



**MINUTES OF THE SPECIAL JOINT MEETING OF THE
CITY COUNCIL/REDEVELOPMENT AGENCY/
HOUSING AUTHORITY OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 16, 2008, 8:00 p.m.**

MEETING

The Meeting of the Special Joint City Council/Redevelopment Agency/Housing Authority was called to order by Mayor/Chair Sweeney at 8:00 p.m., followed by the Pledge of Allegiance led by Eagle Scout Indy Nelson of Troop 876.

ROLL CALL

Present: COUNCIL/RA/HA MEMBERS Zermeño, Quirk, Halliday, May, Dowling,
Henson
MAYOR/Chair Sweeney

Absent: COUNCIL/RA/HA MEMBER None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney announced that at its closed session, the Council discussed the recruitment for the City Clerk position and that the contract will be on a future Council agenda for approval.

PRESENTATIONS: Business Recognition Award

Buffalo Bill's Brewery was selected to receive the September 2008 Business Recognition Award. With 69 employees, Buffalo Bill's Brewery accounts for \$4.1 million in annual sales. This award was presented to Buffalo Bill's Brewery for celebrating 25 years in Hayward; being a great destination spot for locals and visitors alike; providing job opportunities to local residents; being an industry leader; and contributing to the overall economic well being of the Hayward community. Buffalo Bill's Brewery owner, Geoff Harries, accepted and thanked Council for this honor.

PUBLIC COMMENTS

Indy Nelson announced his Eagle Scout attainment and detailed his accomplishments.

Dan Henriques reiterated his concerns of trash and debris left after the Marin County Farmers' Market vendors leave the downtown every Saturday. He noted that there has been some improvement, but it is still not being addressed. Mayor Sweeney asked that staff investigate this matter and provide a response.

Pamela Gomes showed photos of violence to a woman, who was attacked in downtown Hayward. She expressed her concerns that the assailant has not been apprehended. Mayor Sweeney asked that these concerns be expressed to the Police Department.

Donna Logan reported that she was attacked last Friday by an individual. It was her understanding that the police department had developed a composite of her assailment and that she was interested in having that made public. Mayor Sweeney urged her to work with Police Chief Ace on this rather serious incident.

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Dennis Hawlett, a resident on Main Street, indicated that he knew of seven rapes recently in the downtown area and asked for assistance for the safety of the homeless community.

CONSENT

Consent Items 3, 4, 5 and 8 were removed for further consideration.

1. Approval of the Minutes of the Special Joint City Council/Redevelopment Agency Meeting of June 24, 2008

It was moved by Council/RA Member Zermefio, seconded by Council/RA Member Henson, and carried unanimously, to approve the Minutes of the Special Joint City Council/Redevelopment Agency Meeting of June 24, 2008.

2. Adoption of Green Building Ordinance for Municipal Buildings Introduced on 7/29/08

Staff report submitted by City Clerk Reyes, dated September 16, 2008, was filed.

It was moved by Council Member Zermefio, seconded by Council Member Henson, and carried unanimously, to adopt the following:

Ordinance 08-14, "An Ordinance Adding Article 21 to Chapter 10 of the Hayward Municipal Code Establishing Green Building Requirements for Municipal Buildings"

3. Adoption of Resolution Designating September 21 to 27, 2008 as "Falls Prevention Awareness Week"

Staff report submitted by City Manager Jones, dated September 16, 2008, was filed.

Mayor Sweeney announced that this resolution will be provided to a representative of Spectrum and as he works for Spectrum Community Services, he would be leaving the dais for this presentation and abstaining in the vote.

Mayor Pro Tempore Dowling presided during this action.

Stacey Blackard, representing Spectrum and an exercise instructor, explained that this program has served about 300 residents in fall awareness and prevention. She thanked staff on behalf of Spectrum Community Services for this resolution.

Mayor Pro Tempore Dowling thanked Spectrum Community Services for its help to seniors in this community.

DRAFT



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Council Member May commented that senior citizens are a favorite of hers. She questioned the appropriateness of having this on the agenda and would have preferred to see a proclamation towards this effort. As a formality, she would be abstaining.

Council Member Zermefio asked if there are programs that provide hand rails and related equipment for seniors. Ms. Blackard stated that there are programs that assist and provide home evaluations for our residents.

It was moved by Council Member Halliday, seconded by Council Member Quirk, and carried, to adopt the following by the following roll call vote:

Resolution 08-125, "Resolution Designating the Week of September 21-27, 2008 as "Falls Prevention Awareness Week"

AYES: Council Members Zermefio, Quirk, Halliday, Henson
MAYOR PRO TEMPORE Dowling

NOES: None

ABSENT: None

ABSTAINED: Council Member May
MAYOR Sweeney

4. Authorization to Enter into a Contract with Consultant to be Determined to Work on Housing Element Update

Staff report submitted by Senior Planner Pearson, dated September 16, 2008, was filed.

Council Member Henson indicated that this contract is for a consultant to assist in the updating of the City's Housing Element. He asked that staff respond to several of his questions related to the number of units constructed, which he thought were rather low. He asked that staff review the assignment of credits and noted that this update will include the Climate Action Plan. He spoke on the legislation that will assist in the process. He asked that staff, along with the consultant, consider adding incentives for developers to build affordable housing.

Council Member Quirk also felt that the numbers were inaccurate and commented on the lack of funding from both the state and federal governments. He asked if there were consequences if the numbers are not met.

Planning Manager Rizk reported that the units indicated have restrictions and the numbers are from the City's database. He indicated that he was not aware of consequences if the goals are not met, as long as the City can show that it has performed good faith efforts. He pointed out the assistance from Eden Housing for affordable housing.

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Mayor Sweeney confirmed that this is only an item related to the hiring of the consultant, not the Housing Element itself.

Council Member Halliday indicated that she supported the use of a consultant. She urged residents to watch for the community meetings and the public hearings that will occur. She also was concerned about the numbers in the report. In addition, she was aware of some recent changes in the law that will impact the update.

Council Member Dowling also commented on the numbers and was concerned that the State will again be taking funds from the Redevelopment Agency that will diminish the number of affordable units that can be constructed. He suggested Mayor Sweeney and City Manager Jones send a letter to our legislators informing them of this concern.

Council Member Zermefo announced that Eden Housing was celebrating its 40th anniversary in the City Hall rotunda this week.

Mayor Sweeney commented that the numbers are not reasonable, even questionable. He noted that the numbers were provided by ABAG numbers but the Council did not have opportunity to comment on them. He agreed with Council Member Dowling regarding the State's intent to take from Redevelopment Agency funds.

It was moved by Council Member Henson, seconded by Council Member Dowling, and carried unanimously, to adopt the following:

Resolution 08-126, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with Veronica Tam & Associates for the Preparation of the Housing Element Update"

5. Annual Review of City of Hayward's Investment Program

Staff report submitted by Budget Administrator Blohm, dated September 16, 2008, was filed.

Council/RA/HA Member Quirk related to the report, noting its excellence and the graphics that helped to understand the City's policy. In summary, he stated that Hayward has a very conservative investment policy. Mayor/Chair Sweeney thanked staff for the report.

It was moved by Council/RA/HA Member Quirk, seconded by Council/RA/HA Member Halliday, and carried unanimously, to adopt the following:

Resolution 08-127, "Resolution Accepting the Annual Report on the Investment Program and Activity for the City of Hayward, Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"



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RA Resolution 08-09, "Resolution Accepting the Annual Report on the Investment Program and Activity for the Redevelopment Agency of the City of Hayward, Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"

HA Resolution 08-01, "Resolution Accepting the Annual Report on the Investment Program and Activity for the Housing Authority to the City of Hayward, Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"

6. Annual Report of Mitigation Fee Act

Staff report submitted by Budget Administrator Blohm, dated September 16, 2008, was filed.

It was moved by Council Member Zermefio, seconded by Council Member Henson, and carried unanimously, to adopt the following:

Resolution 08-128, "Resolution Accepting the Report and Adopting Findings Related to Fees Collected for the Development Projects Subject to the Requirements of the Mitigation Fee Act"

7. Approval of Fees to be Charged for Costs Incurred in 2007 for Administering the Residential and Mobilehome Rent Stabilization Ordinances

Staff report submitted by City Attorney Lawson, dated September 16, 2008, was filed.

It was moved by Council Member Zermefio, seconded by Council Member Henson, and carried unanimously, to adopt the following:

Resolution 08-129, "Resolution Amending Resolution No. 08-124, the Master Fee Resolution for Fiscal Year 2007-2008, Relating to the City Attorney Department, Establishing Time for Payment of Rent Stabilization Fees"

8. Revisions to the Council Member Handbook

Staff report submitted by City Clerk Reyes, dated September 16, 2008, was filed.

Council Member Quirk thanked City Clerk Reyes for bringing forward the update. He asked that the process for Council Members to place items on the Council's agenda be brought forward for confirmation. He agreed with what is currently included in the Handbook, but felt that the process was changed. Mayor Sweeney also recommended this.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and carried unanimously, to adopt the following:

Resolution 08-130, "Resolution Accepting the Additions and Revisions to the Council Member Handbook"

HEARINGS

9. Proposed Changes to the City Master Fee Schedule Related to Building and Planning Fees; Rental of City Facilities; and Establishing or Adjusting Fines and Penalties

Staff report submitted by Director of Finance Auker, dated September 16, 2008, was filed.

Director of Finance Auker made the presentation, noting that the fee schedule has been reviewed at three sessions. In February, a comprehensive review of the fee structure was undertaken using a consultant. In July, the Council adopted a policy on recovering its costs and adopted some of the fees. The Council determined to allow the building industry more time and thus the reason for this hearing. She reported that a community workshop was conducted to review the methodology. She noted that only two developers attended along with a representative from the Chamber of Commerce. She stated that the Planning Department is unique and charges fees that are based on time and materials. She reiterated the penalties and the administrative citations for infractions to enforce City ordinances, such as the recently established smoking ordinance. She noted that this report also includes fines related to violations of the Traffic Code and the City's bails and fine schedules.

Council Member Henson commented that some of the fines seem to be disjointed, in particular, the penalties charged to business owners, who violate the smoking ordinance. Assistant City Manager David reported how the penalties were enforced and determined. She responded that in the first year of the ordinance there would be a considerable amount of time to warn businesses. The \$1,000 fine would only be applied in the circumstance where a business simply refuses to enforce the ordinance in or around that establishment.

Council Member Henson stated that he would support it, but still had some concerns. He discussed some of the fines that will be moved to Hayward fines rather than California Vehicle Code. Staff reported that the citations by the City generate more than if cited per the state code and commented on the fines for violation of traffic lights. Council Member Henson also inquired on the use of the side rooms by non-profits and it was noted that no changes have been made to that policy.

Council Member Dowling asked what comparisons were done and whether staff could find a comparable facility to Centennial Hall. Director of Finance Auker reported that the facility in South San Francisco was used as it was the only comparison staff could find. Council Member

DRAFT



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Dowling appreciated the outreach to bring awareness to developers about the increases. He asked if there were discussions related to the delay of fees related to larger developments. City Manager Jones concurred.

Council Member Halliday asked about the policy of providing a discount for the rental of Centennial Hall and the City Hall facility. Director of Finance Auker stated that it does not include the City Hall rotunda. City Manager Jones confirmed that when the City co-sponsors an event, fees are waived. If the City is funding a non-profit event that consideration is also made.

Assistant City Manager David stated that Council has the option to set policies around these specific programs and are separate from the fee schedules.

Council Member Halliday asked if businesses are fined by the State in relation to the smoking ordinance. The fine for businesses is high, but is imposed only after reasonable efforts are made. This was confirmed by staff.

Mayor Sweeney opened the public hearing at 9:03 p.m.

Gail Lundholm spoke on behalf of the Board for the Hayward Arts Council. She understood some fees and penalties that have been applied to local artists in connection to business licenses as well as charged late fees and penalties. She detailed the recent incident experienced by one. She highlighted how the Arts Council has assisted the City at various occasions. She encouraged the Council to consider waiver of late fees and penalties for artists or suggested another category or limit.

Mayor Sweeney asked Assistant City Manager David for further information on this matter. Assistant City Manager David reported that the consultant is directed to find anyone doing business within the City without a paid business license. Staff understands that the Council appreciates the arts in Hayward, but the Director of Finance has this responsibility to comply with City ordinances. In light of this, staff intends to bring back to Council an amendment to try and address such issues.

Council Member Dowling stated that he received a number of emails on this including those businesses, which have no fixed location. He asked if the ordinance has a certain amount of sales annually. Assistant City Manager David responded that the ordinance varies according to the type of business. In some instances it is a flat fee, on others it is a percentage of gross income. The City's business ordinance is outdated and not in synch with neighboring cities. To change it will require it to be placed on a ballot. Staff is looking to minimize the impact to artists, but also needs to be careful as some artists have been paying their fees as well as late penalties.

Mayor Sweeney confirmed with staff that the issue with artists obtaining business licenses will be brought forward sometime before the end of the year.

Charles McKeag, representing Citation Homes, spoke on the new proposed building fees. He

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reported that the new fees would potentially add \$1.65 million in straight costs to complete the Citation Homes project. He asked if staff analyzed projects that are fully valid and whether there is a vested right to the current fee structure for such projects. It is important to take a close look at those projected developments and determine whether the current fees still apply.

City Attorney Lawson indicated that this question was just brought to his attention. He would spend some time to consult with Mr. McKeag.

Director of Finance Auker restated that the fees take effect 60 days after the Council approves them. Thus, Mr. McKeag was encouraged to obtain the permits under the current structure before the November deadline.

Doris Rodriguez, former Council Member, stated that she also is representing the Hayward Arts Council. She appreciated Gail Lundholm, who spoke on this issue and Assistant City Manager David for her attention to this matter. The Arts Council will have its next meeting on September 23 to discuss this further.

Mayor Sweeney closed the public hearing at 9:17 p.m.

It was moved by Council Member Dowling, seconded by Council Member Halliday, and unanimously carried to adopt the following, excluding the smoking violation fines:

Resolution 08-131, "Resolution Adopting a Revised Master Fee Schedule Relating to Fees and Charges for Departments in the City of Hayward and Rescinding Resolution No. 08-124 and all Amendments Thereto"

Resolution 08-132, "Resolution Approving a Fine and Recommend Bail Schedule for the City of Hayward Traffic Code"

Council Member Dowling stated that he would be voting against these fines. Council Member Henson re-stated his concern on the fine set when businesses violate the ordinance. He was of the opinion that the responsibility is on the smoker to abide by the rules.

It was moved by Council Member Quirk, seconded by Council Member Halliday, and carried by the following roll call vote to approve the fines related to the violation of the smoking ordinance:

AYES: Council Members Zermefio, Quirk, Halliday, May,
Henson
MAYOR Sweeney
NOES: Council Member Dowling
ABSENT: None
ABSTAINED: None

LEGISLATIVE BUSINESS & INFORMATIONAL ITEMS

10. Consideration of State Proposition 8: Limit on Marriage Amendment

DRAFT



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Staff report submitted by Assistant City Manager David, dated September 16, 2008, was filed.

Assistant City Manager David made the presentation, noting that Proposition 8, if passed would add a new section to the California State Constitution. It would add new language that states that only marriage between a man and woman is valid or recognized in California. She reported that the text of this amendment is the same as the previously defeated Proposition 22. If this proposition is approved by the voters, same sex marriages will no longer be valid in California.

Mayor Sweeney opened the public hearing at 9:21 p.m.

Charles Eldered, Pastor of Fairway Park Baptist Church, commented that he counsels families, but does not counsel them on voting. He felt that the Council should not be encouraging or discouraging voters on this matter.

Charlotte Fournier agreed with what the previous speaker stated and urged the Council not to consider this as it is a State issue.

Grant Petersen urged the Council to endorse a resolution opposing Proposition 8. He is a supporter of equality for all.

Chuck Horner spoke against the City of Hayward addressing this issue. He said that there were other issues that the Council should be considering, not serve personal agendas. He reiterated the past proposition that was previously on the ballot. He urged the Council not to consider this.

Rev. Albert Valencia resides in Hayward and is part of the Chaplains Support Ministry. He stated that this is a matter to be determined by the voters. It is up to the citizens to make their conscientious decision. It does not have anything to do with the citizens of Hayward and is not City related business. He noted, as Pastor Horner cited, that there are other ballot propositions that Council could consider endorsing as well.

Vincent Milani, a resident of Hayward, asked that the Council not try to influence its residents on this proposition, as this is a matter of conscience.

Lee Williamson, a resident of Hayward, urged the Council to take a stand for fairness and equality for all. He believed in taking a stand on the fundamentals of rights for all.

John Wichman, a member of the South Hayward Parish Board, noted that the board of directors of this parish voted to stand against Proposition 8. It would be courageous of the Council to protect the rights and freedoms of Hayward residents and commended the members of the City Council. He felt that there should not be an amendment to the Constitution against inequality.

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Marvin Burrows, a Hayward resident since 1966, noted his experience after the death of his partner without the benefit of marriage and suffered issues of inequality. He urged endorsement of the resolution against Proposition 8.

Barbara Sacks, a resident of Spanish Ranch II, asked that the Council and those listening to consider her list of words: equality, equal opportunity and equal protection of the law, which needed no explanation.

Kari McAllister, a resident of Hayward for 30 years, urged the Council and thanked the members for having a heart as in "Heart of the Bay." She agreed with the Council's desire to provide equality for all its residents.

Patricia Kevena Eils, Executive Director of Lighthouse Community Center, urged the Council to oppose Proposition 8 by adopting this resolution. She stressed the importance of maintaining human rights for same sex couples.

D. Anne Brentsch, a Castro Valley resident, spoke in support of the Council's resolution in opposition.

Former Council Member Rodriguez stated that the Council represents its residents even in race, culture, and gender. She asserted that this Council is within its rights to vote on this resolution.

Dan Henriques spoke in support of citizen rights.

Brandon Austin, a South Hayward Methodist Church clergy representative, spoke of taking a stand so that equal choices can be made on marriage and stressed the importance of not having second-class citizens.

Laura Woods, a resident of Hayward, urged the Council to abstain from voting on this resolution.

Wayne Lau stated that he is here because of political asylum and hopes to be naturalized. He spoke in favor of human rights and families.

Frank Howell spoke on changes in society and was strongly in favor of rights for all.

Victoria Stump, a 55-year resident of Hayward, commented favorably on the new Council team. She asked that Council abstain from acting on this issue.

Richard Navarro, a resident of Hayward, spoke on acceptance and a recent experience, but did not think this was an action that the Council should consider.

Mayor Sweeney closed the public hearing at 9:58 p.m.

Council Member Dowling thanked the Council and staff in bringing this forward. He expressed concern for those who spoke against having this on the Council's agenda. He indicated that there are thousands of gay, lesbians, transgender, and bisexual individuals living in this community. He spoke on the discrimination experienced by individuals who attend the annual



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gay prom held at Centennial Hall. He was glad that the Hayward City Council was considering this. He stated that this is not just a symbolic issue, not just a right and benefits issue, but also responsibilities that accompany marriage. He cited various discrimination experiences that have occurred against the gay, lesbian, and transgender and bisexual community. He stated that the last time the City took such a stand was in 2000. He moved the motion, seconded by Council Member Quirk, as presented by staff.

Council Member Quirk appreciated both sides of this proposition and appreciated that voters will make their own decision on this issue. He spoke in support of this resolution and commended the gay, lesbian, and transgender and bisexual community.

Council Member Zermefio spoke on a personal issue, stating that he is a traditional Catholic and married. With this in mind, he should vote against the motion. However, he spoke on past discriminations that he has endured. He felt that he must support this as it allows the same liberties and rights that everyone should have.

Council Member May appreciated the public discussion, all those who spoke so passionately on the issue, and indicated that she tried to notify as many residents as she could via email about this issue. She expressed her concerns, described past discriminations such as the right for women to vote, but felt that this topic was not an appropriate item for the Council agenda. She stated that as society progresses this issue will become more acceptable. The gay community is acceptable to her generation. She urged voters to get it right in November as this was on the ballot before. Council Member May stated that this is not an appropriate item for the Council to consider on its agenda, but it didn't mean that views can't be expressed. She stated that she would abstain from voting on this resolution.

Council Member Halliday agreed that this was a civil discussion and felt that this was an appropriate agenda consideration. She stated that by taking the oath of office, she supported the State Constitution and Proposition 22 was declared unconstitutional. Hayward does have a large, actively involved gay and lesbian community in this City. They are committed and their rights need to be upheld. She urged the stand to uphold the rights of others; including employees whose rights are impacted. She expressed her support of this resolution to oppose Proposition 8.

Council Member Henson stated that he took a position against Proposition 22 and felt that the State Supreme Court was the final word on this. During his 15 year tenure, he has never abstained, except when he was absent. He would be consistent with his opposition vote in 2000 and would be supporting this recommendation, emphasizing that Hayward is a caring City, a tolerant community. He felt that some folks would be upset on his vote, but he appreciated those who have supported him throughout his tenure.

Council Members appreciated Council Member Dowling for initiating this resolution.

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It was moved by Council Member Dowling, seconded by Council Member Quirk, and carried by the following roll call vote:

Resolution 08-133, "Resolution Urging All Voters to Vote No on Proposition 8 on the November 4, 2008 Ballot"

AYES: Council Members Zermefio, Quirk, Halliday,
Dowling, Henson
MAYOR Sweeney

NOES: None

ABSENT: None

ABSTAINED: Council Member May

COUNCIL REPORTS

There were no Council Reports.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:23 p.m., in memory of four Hayward residents. Jack Smith, former Mayor of Hayward and prominent attorney, who passed away. Council Member Quirk commented that at Mr. Smith's funeral, House Speaker Pelosi commented on his accomplishments. Mr. Smith made a major contribution to Hastings Law, his alma mater. He supported small causes, as well as was a major fundraiser for his cathedral in Oakland. Council Member Henson spoke on Mr. Smith's life message that was encouraging and was simply "You can do it!" Council Member Henson agreed that Jack Smith was behind the scenes for many folks. He reminded all that Mr. Smith was very instrumental in the City's water agreement with San Francisco. Mayor Sweeney asked that staff plant a tree in a prominent location as well as other ways to honor Jack Smith.

Mayor Sweeney also asked that this meeting adjourn in memory of Sara Forsyth, a community activist and a bright light at Chabot College. He requested that a tree be planted in her honor.

Mayor Sweeney also asked that a tree be planted in honor of Eleonor Davis, a San Lorenzo/Hayward resident who was 73 years old when she passed away. Ms. Davis was a 1952 Hayward High School graduate and often shared fond memories of her early days to her daughter, Joline Mallory. In her later years she participated in neighborhood watch and helped celebrate many National Night Out events. She passed away on July 27, 2008.

With sincere regrets and condolences for the loss of a young man, Mayor Sweeney lastly, adjourned this Council meeting in memory of Matt Garcia, Council Member of the City of Fairfield.



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APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency
Chair, Housing Authority

ATTEST:

Angelina Reyes, City Clerk, City of Hayward
Secretary, Redevelopment Agency
Secretary, Housing Authority

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