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COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON LAW AND GOVERNMENT

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, February 24, 2010
10:10 a.m.

- - -

PRESENT:

COUNCILMAN WILLIAM GREENLEE, CHAIR
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN FRANK DiCICCO
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN BILL GREEN
COUNCILMAN JACK KELLY

BILL 100063 - An ordinance amending Chapter
21-1700 of The Philadelphia Code, entitled
"Publication of Notices by City," by revising
provisions concerning how and when required
notices shall be published and advertised...

- - -

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COUNCILMAN GREENLEE: Good

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morning, everyone. This is the Committee

4

on Law and Government.

5

For the record, we have a

6

quorum with myself, Councilman Goode,

7

Councilman DiCicco and Councilman Kelly.

8

Mr. Boyle, will you please read

9

the title of the bill we have before us

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today.

11

THE CLERK: An ordinance

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amending Chapter 21-1700 of The

13

Philadelphia Code, entitled "Publication

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of Notices by City," by revising

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provisions concerning how and when

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required notices shall be published and

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advertised; all under certain terms and

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conditions.

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COUNCILMAN GREENLEE: For the

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record, that's Bill No. 100063.

21

Councilman Clarke, did you want

22

to say something on this bill?

23

COUNCILMAN CLARKE: Yes.

24

COUNCILMAN GREENLEE: I knew

25

you couldn't pass up this opportunity.

1 2/24/10 - LAW & GOV'T - BILL 100063

2 Councilman Clarke.

3 COUNCILMAN CLARKE: You know I
4 love to testify in front of this august
5 body.

6 Thank you, Mr. Chair, members
7 of the Committee. Real briefly, this is
8 essentially an extension of the
9 advertisement provision, the current
10 provision which is in place that allows
11 Council in the event that there are not
12 three daily newspapers. As stated
13 earlier in the -- both the Charter and
14 the state provision expires at the end of
15 February, and this will essentially
16 extend that opportunity in the event that
17 there are no longer three newspapers for
18 Council to advertise and less than three,
19 so we can continue to conduct our
20 business.

21 COUNCILMAN GREENLEE: And this
22 bill doesn't change anything; it just
23 deals with the time issue?

24 COUNCILMAN CLARKE: Yes.

25 COUNCILMAN GREENLEE: Any

1 2/24/10 - LAW & GOV'T - BILL 100063
2 questions from members of the Committee?

3 (No response.)

4 COUNCILMAN GREENLEE: Seeing
5 none, Ms. Johnston from the Law
6 Department, did you just want to submit
7 your -- or did you want to say something?
8 We have your testimony here.

9 MS. JOHNSTON: Right. I'm fine
10 with --

11 COUNCILMAN GREENLEE: Why don't
12 you just say that on the microphone.
13 Identify yourself. We have to be all
14 official here.

15 (Witness approached witness
16 table.)

17 MS. JOHNSTON: Good morning,
18 Chairperson Greenlee, members of the
19 Committee on Law and Government. My name
20 is Martha Johnston and I'm a Senior
21 Attorney in the Appeals and Legislation
22 Unit of the City Solicitor's Office. I'm
23 here to offer testimony on behalf of the
24 Administration in support of Bill 100063.

25 You have my proposed testimony

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2 and you've heard it before, so unless the
3 Committee has any questions, I'll just
4 submit the testimony.

5 COUNCILMAN GREENLEE: Any
6 questions of the witness?

7 (No response.)

8 COUNCILMAN GREENLEE: Thank you
9 very much, Ms. Johnston.

10 MS. JOHNSTON: Thank you.

11 COUNCILMAN GREENLEE: The only
12 other witness I have is Mr. Zaslow.

13 MR. ZASLOW: Good morning,
14 Mr. Chairman.

15 COUNCILMAN GREENLEE: Good
16 morning. If you can just identify
17 yourself for the record and proceed. We
18 have what you submitted to us.

19 MR. ZASLOW: Yes, just if I can
20 review it with you briefly. I appreciate
21 the opportunity --

22 COUNCILMAN GREENLEE: Speak
23 into the microphone, though.

24 MR. ZASLOW: Use the
25 microphone?

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2 COUNCILMAN GREENLEE: Yes.

3 MR. ZASLOW: I appreciate the
4 opportunity to testify. You may recall
5 that I frequently have the honor of
6 appearing before you on behalf of HAPCO,
7 the Homeowners Association of
8 Philadelphia. This bill regarding notice
9 is very important to us, and while it
10 may --

11 COUNCILMAN GREENLEE: Sir,
12 excuse me. Just for the record, you have
13 to identify yourself. Just state your
14 name.

15 MR. ZASLOW: I'm so sorry,
16 Mr. Chairman. Darrell M. Zaslow, Z, as
17 in zebra, A-S-L-O-W. I'm an attorney
18 here in Philadelphia.

19 The bill as is proposed
20 certainly is just reinstituting the
21 status quo, which is very good and to
22 some extent is better than what my
23 perception of the law requires. However,
24 I would suggest -- and I've laid it out
25 for you in this brief testimony -- that

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2 the ordinance should comply with the
3 Sunshine Act and it doesn't, and the
4 reason it doesn't, I've laid it out in
5 three areas. I've taken the liberty of
6 attaching for you copies of my testimony,
7 which is the single page on top. Below
8 that is a printout from that very famous
9 legal treatise, Pennsylvania Municipal
10 Law Source, which I had the honor of
11 writing. It doesn't mean that it's
12 correct necessarily, but it's in print.

13 I've attached for you the
14 Sunshine Law requirement for notice of a
15 meeting, and the notice of a meeting
16 requires three things. Number one, it
17 says that notice of hearings should be
18 containing the place, date and the time
19 of the meeting. And the law as it's
20 written says the place and the time.
21 Obviously you're not going to publish a
22 notice which does not include the date of
23 a meeting, but the law requires that you
24 do that, and it would make sense if the
25 law before you enacted would say not just

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2 advertising the place and time of a
3 meeting, but the date of a meeting also
4 even though, of course, you would do it.

5 The second requirement of the
6 Sunshine Act, which is also contained in
7 Section 703 of the Sunshine Act under the
8 definition of Public Notice, requires --
9 and you do this also, I'm sure, and you
10 do it perhaps even better than the law
11 requires, but the law requires that the
12 notice be posted somewhere in the main
13 office of the agency, which in your case
14 would be, I'm sure, the City Council
15 Clerk's Office or the building where
16 you're holding a hearing. So, again, you
17 may do that, and certainly you do a very
18 good job here in the City of providing
19 notice, making it available, giving out
20 copies, but as a technical matter, just
21 to be in compliance, I believe the law
22 should be -- the ordinance should be
23 amended to require and mimic the language
24 of the Sunshine Act, which requires
25 posting.

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2 And the third requirement of
3 the Sunshine Act is that notice be
4 provided to anyone who has requested
5 notice. Now, again, Philadelphia does
6 that very well. I'm most appreciative of
7 it personally. I get e-mails, I receive
8 copies of it in the mail if I request it,
9 but I believe that the law should also --
10 the ordinance should also require that
11 anyone who has complied with the Sunshine
12 Act, which is actually contained in
13 Section 709(c) of the Sunshine Act, that
14 any newspaper or radio station or any
15 party, meaning any taxpayer or citizen,
16 who provides a request for notice of a
17 hearing has to be sent notice of the
18 hearing.

19 So, therefore, my purpose for
20 appearing this morning would be to
21 suggest to you that this law be amended
22 to provide the language as mandated by
23 the Sunshine Act. I understand that this
24 ordinance is mimicking precisely the
25 language of the City Charter, which

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2 states it in these terms, but the City
3 Charter is not right either. Just
4 because it's in the City Charter doesn't
5 make it right, and the City Charter
6 itself should probably be corrected to
7 provide for that. But here with this
8 ordinance, you have the opportunity to do
9 that.

10 I would also request of you,
11 although it's clearly not a requirement,
12 although I think it should be, that the
13 old-fashioned way of mailing out a notice
14 of a hearing is okay for the last
15 century, but in this century, of course,
16 everything is e-mail. And, again, your
17 staffers do a very good job of supplying
18 e-mail notice of everything that you do,
19 and the public appreciates it. I would
20 like to see the law that you mandate that
21 that be done in this ordinance, that No.
22 4 of my testimony, that notice also be
23 provided by e-mail to all parties that
24 provide an e-mail address upon such terms
25 as the Clerk of Council may prescribe in

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2 whatever format the Clerk of Council or
3 Council itself would prescribe.

4 So that would be a suggestion I
5 would have, which would be very helpful
6 to have as part of the law if you would
7 voluntarily go beyond the Sunshine Act
8 and mandate that notice be provided by
9 e-mail. I know you do it anyway.

10 I would comment, lastly -- I
11 didn't make a note of this -- the
12 five-day notice, I acknowledge, is more
13 than law requires, but it's such a short
14 period of time to react to important
15 things that you do, to get a notice five
16 days before and begin to put together
17 testimony and be available to come here
18 is sometimes difficult.

19 So in summary, I would request
20 that the ordinance be amended for
21 compliance with the Sunshine Act to
22 provide the technical word that the date
23 should be provided, to provide
24 technically that posting of notice should
25 be required, and that notice is to be

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2 provided to all parties who have
3 requested it, together with a voluntary
4 action on your part to mandate the e-mail
5 notice be provided.

6 I appreciate your time very
7 much this morning, Mr. Chairman, to be
8 able to testify on this ordinance.

9 COUNCILMAN GREENLEE: Thank
10 you, Mr. Zaslow.

11 Please note for the record the
12 presence of Councilman Green also.

13 Any questions or comments?

14 (No response.)

15 COUNCILMAN GREENLEE: Thank you
16 very much.

17 MR. ZASLOW: Thank you.

18 COUNCILMAN GREENLEE: Is
19 there -- I'm sorry. Please approach the
20 witness table, sir. You know how this
21 works. Your name and whatever statement.
22 Thank you.

23 (Witness approached witness
24 table.)

25 MR. ALI: Good morning,

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2 Mr. Chairman, members of the Committee.

3 My name is Jihad Ali and I'm a citizen

4 who regularly attends some of the

5 meetings of City Council, as well as some

6 of the Board meetings at some of the

7 various quasi agencies. I wanted to come

8 down here today to give testimony on this

9 bill and then share with you some of my

10 experiences as a citizen in dealing with

11 this issue of public notice. And I think

12 that's important, because as a citizen,

13 you know, I'm here today because you are

14 my elected officials, you and Councilman

15 and all the members of Council. The

16 citizens voted for you. And a lot of

17 times when these issues come up that

18 affect citizens, it's really the citizens

19 that are being overlooked or their rights

20 aren't being enforced. So this is a

21 great opportunity to address the whole

22 issue of citizen participation.

23 I'd like to read my statement.

24 Mr. Chairman, Chairman

25 Councilman Greenlee and members of the

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2 Committee on Law and Government, thank
3 you for the opportunity to testify before
4 you today on this ordinance 100063,
5 requirement to provide notice of its
6 public meetings. I am particularly
7 grateful for your role in providing
8 Philadelphia citizens with the necessary
9 oversight of such powerful authorities
10 and your dedication to Philadelphia
11 citizens to have transparency and
12 accountability at all levels of City
13 government.

14 I am here today to give you
15 insight and to share my experiences with
16 the Philadelphia Authority for Industrial
17 Development, PAID, and Philadelphia
18 Industrial Development Corporation, PIDC.
19 Philadelphia Authority for Industrial
20 Development has during its long history,
21 along with Philadelphia Industrial
22 Development Corporation, PIDC, has
23 effectively implemented the City's
24 economic development policies in
25 accordance with the realities of the

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2 marketplace. Its public-private
3 partnership track record is impressive -
4 5,490 settled transactions, including
5 \$9.5 billion of financing; 2,000 acres of
6 land sales, including parcels at the Navy
7 Yard. Five million square feet of lease
8 space have leveraged over \$16 billion of
9 total investment and have assisted in
10 retaining and creating 450,000 jobs in
11 Philadelphia.

12 As a citizen, I am also
13 tremendously impressed by their track
14 record. However, I am deeply concerned
15 about transparency, integrity and
16 accountability.

17 For the past three years, I
18 have attempted to attend both PIDC and
19 PAID public meetings as required by the
20 Sunshine Laws of Pennsylvania. In
21 addition, I have sought to review
22 documents held by each of these
23 organizations. I had been permitted to
24 attend PAID meetings and denied
25 admittance to PIDC meetings on the

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2 grounds that it was a private non-profit
3 organization. Initially I was partially
4 denied access to some documents held by
5 PAID, and the documents I wanted to
6 review were not one of the exempted
7 categories under the Pennsylvania Right
8 to Know Law.

9 I subsequently appealed the
10 denial and partial denial of documents by
11 both PAID and PIDC on an individual case
12 and was successful in overturning the
13 partial and had success in the appeal of
14 the full denial by PIDC.

15 On March 17th, 2009, I attended
16 a Board meeting at PAID and there were
17 several items on the agenda, but the one
18 that stood out to me was the selling of a
19 four-acre parcel of land located at
20 2021-71 Woodhaven Road to Philadelphia
21 Union of Insulators and Allied Workers
22 Local 14, or its nominee, for a reduced
23 price of \$157,468. Also on the agenda
24 was an authorization to submit a
25 Redevelopment Assistance Capital Program

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2 grant, RCAP, application on behalf of
3 several organizations to the Commonwealth
4 Office of the Budget and tax-exempt bond
5 financing on behalf of Chemical Heritage
6 Foundation.

7 At the hearing I attempted to
8 ask questions on each of the proposed
9 resolutions: economic impact statement,
10 project description and statement of
11 community participation.

12 I also submitted an objection
13 letter to the Chairman opposing two of
14 the resolutions, specifically the
15 resolution dealing with the discounted
16 land price on the following grounds: The
17 resolution indicated that it was
18 authorized by the Director of Commerce in
19 agreement with Bill No. 1048, Section 3,
20 and this citation of the bill number was
21 incorrect and had been rescinded by Bill
22 No. 040034, Section 3. The land was
23 being sold at a reduced price without
24 justification to a union, in my opinion,
25 that discriminates against African

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2 American males and other minorities.

3 I sent a letter to the Commerce
4 Director, who is also a Board member of
5 the Philadelphia Authority for Industrial
6 Development, who during his tenure had
7 not attended any meeting held by the
8 Philadelphia Authority for Industrial
9 Development. I also sent a letter to
10 Mayor Nutter of Philadelphia about this
11 issue.

12 The Board meeting was
13 subsequently voided because it had not
14 complied with the Sunshine requirements
15 for the advertised public meeting. By
16 way of explanation, all the public
17 hearing dates for the year 2009 for PAID
18 were advertised in the Philadelphia Daily
19 News on December 23, 2008, two days
20 before Christmas. The date above was not
21 on the announced dates.

22 The new date was set for March
23 24th. This meeting was held in the same
24 agenda from March 17th, and I presented
25 my objections again and sent new letters

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2 to both Commerce and the Mayor.

3 On April 21st at the PAID Board
4 meeting, the Board set forth and adopted
5 a new resolution amending the Sunshine
6 Laws by setting reasonable rules and
7 regulations for conduct at its public
8 meetings. The Board chose to amend the
9 Sunshine Laws in three areas: The
10 subject matter limited to current
11 business; the second area was time limit
12 of three to five minutes for residents at
13 the discretion of the Chairman; and a
14 public comment period scheduled at the
15 discretion of the Chairman only for the
16 residents of the City of Philadelphia who
17 pay taxes and non-residents who pay
18 taxes.

19 The Board adopted and approved
20 the resolution and now conducts all of
21 its public meetings in accordance with
22 the above-amended Sunshine Laws. I filed
23 a lawsuit to oppose this, in my opinion,
24 blatant abuse of authority and disregard
25 of citizens' rights, which is in

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2 contradiction of the Sunshine Laws of the
3 State of Pennsylvania. It is also my
4 opinion that it is in direct opposition
5 to the Home Rule Charter, Section 8-407.

6 It was my duty as a citizen to
7 present my experiences to the leadership
8 of this City Council, which you are
9 aware, Mr. Chairman, I did at the close
10 of the last session. It was my testimony
11 at City Council where both you and
12 President Verna took to listen to my
13 concerns, and I thank you both for that.

14 One of the things that's
15 striking about this ordinance that you
16 have now is the part that talks about the
17 requirement that the notice be filed in
18 the City records room, Department of
19 Records, and it be 30 days before the
20 resolution was adopted. In my case, that
21 didn't even happen. And, you know, the
22 Law Department -- what's striking like as
23 a former Philadelphia police officer, one
24 of the things that really turns
25 somebody's stomach that works in the

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2 capacity for the citizens is when
3 somebody turns a blind eye. You know,
4 the Law Department regularly, you know,
5 they -- and the issue that I had, I filed
6 a suit in the case with PIDC. The City
7 Solicitor sits on the Board, and the
8 result of that suit was we went to trial.
9 The case was dismissed because they
10 hadn't really done anything else to me,
11 because I immediately filed suit at the
12 start of it. The judge ruled, in her
13 opinion, that should they continue to do
14 that, then I would come back down there.
15 They denied their claim to have my case
16 dismissed with prejudice. The judge saw
17 through the arguments, and she gave me
18 the opportunity to present that case
19 again.

20 The problem that I had with
21 PIDC and all these other quasi agencies,
22 like the other speaker that came up here,
23 when it comes to City Council and it
24 comes to public notice, nobody does
25 better than City Council. The Chief

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2 Clerk's Office over there, I get a ton of
3 e-mails on every bill that comes before
4 this Council. They absolutely do their
5 job. All your Council offices, you all
6 do your jobs. It's just these quasi
7 agencies where the problem becomes. And
8 it's really important, because on the
9 quasi agencies, it's like a
10 public-private partnership, and the
11 problem becomes when you have businessmen
12 who say, We're going to get this deal
13 done, but that issue about citizen
14 participation, we're going to roll over
15 that. Maybe we'll just put -- maybe
16 we'll put a newspaper advertisement in
17 where somebody talked about this project
18 and we'll submit these applications up.

19 COUNCILMAN GREENLEE: Mr. Ali,
20 I understand what you're saying, but in
21 all fairness, this bill just deals with
22 City Council notices. So I appreciate
23 what you're saying, that we do it right,
24 and I appreciate your raising that issue.
25 I know you raised it before, and I think

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2 you have valid points. Councilman Clarke
3 told me he's working with you on some
4 things.

5 I don't want to cut you off,
6 but we certainly understand what you're
7 saying and, again, we appreciate your
8 saying that Council knows how to do it.

9 MR. ALI: Your Council does it
10 right.

11 COUNCILMAN GREENLEE: And this
12 bill just deals with City Council. So we
13 can't really directly affect what you're
14 talking about.

15 MR. ALI: Well, the problem is
16 with other departments, not the City
17 Council. The City Council does a great
18 job.

19 COUNCILMAN GREENLEE: I
20 understand, and I think that has to be
21 addressed. I understand.

22 MR. ALI: Okay. Thank you.

23 COUNCILMAN GREENLEE: Thank
24 you, sir.

25 Anyone else here to testify on

1 2/24/10 - LAW & GOV'T - BILL 100063

2 this bill?

3 (No response.)

4 COUNCILMAN GREENLEE: Seeing
5 none, for you people already in the
6 audience who are waiting for the Health
7 and Human Services, it should start in
8 just a few minutes.

9 That concludes the hearing of
10 the Committee on Law and Government.
11 We'll now go into the public meeting, and
12 the Chair recognizes Councilman Goode.

13 COUNCILMAN GOODE: Thank you,
14 Mr. Chairman. I move that Bill No.
15 100063 be reported out of Committee with
16 a favorable recommendation and the rules
17 of Council be suspended so as to permit
18 first reading at our next Council
19 session.

20 (Duly seconded.)

21 COUNCILMAN GREENLEE: It's been
22 moved and seconded.

23 All in favor please say aye.

24 (Aye.)

25 COUNCILMAN GREENLEE: Opposed?

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2 (No response.)

3 COUNCILMAN GREENLEE: Hearing

4 none, the motion carries and Bill No.

5 100063 has been reported out of this

6 committee with a favorable recommendation

7 and with a rules suspension for first

8 reading at our next session of Council.

9 Thank you very much. The
10 meeting is adjourned.

11 (Committee on Law and
12 Government concluded at 10:30 a.m.)

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CERTIFICATE

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I HEREBY CERTIFY that the

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proceedings, evidence and objections are

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contained fully and accurately in the

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stenographic notes taken by me upon the

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foregoing matter on February 24, 2010, and

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that this is a true and correct transcript of

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same.

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MICHELE L. MURPHY

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RPR-Notary Public

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