



**Environmental
Planning
Commission**

**Agenda Number: 10
Project Number: 1001620
Case #: 15EPC 40057
November 12, 2015**

Staff Report

Agent City of Albuquerque Planning Department

Applicant City of Albuquerque Council Services

Request
Amending the Subdivision Ordinance section 14-14-5-12, to amend the alternative methods for construction of sidewalks, allowing for a deposit and agreement for completion of sidewalks in residential subdivisions.

Location City-Wide

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of 15EPC 40057 be forwarded to the City Council, based on the Findings beginning on page 4, and subject to the Conditions for Recommendation of Approval beginning on page 5.*

Staff Planner

**Jack Cloud, Chair
Development Review Board**

Summary of Analysis

This request is for a recommendation to City Council for revisions to the Subdivision Ordinance §14-14-5-12, ROA 1994, "Alternative Method for Guaranteeing Sidewalks" to provide an updated process for sidewalk construction as regulated by the Subdivision Ordinance. The revisions are in Bill No. **O-15-62** which was introduced at City Council on September 21, 2015 and referred to the Planning Department for recommendation from the Environmental Planning Commission/ EPC.

The basic intent of the proposed amendments is to streamline the application and bonding requirements currently required to ensure construction of sidewalks in residential subdivisions. While there is an existing "Alternative Method for Guaranteeing Sidewalks", it is impractical and rarely, if ever, used. Accordingly, with this amendment the City is seeking to make the alternative method of guaranteeing construction of sidewalks more feasible.

Staff found additional sections of §14-14-4-5 ROA 1994 that could be amended to help clarify the process for using the alternative method for sidewalk guarantee. Staff recommends that a recommendation of conditional approval be forwarded to the City Council.

City Departments and other interested agencies reviewed this application from 10/03/2015 to 10/21/2015. Agency comments used in the preparation of this report begin on Page 6.

I. INTRODUCTION

Request

This is a proposed change to the Subdivision Ordinance (**O-15-62**) to provide an updated process for sidewalk construction in residential subdivisions. Sidewalks are included as required infrastructure by the Subdivision Ordinance similar to streets and utilities, however the construction of sidewalks are generally delayed, though, with an alternate financial guarantee, until there is a house built on a new lot. This prevents sidewalks from being damaged during house construction.

Purpose/Intent

The intent of the proposed amendments are to alleviate much of the paperwork--for both City staff and developers--and bonding requirements currently required to ensure construction of sidewalks in residential subdivisions. While there is the existing "Alternative Method for Guaranteeing Sidewalks", it is impractical and rarely, if ever, used. Accordingly, with this amendment the City is seeking to make the alternative method of guaranteeing construction of sidewalks more feasible.

Environmental Planning Commission (EPC) Role

The task of the Environmental Planning Commission (EPC) is to make a recommendation to the City Council regarding the proposed text amendments; the EPC is a recommending body with review authority similar to the Zoning Code, but in this case it is a provision of the Subdivision Ordinance §14-14-5-12. The City Council is Albuquerque's legislative body with the authority to amend or adopt ordinances.

II. PROPOSED TEXT AMENDMENTS

When seeking a final plat for a residential subdivision, a developer may elect the alternative method for guaranteeing sidewalks. With this proposed amendment, the developer will deposit a non-refundable fee for 10% of the estimated value of the sidewalks to be constructed. The developer will then enter into an agreement in which the developer will: 1) indemnify the City against claims arising from the sidewalks; 2) acknowledge that the City will not issue a certificate of occupancy for any residence that does not have a sidewalk; and, 3) agree that the City may enter upon the parcel if needed and cause the absent sidewalks to be constructed, which expense could be collected as a statutory lien on the adjoining lot.

The agreement language will also be incorporated into the subdivision's plat. The incentive to construct sidewalks will then be the ability to convey the property with a certificate of occupancy, rather than the carrying and administrative costs to seek relief from bonding requirements.

The 10% fees collected will go into a fund allowing for the construction of missing sidewalks. Once the sidewalks are completed in a particular subdivision and if there are any excess funds, then those monies may be used for other sidewalk projects throughout the City.

After staff review, other portions of this section of the Subdivision Ordinance have been identified for revisions to help clarify and improve the functionality of the alternate method for sidewalk construction. The text amendment ordinance has proposed deleted text from the existing ordinance shown with a ~~strike through~~, and new text is shown with an underline. This is carried through on the proposed revisions below.

1. The proposed amendment will do away with a requirement for a Subdivision Improvements Agreement, and will accept a new form of agreement with a cash deposit instead. On page 1 of the ordinance, lines 17 and 18, the reference to a Subdivision Improvement Agreement should be deleted along with the other amendments – this suggested revision for additional deletion is highlighted in the first two lines of the excerpt below:

(1) ~~Fee.~~ Submit to the City, [with the execution of the Subdivision Improvements Agreement,] a nonrefundable [payment fee for deposit into the incomplete residential sidewalk fund] in the form of a cashier's check in an amount equal to 10% of the estimated cost of construction of the sidewalks [in the subdivision] as calculated by the City Engineer using City unit prices including taxes, surveying, inspection and testing;

2. On page 3 of the ordinance, line 25, the reference to the City's Street Maintenance Program will become outdated, and needs to be changed to clarify that it would be the CIP activity within the Planning Department – this suggested revision is highlighted in the third line of the excerpt below:

The funds received through the [alternative method nonrefundable deposit required under subsection (A)(1) above] will be placed in a separate Capital Implementation Program (CIP) activity in the [Street Maintenance Program Planning Department, within the City's Capital Acquisition Fund 305].

3. The final suggested revision to the text amendment ordinance is at the top of page 4. The ordinance was drafted with some carryovers from the typical Subdivision Improvement Agreement (cost estimates, 125% calculation of that estimate, etc.). As previously noted there will no longer be a Subdivision Improvements Agreement associated with sidewalks, but instead there be a new agreement and a cash deposit. To simplify the new process, this revision with appropriate new language highlighted would read as follows:

(ADA) within the City of Albuquerque [as described in subsection (B)(3) above. Notwithstanding the above, when the sidewalks in a subdivision have been built and accepted by the City, then the funds may be transferred to a Streets Fund and used for pedestrian improvements anywhere in the City consistent with the Complete Streets Ordinance].

III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Note: Policy citations are in regular text; *Staff analysis is in bold italics.*

Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. The purpose of this Charter is to provide for maximum local self government. A liberal construction shall be given to the powers granted by this Charter.”

Amending provisions in the Subdivision Ordinance to allow for a more efficient means of ensuring sidewalk construction in new residential developments is a responsible exercise in local self-government, and generally expresses the Council’s desire to ensure the proper use and development of land.

Albuquerque/Bernalillo County Comprehensive Plan

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision.

The proposed text amendments to the Subdivision Ordinance would provide a predictable framework for development while maintaining the provision of public services/ sidewalks.

IV. CONCERNS OF REVIEWING AGENCIES

There have been no concerns expressed by reviewing agencies.

V. NEIGHBORHOOD/PUBLIC CONCERNS

The proposed text amendments were posted on the Planning Department’s website and announced in October/ November 2015 issue of the Neighborhood News (NN); Staff sent a brief article to the Office of Neighborhood Coordination (ONC) for inclusion in the NN, and has not received any comments as of this writing.

VI. CONCLUSION

These amendments to the Subdivision Ordinance are the result of discussions with developers seeking a more efficient means to ensure the construction of sidewalks, which are generally installed after the other infrastructure in a subdivision is completed, accepted, and financial guarantees are released to the

developer. The amendments will still provide recourse for the City to see sidewalks completed, but without the continual renewal of Subdivision Improvement Agreements and associated financial guarantees, saving time and paperwork for both staff and developers.

RECOMMENDED FINDINGS - 15EPC-40057, November 12, 2015 - Subdivision Ordinance Text Amendments

1. The request is for a recommendation to City Council regarding text amendments to the City's Subdivision Ordinance to provide more efficient means of alternate sidewalk construction as required by the City Subdivision Ordinance.
2. The intent of these particular text amendments to the Subdivision Ordinance is to allow an up-front deposit for completion of sidewalks and an agreement to be a covenant on a subdivision plat, in lieu of a separate Subdivision Improvement Agreement and financial guarantee.
3. The proposed text amendments are found in legislation authored by Council Services Staff and known as Bill No. **O-15-62**. O-15-62 was introduced at City Council on September 21, 2015 and subsequently referred to the Planning Department for review. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's legislative body and will make the final decision regarding City Ordinances.
4. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Subdivision Ordinance are incorporated herein by reference and made part of the record for all purposes.

5. Intent of the City Charter:

Adding provisions to the Subdivision Ordinance to allow for guarantee of public infrastructure (sidewalks) in a more efficient manner is a responsible exercise in local self-government, and generally expresses the Council's desire to ensure the proper use and development of land.

(City Charter, Article I).

6. Goals and Policies of the Comprehensive Plan:

The proposed text amendments to the Subdivision Ordinance would provide a predictable framework for development while maintaining the provision of public services/ sidewalks.

RECOMMENDATION - 15EPC-40057, November 12, 2015- Subdivision Ordinance Text Amendments

That a Recommendation of APPROVAL of Text Amendments to the Subdivision Ordinance, be forwarded to the City Council based on the preceding Findings and subject to the following Conditions for Recommendation of Approval.

CONDITIONS FOR RECOMMENDATION OF APPROVAL - 15EPC-40057, November 12, 2015-
Subdivision Ordinance Text Amendments

1. On page 1 of the ordinance, revise lines 17 and 18 to show deletion of the reference to a Subdivision Improvement Agreement, such that the subject paragraph appears as follows:

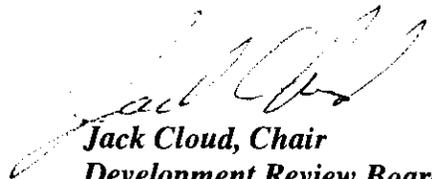
(1) Fee.] Submit to the City, [with the execution of the Subdivision Improvements Agreement,] a nonrefundable [payment fee for deposit into the incomplete residential sidewalk fund] in the form of a cashier's check in an amount equal to 10% of the estimated cost of construction of the sidewalks [in the subdivision] as calculated by the City Engineer using City unit prices including taxes, surveying, inspection and testing;

2. On page 3 of the ordinance, line 25, delete the reference to the City's Street Maintenance Program and insert in its place the words Planning Department, such that the subject sentence appears as follows:

The funds received through the [alternative method nonrefundable deposit required under subsection (A)(1) above] will be placed in a separate Capital Implementation Program (CIP) activity in the [Street Maintenance Program Planning Department, within the City's Capital Acquisition Fund 305].

3. On page 4 of the ordinance, revise lines 1 thru 7 with appropriate new language such that the ending of the subject amendment appears as follows:

(ADA) within the City of Albuquerque [as described in subsection (B)(3) above. Notwithstanding the above, when the sidewalks in a subdivision have been built and accepted by the City, then the funds may be transferred to a Streets Fund and used for pedestrian improvements anywhere in the City consistent with the Complete Streets Ordinance].



Jack Cloud, Chair
Development Review Board

cc: City of Albuquerque, City Council, Attn: Andrew Webb, P.O. Box 1293, Abq. NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Abq. NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement

Office of Neighborhood Coordination

10/13/15 – Newsletter article received, to be published in the “Neighborhood News” newsletter for official notification to the NA/HOA/Coalitions

Long Range Planning

CITY ENGINEER

Transportation Development Services

Traffic Engineering Operations

Hydrology

DEPARTMENT OF MUNICIPAL DEVELOPMENT

Transportation Planning

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Parks and Recreation Department has reviewed and has no adverse comments for this request.

Open Space Division

OSD has reviewed and has no adverse comments.

City Forester

POLICE DEPARTMENT/PLANNING

No Crime Prevention or CPTED comments concerning the proposed *Amendment to Zoning Code* request at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

No comment.

FIRE DEPARTMENT/PLANNING

TRANSIT DEPARTMENT

Adjacent and nearby routes	None
Adjacent bus stops	None
Site plan requirements	None
Large site TDM suggestions	None.
Other information	None

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed. No comment.

ALBUQUERQUE PUBLIC SCHOOLS

MID-REGION COUNCIL OF GOVERNMENTS

MRMPO has no adverse comments.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.

FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

ANNEXATION (EPC08)

- ___ Application for zone map amendment including those submittal requirements (see below).
Annexation and establishment of zoning must be applied for simultaneously.
 - ___ Petition for Annexation Form and necessary attachments
 - ___ Zone Atlas map with the entire property(ies) clearly outlined and indicated
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - ___ Letter describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - ___ Letter of authorization from the property owner if application is submitted by an agent
 - ___ Board of County Commissioners (BCC) Notice of Decision
 - ___ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
 - ___ Sign Posting Agreement form
 - ___ Traffic Impact Study (TIS) form
 - ___ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.* Your attendance is required.

- SDP PHASE I – DRB CONCEPTUAL PLAN REVIEW (DRBPH1)** (Unadvertised)
- SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14)** (Public Hearing)
- SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2)** (Unadvertised)

- ___ Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
 - ___ Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
 - ___ Zone Atlas map with the entire plan area clearly outlined and indicated
 - ___ Letter describing, explaining, and justifying the request
 - ___ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
(for EPC public hearing only)
 - ___ Traffic Impact Study (TIS) form (for EPC public hearing only)
 - ___ Fee for EPC final approval only (see schedule)
 - ___ List any original and/or related file numbers on the cover application
- Refer to the schedules for the dates, times and places of DRB and EPC hearings.* Your attendance is required.

AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- ___ Zone Atlas map with the entire property clearly outlined and indicated
 - ___ Letter describing, explaining, and justifying the request pursuant to Resolution 270-1980.
 - ___ Letter of authorization from the property owner if application is submitted by an agent
 - ___ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
 - ___ Sign Posting Agreement form
 - ___ Traffic Impact Study (TIS) form
 - ___ Fee (see schedule)
 - ___ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.* Your attendance is required.

AMENDED TO SECTOR DEVELOPMENT MAP (EPC03)

AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- ___ Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
 - ___ Plan to be amended with materials to be changed noted and marked
 - ___ Zone Atlas map with the entire plan/amendment area clearly outlined
 - ___ Letter of authorization from the property owner if application is submitted by an agent (map change only)
 - ___ Letter describing, explaining, and justifying the request pursuant to Resolution 270-1980 (Sector Plan map change only)
 - ___ Letter briefly describing, explaining, and justifying the request
 - ___ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
(for sector plans only)
 - ___ Traffic Impact Study (TIS) form
 - ___ Sign Posting Agreement
 - ___ Fee (see schedule)
 - ___ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.* Your attendance is required.

AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
 - Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
 - ___ Letter describing, explaining, and justifying the request
 - ___ Fee (see schedule)
 - List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.* Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Applicant name (print)

Applicant signature & Date

Revised: June 2011



- Checklists complete
 - Fees collected
 - Case #s assigned
 - Related #s listed
- Application case numbers
DEPL - 40057

Staff signature & Date
10-1-15

Project # 1001620

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1 have been satisfactorily constructed to City standards and accepted by the
2 City Engineer, the subdivider shall indemnify the City against any and all
3 claims, suits and actions arising from the absence of any sidewalk or arising
4 from any failure to construct the sidewalks;

5 (b) The City will not issue a certificate of occupancy for any
6 parcel until such time as the adjoining sidewalk has been satisfactorily
7 constructed to City standards and accepted by the City Engineer; and

8 (c) At any time the City may, in its discretion, enter upon any
9 parcel and cause the absent sidewalks to be constructed, and charge the cost
10 of construction against such parcel. Such charge shall be a statutory lien
11 against the parcel, which lien may be recorded and foreclosed by the City as
12 provided in NMSA 1978 §§3-36-1 et seq.]

13 [Place (B) Notice on Plat. The subdivider shall cause] a note [to be placed]
14 on the [Final] Plat[,that incorporates by reference the alternative sidewalk
15 construction agreement described in subsection (A)(2) above and this
16 ordinance,] which note shall constitute a covenant running with the title [to the
17 real property as shown on the Final Plat in, and pursuant to] which the owner
18 of [the subdivision each respective parcel and their successors and assigns,]
19 agrees[= to and is bound by the terms of the alternative sidewalk construction
20 agreement jointly with the subdivider.]

21 ~~(1) Until all of the sidewalks as shown on the approved construction~~
22 ~~plans and Final Plat have been satisfactorily constructed to City Standards~~
23 ~~and accepted by the City Engineer, owner shall indemnify the City against any~~
24 ~~and all claims, suits and actions arising from the construction of the sidewalks~~
25 ~~or arising from any failure to construct the sidewalks;~~

26 ~~(2) Owner shall not be entitled to a certificate of occupancy on any lot~~
27 ~~for which the adjoining sidewalk has not been satisfactorily constructed to~~
28 ~~City Standards and accepted by the City Engineer;~~

29 ~~(3) The owner(s) of the subdivided lot(s) shall be responsible to~~
30 ~~construct the sidewalk fronting and adjoining each owner's lot. Failure to~~
31 ~~construct sidewalks within four years from the date of filing the Final Plat in~~
32 ~~the County Clerk's Office shall result in proceedings to foreclose the City lien.~~

1 ~~[In the event owner elects the alternative method for the construction of~~
2 ~~sidewalks the City shall file a statutory lien against the real property shown on~~
3 ~~the approved Final Plat as provided in Section 3-36-2 NMSA 1978. The City~~
4 ~~lien shall be filed to guaranty construction of the sidewalks in an amount not~~
5 ~~less than 125% of the cost of constructing the sidewalks as estimated by the~~
6 ~~City Engineer. The lien shall be recorded with the Final Plat by the Planning~~
7 ~~Director in the office of the County Clerk and if necessary shall be foreclosed~~
8 ~~in the manner provided in Sections 3-36-4 to 3-36-6 NMSA 1978. The Planning~~
9 ~~Director shall not issue a certificate of occupancy for any lot on which an~~
10 ~~adjoining sidewalk has not been satisfactorily constructed to City Standards~~
11 ~~and accepted by the City Engineer. The City may upon the approval of the~~
12 ~~City Engineer execute a partial release of lien upon the subdivision if the City~~
13 ~~Engineer determines that the sidewalk(s) are satisfactorily constructed to City~~
14 ~~standards. The lien created herein may be released at any time upon payment~~
15 ~~to the City of an amount not less than 125% of the cost of constructing the~~
16 ~~sidewalks as estimated by the City Engineer. The lien established herein shall~~
17 ~~be a first and prior lien on the property subject only to the lien of general state~~
18 ~~and county taxes.~~

19 ~~—The alternative method for construction of sidewalks shall only apply to~~
20 ~~residentially zoned subdivisions and for which a residential lot adjoins the~~
21 ~~sidewalk.~~

22 (C) Incomplete Residential Sidewalk Fund. The funds received through the
23 ~~[alternative method nonrefundable deposit required under subsection (A)(1)~~
24 ~~above]~~ will be placed in a separate Capital Implementation Program (CIP)
25 activity in the Street Maintenance Program [, within the City's Capital
26 Acquisition Fund 305]. All interest earned by these funds will be accrued to
27 the separate CIP activity [and] ~~[-The funds will be held for the exclusive~~
28 ~~purpose of guaranteeing the installation of sidewalks elected under the~~
29 ~~alternative method. The account will maintain at least 25% of the amount to~~
30 ~~construct the sidewalks guaranteed under the alternative method. Any time~~
31 ~~the account exceeds 25% of the amount guaranteed under the alternative~~
32 ~~method, the excess funds.]~~ may be used [solely] to install missing sidewalks
33 or construct sidewalks to comply with the Americans With Disabilities Act

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1 (ADA) within the City of Albuquerque [as described in subsection (B)(3) above.
2 Notwithstanding the above, if at any time in the reasonable estimation of the
3 City Engineer, the funds available exceed 125% of the amount needed to fulfill
4 anticipated needs for the construction of new sidewalks guaranteed under this
5 alternative method, then any funds in excess of 125% may be used for
6 pedestrian improvements anywhere in the City consistent with the Complete
7 Streets Ordinance].

8 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
9 clause, word or phrase of this Ordinance is for any reason held to be invalid or
10 unenforceable by any court of competent jurisdiction, such decision shall not
11 affect the validity of the remaining provisions of this Ordinance. The Council
12 hereby declares that it would have passed this Ordinance and each section,
13 paragraph, sentence, clause, word or phrase thereof irrespective of any
14 provisions being declared unconstitutional or otherwise invalid.

15 SECTION 3. COMPILATION. Section 1 of this Ordinance shall amend, be
16 incorporated in and made part of the Revised Ordinances of Albuquerque,
17 New Mexico, 1994.

18 SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five (5)
19 days after publication by title and general summary.

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[+ Bracketed/Underscored Material+] - New
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