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Title: A Local Law to amend the administrative code of the city of New York, in relation to the regulation of public wholesale markets.

Sponsors: Jerome X. O'Donovan, Stephen DiBrienza, Kenneth K. Fisher, Martin Malave-Dilan, Stanley E. Michels, Walter L. McCaffrey, Adolfo Carrion, Helen M. Marshall, Christine C. Quinn, Karen Koslowitz, Herbert E. Berman, Victor L. Robles, Kathryn E. Freed, Howard L. Lasher, Guillermo Linares, June M. Eisland, Sheldon S. Leffler, Priscilla A. Wooten

Indexes:

Attachments: 1. Committee Report, 2. Fiscal Impact Statement

Date	Ver.	Action By	Action	Result
10/22/1998	A	City Council	Introduced by Council	
10/22/1998	A	City Council	Referred to Comm by Council	
11/12/1998	A	Legislative Documents Unit	Printed Item Laid on Desk	
8/10/1999	A	Committee on Economic Development	Hearing Held by Committee	
8/10/1999	A	Committee on Economic Development	Laid Over by Committee	
2/17/2000	A	Committee on Economic Development	Hearing Held by Committee	
2/17/2000	A	Committee on Economic Development	Amendment Proposed by Comm	
2/17/2000	A	Committee on Economic Development	Amended by Committee	
2/17/2000	A	Committee on Economic Development	Approved by Committee	Pass
2/29/2000	A	City Council	Approved by Council	Pass
2/29/2000	A	City Council	Sent to Mayor by Council	
3/16/2000	A	Mayor	Hearing Held by Mayor	
3/16/2000	A	Mayor	Vetoed by Mayor	
3/16/2000	A	City Council	Recvd from Mayor by Council	
3/29/2000	A	Committee on Economic Development	Hearing Held by Committee	
3/29/2000	A	Committee on Economic Development	Approved by Committee	Pass
3/29/2000	A	City Council	Overridden by Council	Pass

Int. No. 459-A

By Council Members O'Donovan, DiBrienza, Fisher, Malave-Dilan, Michels, McCaffrey, Carrion, Marshall, Quinn, Koslowitz, Berman, Robles, Freed, Lasher and Linares; also Council Members Eisland, Leffler and Wooten.

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of public wholesale markets.

Be it enacted by the Council as follows:

Section one. Subdivision h of section 22-251 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended to read as follows:

h. "Public wholesale market" or "market" shall mean any building, structure or place owned by the city or located on property owned by the city or under lease to or in the possession of the city or any part of a street, avenue, parkway, plaza, square or other public place designated as a public market by resolution of the former board of estimate of the city or a local law enacted by the city council to be used or intended to be used for the wholesale buying, selling or keeping of food, flowers or ornamental plants and shall continue to be public property notwithstanding that such public wholesale market is operated pursuant to a lease or other agreement with a non-governmental entity; except that the term "public wholesale market" shall not, unless otherwise set forth in this chapter, include any building, structure or place within the fulton fish market distribution area or other seafood distribution area as defined in section 22-202 of this code. For the purposes of this chapter, the term "public wholesale market" shall also include an area identified by rule of the commissioner that is in the vicinity of a designated [wholesale] public wholesale market where one or more wholesale businesses or market businesses operate. For the purposes of this chapter, the "place of business of a wholesale business or market business" shall mean any building, structure, stall or other area, or any part thereof, within a public wholesale market that is leased, operated, managed or used exclusively by such wholesale business or market business.

§2. Subdivision a of section 22-253 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended read as follows:

a. No person shall conduct a wholesale business or a market business in a public wholesale market

unless such person has registered such business with the commissioner and has obtained a registration number for such business from the commissioner. Application for such registration shall be made upon a form prescribed by the commissioner containing such information as the commissioner shall determine appropriately identifies and demonstrates the fitness of the wholesale business or market business. A registration number shall not be transferable. A person conducting a wholesale business or a market business shall not sublease or assign to another person any portion of any premises in the market occupied or utilized by such business unless such proposed sublessee or assignee has registered with and obtained a registration number from the commissioner. The commissioner shall establish by rule a procedure for the preliminary review of registration applications for businesses not previously operating in a market that are considering the purchase of a wholesale business or a market business, and for the expedited completion of registration review upon entry into a purchase and sale agreement. A business required to register pursuant to this section shall [, in accordance with rules promulgated by the commissioner pursuant to section 22-266 of this chapter,] inform the commissioner of any change in the ownership composition of the business, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for registration within thirty calendar days thereof.

§3. Section 22-255 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended to read as follows:

a. Visitor pass. The department or a designee of the department shall be authorized to issue a visitor pass as a requirement for any person to enter a public wholesale market including but not limited to: retailers who enter the market to purchase products and their employees and temporary employees; and, subject to the provisions of sections 22-264 of this chapter, officers and business agents of labor unions or organizations covered by such section and officers and business agents of the affiliates thereof, including international unions, pension and welfare funds and others. Such pass shall be in a form prescribed by the commissioner, may contain a photograph of such person and shall indicate the reason the person is visiting the market, whether

such person visits the market on a regular basis or, in the event that such person does not regularly visit the market, the date for which such pass shall be valid. The commissioner may provide for the issuance of permanent visitor passes to those persons who regularly visit a market, and shall provide for the expeditious issuance of passes at the market entrance to persons wishing to enter the market on a single or occasional basis. A pass shall be in the possession of such person at all times when such person is in the market and shall be worn and visible in compliance with rules promulgated by the commissioner pursuant to section 22-266 of this chapter. The department or, at the direction of the department, a designee of the department, shall be authorized to deny a [visitor's] visitor pass and entry into a market to any person whose presence may constitute a threat to the orderly operation of a market or who has failed to provide the identifying information required by the commissioner or the designee of the commissioner. The provisions of this section shall not apply to any public wholesale market to which access by the public has routinely been permitted without control, restriction or other regulation for no less than a year directly preceding the effective date of this provision; provided, however, that the commissioner may apply such provisions upon a determination that an emergency exists that necessitates the temporary restriction of access to such a market. For the purposes of this section, a "designee of the department" shall mean an agency of the city or, in the discretion of the commissioner, a wholesaler cooperative or similar organization. Nothing in this section shall be construed to permit the denial of a visitor pass to a representative of a labor union or labor organization solely because such person seeks to engage in the lawful exercise within a public wholesale market of an activity protected under the provisions of the National Labor Relations Act, 29 U.S.C. §141 *et seq.*, including, but not limited to, the lawful picketing of a place of business of a wholesale business or market business in connection with a legitimate labor dispute, except as may otherwise be prohibited by law. However, such person shall not impede any reasonable measure undertaken by a police officer or authorized employee of the department intended to control vehicle and pedestrian traffic within such public wholesale market or upon any street, avenue, parkway, plaza, square or other public place designated as a public market. The commissioner shall consult with the commissioner of

labor relations prior to reaching any determination that an activity be a representative of a labor union or organization is not lawful under the National Labor Relations Act.

§4. Section 22-256 of the administrative code of the City of New York, as added by local law number 28 for the year 1997, is amended to read as follows:

§22-256 Fees. The commissioner shall by rule establish fees for photo identification cards, for registration and the renewal of registration, and for visitor passes issued pursuant to this chapter in amounts sufficient to compensate the city for the administrative expense of issuance of such photo identification cards, of registration and the inspections and other activities related thereto, and of issuance of visitor passes. Such rule may provide that a designee of the department perform administrative functions related to the issuance of photo identification cards or the issuance of [visitors'] visitor passes and that such designee may, with the approval of the commissioner, impose a fee for the performance of such functions. For the purposes of this section "designee of the department" shall mean an agency of the city or, in the discretion of the commissioner, a wholesaler cooperative or similar organization. Registration pursuant to this chapter shall be valid for three years. A wholesale business or a market business shall be responsible for the payment of any fee imposed by this section with respect to an employee of such business or any person seeking to become an employee of such business.

§5. Section 22-257 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended by lettering the existing section as subdivision a of such section and by adding a new subdivision b to read as follows:

b. In any civil action or administrative proceeding against an employee of a wholesale business or market business for a violation of this chapter or any rules promulgated pursuant thereto, it shall be an affirmative defense that the employee was acting within the scope of his or her employment when the action or actions constituting the alleged violation were committed and that such action or actions were committed pursuant to an instruction given to such employee by such wholesale business or market business or by any

principal, officer or agent of such business, provided, however, that this subdivision shall not be applicable to a violation of section 22-252 or section 22-262 of this chapter and any rules promulgated pursuant thereto.

§6. Subdivisions b and c of section 22-264 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, are amended to read as follows:

b. An officer of a labor union or labor organization required to be registered with the commissioner pursuant to subdivision a of this section shall inform the commissioner, on a form prescribed by the commissioner, of: (i) all criminal convictions, in any jurisdiction, of such officer; (ii) any pending civil or criminal actions to which such officer is a party; and (iii) any criminal or civil investigation by a federal, state, or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the date of registration pursuant to subdivision a of this section and at any time subsequent to such registration, wherein such officer has (A) been the subject of such investigation, or (B) received a subpoena requiring the production of documents or information in connection with such an investigation. Any material change in information reported pursuant to this subdivision shall be reported [forthwith] to the commissioner within thirty calendar days thereof. The commissioner may, if he or she has reasonable cause to believe that such an officer lacks good character, honesty and integrity, require that such officer be fingerprinted by a person designated by the commissioner for such purpose or by the department of investigation and pay a fee to be submitted to the division of criminal justice services and/or the federal bureau of investigation for the purpose of obtaining criminal history records.

c. The commissioner may, after notice and opportunity to be heard, disqualify an officer of a labor union or labor organization from holding office when such person: (i) has failed, by the date prescribed by the commissioner, to be fingerprinted or to provide truthful information in connection with the reporting requirements of subdivision b of this section; (ii) is the subject of a pending indictment or criminal action against such officer for a crime which bears a direct relationship to the lawful and orderly operation of the market, in which case the commissioner may defer a determination until a decision has been reached by the

court before which such action is pending; (iii) has been convicted of a crime which, under the standards set forth in article 23-A of the correction law, bears a direct relationship to the lawful and orderly operation of the market, including the specific duties and responsibilities necessarily related to the union office; the bearing, if any the criminal offense or offenses will have on the fitness of the officer to perform such responsibilities; the time which has elapsed since the occurrence of the criminal offense or offenses; the seriousness of the offense or offenses; and any information produced by the person, or produced on his or her behalf, in regard to his or her rehabilitation or good conduct; (iv) has committed a racketeering activity or associated with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organization statute (18 U.S.C. §1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, when the officer knew or should have known of such conviction; or (v) has associated with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the officer knew or should have known of the organized crime associations of such person. An officer required to disclose information pursuant to subdivision a of this section may submit to the commissioner any material or explanation which such officer believes demonstrates that such information does not reflect adversely upon the officer's good character, honesty and integrity. If the commissioner determines pursuant to this subdivision that there are sufficient grounds to disqualify a person from holding office in a labor union or labor organization, the commissioner shall suspend such person from holding office pending final determination and, in the event such person is disqualified, such suspension shall continue pending resignation or vacatur of or removal from office. Upon written request of the suspended person within ten days of the commissioner's determination, the [commissioner] director of the office of collective bargaining shall [designate five] prepare a list of the names of the first fifteen arbitrators selected at random from the [list] roster of arbitrators approved by the office of collective bargaining and present the first five names on such list to the suspended person and the commissioner. [Such suspended person shall select one

arbitrator from among the five arbitrators designated by the commissioner.] Within alternating periods of five business days the suspended person and then the commissioner shall each strike a name from the list of selected arbitrators. If the parties cannot within two additional business days jointly appoint an arbitrator from those remaining on the list, the suspended person and then the commissioner shall within alternating periods of two business days each strike an additional name from the list. The remaining arbitrator shall thereupon be appointed as the arbitrator for that proceeding and shall establish a schedule for such proceeding. In the event that such arbitrator declines the appointment or for any reason is unable to accept the appointment, then the director of the office of collective bargaining shall within five business days present to the suspended person and the commissioner the next five names on the list of arbitrators previously selected at random and the procedures set forth in this subdivision for appointing an arbitrator shall be applied to this second group. In the event that the arbitrator appointed from this second group declines the appointment or for any reason is unable to accept the appointment then the director of the office of collective bargaining shall present the remaining five names from the list arbitrators selected at random and the suspended person shall select an arbitrator from such group. Such arbitrator shall make a final report and recommendations in writing concerning the disqualification. The commissioner shall accept such report and recommendations and issue his or her final determination consistent with such report and recommendations. In the event that the suspended person does not make [such] a request for arbitration within [such] the ten-day period he or she shall be disqualified from holding office. Upon receiving an order of the commissioner pursuant to this subdivision disqualifying a person from holding office in a labor union or labor organization, such person shall resign or vacate such office within fourteen days or, if such person fails to resign or vacate such office within such time period, such union or organization shall remove such person forthwith from such office. Failure of such a person to resign or vacate office within such time period shall subject such person to the penalties set forth in subdivision a of section 22-258 of this chapter. An [office-holder] officer who has been disqualified or suspended by the commissioner pursuant to the provisions of this subdivision may be excluded by the commissioner from the

market. Nothing in this section shall be construed to authorize the commissioner to disqualify a labor union or labor organization from representing or seeking to represent employees of a business required to be registered pursuant to section 22-253 of this code.

§7. Subdivision b of section 22-265 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended to read as follows:

b. An officer of a wholesale trade association required to register pursuant to this section shall inform the commissioner, on a form prescribed by the commissioner, of: (i) all criminal convictions, in any jurisdiction, of such officer; (ii) any pending civil or criminal actions to which such officer is a party; and (iii) any criminal or civil investigation by a federal, state, or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the date of registration pursuant to subdivision a of this section and at any time subsequent to such registration, wherein such officer has (A) been the subject of such investigation, or (B) received a subpoena requiring the production of documents or information in connection with such an investigation. Any material change in information reported pursuant to this subdivision shall be reported [forthwith] to the commissioner within thirty calendar days thereof. The commissioner may, if he or she has reasonable cause to believe that such an officer of a trade association lacks good character, honesty and integrity, require that such officer be fingerprinted by a person designated by the commissioner for such and pay a fee to be submitted to the division of criminal justice for the purpose of obtaining criminal history records.

§8. Chapter 1-B of title 22 of the administrative code of the city of New York, as added by local law number 28 for the year 1997, is amended by adding a new section 22-262.1 to read as follows:

§22-262.1 Seizure; forfeiture. a. Any police officer or authorized officer or employee of the department may, upon service of a notice of violation or criminal summons upon the owner or operator of a vehicle or other property or equipment, seize such vehicle or such other property or equipment which such police officer or authorized officer or employee has reasonable cause to believe is being used in connection with an act

constituting a violation of subdivision a of section 22-253 of this chapter where such vehicle or other property or equipment is owned, leased or rented by a person subject to the provisions of such subdivision or such vehicle or other property or equipment is owned by a person other than an employee and is used directly by a person subject to the provisions of such subdivision. Any vehicle, property or equipment seized pursuant to this subdivision shall be delivered into the custody of the department or other appropriate agency. Where a notice of violation has been served, a hearing to adjudicate the violation underlying the seizure shall be held before the environmental control board within five business days after the seizure and such board shall render a decision within five business days after the conclusion of the hearing. Where a criminal summons has been served, a hearing to adjudicate the violation underlying the seizure shall be held before a court of competent jurisdiction. In the event that such court or the environmental control board determines that there has been no violation, the vehicle, property or equipment that was seized shall be released forthwith to the owner or any person authorized by the owner to take possession of such vehicle, property or equipment.

b. Except as otherwise provided in subdivision a of this section or where notice has been given that forfeiture will be sought pursuant to paragraph (ii) of subdivision e of this section, a vehicle or other property or equipment seized pursuant to subdivision a of this section shall be released upon payment of a fine or civil penalty imposed for the violation underlying the seizure and the costs of removal and storage as set forth in the rules of the department. Where an action or a proceeding relating to the violation underlying the seizure is pending in a court of competent jurisdiction or an administrative proceeding before the environmental control board, the vehicle or other property or equipment shall be released upon posting of a bond or other form of security sufficient to cover the maximum fine or civil penalty which may be imposed for such violation and the costs of removal and storage.

c. Where a court of competent jurisdiction or the environmental control board makes a finding that the vehicle or other property or equipment has not been used in connection with an act constituting a violation of subdivision a of section 22-253 of this chapter, the vehicle or other property or equipment shall be released

forthwith to the owner or any person authorized by the owner to take possession of such vehicle, property or equipment.

d. Any vehicle or other property or equipment that has not been claimed by the owner within ten business days after mailing by first class mail to such owner of notice of a determination by a court of competent jurisdiction or by the environmental control board that there has been no violation or that the vehicle or other property or equipment was not used in connection with a violation of subdivision a of section 22-253 of this chapter shall be deemed by the department to be abandoned. Any vehicle unclaimed under the provisions of this subdivision shall be disposed of by the department pursuant to section twelve hundred twenty-four of the vehicle and traffic law. Property or equipment other than a vehicle shall be disposed of by sale at public auction following notice by publication in the city record describing such property or equipment not less than ten business days prior to such sale. Such notice shall provide that the owner may reclaim such property or equipment until a date that shall be not sooner than ten business days from the date the notice is published.

e. (i) in addition to any other fines, penalties, sanctions or remedies provided for in this chapter, a vehicle or other property or equipment which has been seized pursuant to subdivision a of this section and all rights, title and interest therein shall be subject to forfeiture upon notice and judicial determination thereof if the owner of such vehicle or other property or equipment has been found liable by a court of competent jurisdiction or the environmental control board on one or more prior occasions for using such vehicle or such other property or equipment in connection with an act constituting a violation of subdivision a of section 22-253 of this chapter.

(ii) A forfeiture proceeding may not be commenced more than ten business days after the receipt of a request by the owner for return of the vehicle, other property or equipment. If a forfeiture proceeding is not commenced within such ten day period, the property shall be returned to the owner upon payment of the fine or civil penalty imposed and the costs of removal and storage. A vehicle or other property or equipment which is the subject of such action shall remain in the custody of the department or other appropriate agency pending the

final determination of the forfeiture action.

(iii) Notice of the institution of the forfeiture action shall be served by first class mail on: (a) an owner of a vehicle at the address set forth in the records maintained by the department of motor vehicles, or for vehicles not registered in New York state, in the records maintained by the state of registration; (b) all persons holding a security interest in such vehicle which security interest has been filed with the department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or for vehicles not registered in New York state, all persons who hold a security interest in such vehicle which security interest has been filed with such state of registration and which persons are made known by such state to the department at the address provided by such state of registration; and (c) for property and equipment other than a vehicle, by publication in the city record describing such property or equipment and by notice served by first class mail to the address of the person from whom such property or equipment was seized. Where such person is other than the owner of such property or equipment, notice shall be served by first class mail both to such person and to the owner of such property or equipment where such owner is known, or can by reasonable effort, be ascertained or, where such owner is not known or cannot by reasonable effort be ascertained, to the employer of the person from whom the property or other equipment was seized. Notice shall also be served by first class mail to any person who holds a security interest in such property or equipment when the name and address of such person has been provided by the owner of the property or equipment or other person from whom the property or equipment was seized, or is otherwise known or can, by reasonable effort, be ascertained.

(iv) Any owner who receives notice of the institution of a forfeiture action who wishes to claim an interest in the vehicle or other property or equipment subject to forfeiture may assert a claim in such action for the recovery of the vehicle or other property or equipment or satisfaction of the owner's interest in such vehicle or other property or equipment. Any person with a security interest in such vehicle or property or equipment who receives notice of the institution of the forfeiture action who claims an interest in such vehicle or other

property or equipment may assert a claim in such action for satisfaction of such person's security interest.

(v) Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in the vehicle or other property or equipment pursuant to paragraph (iv) of this subdivision, where such person establishes that: (a) the use of such vehicle, property or equipment in connection with an act constituting a violation of subdivision a of section 22-253 of this chapter that was the basis for seizure occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by failing to do all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the vehicle, property or equipment in order to avoid the forfeiture; or (b) that the conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle, property or equipment while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

(vi) The department, after judicial determination of forfeiture, shall, at its discretion, either: (a) retain such vehicle, property or equipment for the official use of the city; or (b) by public notice of at least five days, sell such forfeited vehicle, property or equipment at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

(vii) In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest in the forfeited vehicle, property or equipment, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, property or equipment after deduction of the lawful expenses incurred by the city, including the reasonable costs of removal and storage between the time of seizure and the date of sale.

(viii) For purposes of this section, the term "owner" of a vehicle shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eight of the vehicle and

traffic law. The term "owner" of other property or equipment subject to seizure or forfeiture pursuant to this section shall mean a person who demonstrates ownership of such property or equipment to the satisfaction of the commissioner.

(ix) For purposes of this section, the term "security interest" in a vehicle shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law. "Security interest" in other property or equipment shall mean an interest reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security.

§9. Section 22-214 of the administrative code of the city of New York, as added by local law number 50 for the year 1995, is amended by lettering the existing section as subdivision a of such section and by adding a new subdivision b to read as follows:

b. In any civil action or administrative proceeding against an employee of a business entity for a violation of this chapter or any rules promulgated pursuant thereto, it shall be an affirmative defense that the employee was acting within the scope of his or her employment when the action or actions constituting the alleged violation were committed and that such action or actions were committed pursuant to an instruction given to such employee by such business entity or by any principal, officer or agent of such business entity, provided, however, that this subdivision shall not be applicable to a violation of section 22-203, subdivision e of section 22-204, subdivision e of section 22-206, subdivision c of section 22-208, paragraphs ii and iii of subdivision b of section 22-215 or subdivision b of section 22-219 of this chapter and any rules promulgated pursuant thereto.

§10. Subdivision d of section 22-216 of the administrative code of the city of New York, as added by local law number 50 for the year 1995, is amended to read as follows:

d. The commissioner may require that an applicant submitting a licensing proposal for any license required pursuant to this chapter or an application for registration as a wholesaler or seafood deliverer shall

submit such information regarding the applicant's business as the commissioner shall require in order to demonstrate the financial responsibility to conduct the business for which such license or registration is required, and may refuse to issue a license or registration to any applicant who has not, in the commissioner's determination, demonstrated such financial responsibility.

§11. If any clause, sentence, item, paragraph or section added by this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, item, paragraph or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§12. This local law shall take effect immediately.

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