not both, shall pay the tax from which they
25 are not exempt.

1 **SEC. 3308. ADMINISTRATION OF THE MENTAL HEALTH GROSS RECEIPTS TAX**
2 **ORDINANCE.**

3 *Except as otherwise provided under this Article 33, the Mental Health Gross Receipts Tax*
4 *Ordinance shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as*
5 *amended from time to time, including all penalties and other charges imposed by that Article.*

6
7 **SEC. 3309. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

8 *(a) All monies collected under the Mental Health Gross Receipts Tax Ordinance shall be*
9 *deposited to the credit of the Mental Health Fund, established in Administrative Code Section 10.100-*
10 *157. The Fund shall be maintained separate and apart from all other City funds and shall be subject to*
11 *appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to*
12 *have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be*
13 *carried forward and accumulated in the Fund for the purposes described in subsection (b).*

14 *(b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Mental Health*
15 *Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following*
16 *purposes:*

17 *(1) Up to 2% of the proceeds of the Mental Health Gross Receipts Tax, distributed in*
18 *any proportion to the Tax Collector and other City departments, for administration of the Mental*
19 *Health Gross Receipts Tax and administration of the Mental Health Fund.*

20 *(2) Refunds of any overpayments of the Mental Health Gross Receipts Tax, including*
21 *any related penalties, interest, and fees.*

22 *(3) If a measure creating the Mental Health SF program passes at the November 5,*
23 *2019 election, all remaining amounts shall be used for said program, including the costs of*
24 *administering Mental Health SF. If Mental Health SF is fully funded during any fiscal year, any excess*
25

1 funds in the Mental Health Fund during that fiscal year may be used for any other mental health
2 facilities, services, and programs, including the costs of administering those programs.

3 (4) If a measure creating the Mental Health SF program does not pass at the
4 November 5, 2019 election, all remaining amounts shall be used for any mental health facilities,
5 services, and programs, including the costs of administering those programs.

6 (c) Commencing with a report filed no later than February 15, 2023, covering the fiscal year
7 ending on June 30, 2022, the Controller shall file annually with the Board of Supervisors, by
8 February 15 of each year, a report containing the amount of monies collected in and expended from the
9 Mental Health Fund during the prior fiscal year, the status of any project required or authorized to be
10 funded by this Section 3309, and such other information as the Controller, in the Controller's sole
11 discretion, deems relevant to the operation of this Article 33.

12
13 **SEC. 3310. AMENDMENT OF ORDINANCE.**

14 The Board of Supervisors may amend or repeal this Article 33 by ordinance without a vote of
15 the people except as limited by Articles XIII A and XIII C of the California Constitution.

16
17 **SEC. 3311. EFFECT OF STATE AND FEDERAL AUTHORIZATION.**

18 To the extent that the City's authorization to impose or to collect any tax imposed under this
19 Article 33 is expanded or limited as a result of changes in state or federal statutes, regulations, or other
20 laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be
21 required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with
22 those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up
23 to the full amount and rate of the taxes imposed under this Article.

1 **SEC. 3312. SEVERABILITY.**

2 *(a) Except as provided in Section 3312(b), below, if any section, subsection, sentence, clause,*
3 *phrase, or word of this Article 33, or any application thereof to any person or circumstance, is held to*
4 *be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not*
5 *affect the validity of the remaining portions or applications of this Article. The People of the City and*
6 *County of San Francisco hereby declare that, except as provided in Section 3312(b), they would have*
7 *adopted this Article and each and every section, subsection, sentence, clause, phrase, and word not*
8 *declared invalid or unconstitutional without regard to whether any other portion of this Article or*
9 *application thereof would be subsequently declared invalid or unconstitutional.*

10 *(b) If the imposition of the Mental Health Gross Receipts Tax in Section 3303 is held in its*
11 *entirety to be facially invalid or unconstitutional in a final court determination, the remainder of this*
12 *Article 33 shall be void and of no force and effect, and the City Attorney shall cause it to be removed*
13 *from the Business and Tax Regulations Code, and likewise cause Section 10.100-157 to be removed*
14 *from the Administrative Code.*

15
16 **SEC. 3313. SAVINGS CLAUSE.**

17 *No section, clause, part, or provision of this Article 33 shall be construed as requiring the*
18 *payment of any tax that would be in violation of the Constitution or laws of the United States or of the*
19 *Constitution or laws of the State of California.*

20
21 Section 3. Chapter 10 of the Administrative Code is hereby amended by adding
22 Section 10.100-157 to Article XIII, to read as follows:
23
24
25

1 **SEC. 10.100-157. MENTAL HEALTH FUND.**

2 *(a) Establishment of Fund. The Mental Health Fund ("Fund") is established as a category*
3 *four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all taxes,*
4 *penalties, interest, and fees collected from the Mental Health Gross Receipts Tax imposed under*
5 *Article 33 of the Business and Tax Regulations Code.*

6 *(b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the*
7 *Fund shall be used exclusively for the purposes described in Section 3309(b) of Article 33 of the*
8 *Business and Tax Regulations Code.*

9 *(c) Administration of Fund. As stated in Section 3309(c) of Article 33 of the Business and Tax*
10 *Regulations Code, commencing with a report filed no later than February 15, 2023, covering the fiscal*
11 *year ending June 30, 2022, the Controller shall file annually with the Board of Supervisors, by*
12 *February 15 of each year, a report containing the amount of monies collected in and expended from the*
13 *Fund during the prior fiscal year, the status of any project required or authorized to be funded by*
14 *Section 3309, and such other information as the Controller, in the Controller's sole discretion, shall*
15 *deem relevant to the operation of Article 33.*

16
17 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
18 Article XIII B and applicable laws, for four years from November 5, 2019, the appropriations
19 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
20 imposed under this ordinance.
21
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1 Section 5. Effective and Operative Date. The effective date of this ordinance shall be
2 ten days after the date the official vote count is declared by the Board of Supervisors. This
3 ordinance shall become operative on January 1, 2021.
4

5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7
8 By: 

9 MOE JAMIL
Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Additional Tax on Businesses With Disproportionate Executive Pay]

Motion ordering submitted to the voters at an election to be held on November 5, 2019, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an additional gross receipts tax and administrative office tax on businesses with a ratio of the compensation of the business's highest-paid employee to the median compensation paid to the business's employees based in the City that exceeds 100:1, to fund Mental Health SF (as proposed in the initiative ordinance in Board File No. 190665) or other mental health services; and increasing the City's appropriations limit by the amount collected under the additional tax for four years from November 5, 2019.

Existing Law

The City currently imposes several taxes on businesses engaging in business in the City:

- Article 12 generally imposes a registration fee on all businesses engaged in any business in the City other than as an administrative office equal to between \$75 and \$35,000 (adjusted for inflation), depending on the type of business and the amount of gross receipts attributable to the City. Article 12 generally imposes a registration fee on businesses engaged in business as an administrative office equal to between \$15,000 and \$35,000 (adjusted for inflation), depending on the payroll expense of the business attributable to the City. These fees are deposited into the General Fund.
- Articles 12-A and 12-A-1 generally impose additional taxes on all businesses engaged in any business in the City other than as an administrative office equal to 0.075% to 0.65% of the business's gross receipts attributable to the City, depending on the type of business and amount of gross receipts attributable to the City, plus 0.38% of the business's payroll expense attributable to the City. In lieu of these taxes, Article 12-A-1 imposes a tax on all businesses engaged in business as an administrative office equal to 1.4% of the business's payroll expense attributable to the City. These taxes are deposited into the General Fund.
- Article 21 generally imposes an additional tax on all business engaged in business in the City that receive gross receipts from the lease of commercial space in properties in the City, with rates between 1% to 3.5% of the gross receipts from the lease of that commercial space, depending on the type of property. This tax is dedicated 15% to the General Fund and 85% to fund early care and education for young children.
- Article 28 generally imposes an additional tax on all businesses engaged in any business in the City other than as an administrative office equal to 0.175% and 0.69% of the business's gross receipts attributable to the City in excess of \$50 million, depending on the type of business. In lieu of this tax, Article 28 imposes a tax on all

businesses engaged in business as an administrative office equal to 1.5% of the business's payroll expense attributable to the City. This tax is dedicated to fund services for homeless people and to prevent homelessness.

- Commencing in 2021, Article 30 will impose an additional tax on all businesses engaged in cannabis business activities in the City equal to 1% to 5% of the gross receipts from those cannabis business activities in excess of \$500,000, depending on the type of cannabis business activities and the amount of gross receipts from those activities attributable to the City. This tax will be deposited into the General Fund.

Amendments to Current Law

Effective in 2021, this ordinance would create an additional tax that would generally apply to all businesses engaged in any business in the City where the compensation of the business's highest-paid employee to the median compensation paid to the business's employees based in the City (the "Executive Pay Ratio") exceeds 100:1. For businesses engaged in any business other than as an administrative office the tax rates would be a percentage of the business's gross receipts attributable to the City, depending on the Executive Pay Ratio of the business, as follows:

Executive Pay Ratio	Tax Rate
More Than 100:1 but Less Than or Equal to 200:1	0.1%
More Than 200:1 but Less Than or Equal to 300:1	0.2%
More Than 300:1 but Less Than or Equal to 400:1	0.3%
More Than 400:1 but Less Than or Equal to 500:1	0.4%
More Than 500:1 but Less Than or Equal to 600:1	0.5%
More Than 600:1	0.6%

For businesses engaged in business as an administrative office, the tax rates would be a percentage of the business's payroll expense attributable to the City, depending on the Executive Pay Ratio of the business, as follows:

Executive Pay Ratio	Tax Rate
More Than 100:1 but Less Than or Equal to 200:1	0.4%
More Than 200:1 but Less Than or Equal to 300:1	0.8%
More Than 300:1 but Less Than or Equal to 400:1	1.2%
More Than 400:1 but Less Than or Equal to 500:1	1.6%
More Than 500:1 but Less Than or Equal to 600:1	2.0%
More Than 600:1	2.4%

If the voters pass a measure creating Mental Health SF at the November 5, 2019 election, monies collected from this tax would fund that program, with any amounts remaining funding mental health facilities, services, and programs more generally. If the voters do not pass a measure creating Mental Health SF at the November 5, 2019 election, monies collected from this tax would fund mental health facilities, services, and programs more generally.

FILE NO. 190695

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax for four years from November 5, 2019.

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