

July
2013

The Councillor Conduct Guide

For representatives elected under the
Queensland Local Government Act 2009

Parts of this guide may not apply to Brisbane City Councillors

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

That the CMC make a unique contribution to protecting Queenslanders from major crime, and promote a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

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Foreword

Local government is central to the way in which our tiered system of government operates. Elevation to public office as a local government councillor carries with it a great deal of responsibility. As the elected representative for your local area, you have an obligation to act ethically at all times and to maintain the primacy of the public interest. This involves setting high standards of behaviour and leading by example.



In performing your functions, you are required to identify the needs of the community, determine the strategic objectives of the council, and allocate resources to best address these priorities. In undertaking these functions, there may be occasions where your private interests intersect with the broader public interest of the community you serve. Such circumstances need careful consideration: you are required to demonstrate a commitment to the principles of the *Local Government Act 2009* and to act accordingly.

To assist you in meeting your obligations, the Crime and Misconduct Commission has developed this guide as a practical advisory resource to guide ethical behaviour.

The Crime and Misconduct Commission is committed to working with local governments across Queensland to help build capacity and to foster a culture of best practice in preventing misconduct. Together, we can identify and deal with emerging risks to the sector as well as develop strategies to address those risks.

I commend this publication to you, and am confident that it will assist you in undertaking your official functions and help inspire public confidence in the operation of local government.

Dr Ken Levy

Acting Chairperson

July 2013

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Essential principles of local government

Good governance refers to the rules, processes and behaviour that shape how powers are exercised. Everyone has a role to play in the governance of a council — from the person offering advice at the customer service counter to the Councillor representing constituents. Effective governance relies on an understanding of the different roles played by elected representatives and employees and the successful working relationships that are established as a result.

The *Local Government Act 2009* (the Act) creates clear obligations for Councillors in carrying out their responsibilities. Section 4(2) of the Act provides five core principles:

- a. transparent and effective processes, and decision making in the public interest
- b. sustainable development and management of assets and infrastructure, and delivery of effective services
- c. democratic representation, social inclusion and meaningful community engagement
- d. good governance of, and by, local government
- e. ethical and legal behaviour of Councillors and local government employees.

The benefits of good governance can also extend through all aspects of your council through developing and implementing tools such as:

- corporate and operational plans
- annual budgets and future budget forecasts
- appropriate and clear delegations
- a code of conduct for staff
- systems for monitoring and reporting (being able to measure and report performance against the stated objectives and budget)
- a reliable information management system capable of retaining council information in a structured and secure manner
- a risk management system (operational, misconduct and financial).

The use of these tools can contribute to a stable, transparent and ethical decision-making process.

As an elected official you are responsible for leading the development of your council and helping set the ethical tone. The role is a diverse and complex one with expectations to deliver from a variety of stakeholders and your conduct will often be analysed publicly.

There are three tiers of unacceptable conduct. The Local Government Act identifies:

Inappropriate conduct (s. 176(4)) is conduct not appropriate for a Councillor — for example, when a Councillor fails to comply with a council procedure, or behaves in an offensive or disorderly way in a council meeting or any of its committees.

Misconduct (s. 176(3)) is conduct that adversely affects, or could adversely affect, the honest and impartial performance of a Councillor's responsibilities or exercise of powers, or the misuse of information or material accessed by a Councillor in their role. This includes repeated inappropriate conduct, which may be assessed as misconduct and dealt with accordingly.

The *Crime and Misconduct Act 2001* identifies:

Official misconduct (ss. 14–19) includes conduct that could, if proved, amount to a criminal offence. This includes conduct connected with the performance of a Councillor's official duties that is dishonest or lacks impartiality; involves a breach of the trust placed in the Councillor by virtue of their position; or is a misuse of officially obtained information.

Assessing alleged unacceptable conduct

Where a complaint about a Councillor's conduct has been received by the local government, a preliminary assessment will be undertaken by the council's Chief Executive Officer (CEO) in accordance with s. 176B of the Act. The exception to this is where a complaint is made by a CEO or Mayor, in which case it must be referred to the Department of Local Government, Community Recovery and Resilience CEO (Department's CEO) for preliminary assessment.

An allegation may be about:

- a frivolous matter, was made vexatiously or is lacking in substance. Such allegations need not be referred to an external agency and the CEO can decide to take no further action. The complainant must be notified of the decision.
- inappropriate conduct by a Mayor or Deputy Mayor, which must be referred to the Department's CEO.
- inappropriate conduct by a Councillor (other than the Mayor or Deputy Mayor), which must be referred to the Mayor for action. Such action may include an order reprimanding the Councillor or an order that any repeat of the conduct be referred to the Regional Conduct Review Panel as misconduct. Where inappropriate conduct occurs in a meeting, the chairperson may order that the conduct be noted in the minutes or that the Councillor leave the meeting for the remainder of the meeting.
- misconduct, which must be referred to the Department's CEO
- official misconduct, which must be dealt with under the *Crime and Misconduct Act 2001*, and referred to the CMC.

Care should be taken in assessing matters properly, including paying particular attention to elements that may constitute official misconduct. When in doubt it is safer to refer a matter than to dismiss it.

It should be noted that penalty provisions now exist for a Councillor who makes 'substantially' the same complaint as any of their previous complaint(s) and where the previous complaint(s) have been deemed frivolous, made vexatiously or lacking in substance.

Managing your personal interests

All of us have personal interests — for example, our possessions or our professional, sporting or social affiliations. In your role as Councillor, you may sometimes find that a matter that comes before the council could affect one of your personal interests — that is, your *personal* interest may be different from the *public* interest.

Having an interest in a matter is not in itself wrong; it is how it is managed that is important. Remember that the ethical tone of the council is set at the top by you and the senior executives. Before taking any action or committing to any decision ask yourself:

1. Is the action legal and consistent with council policies?
2. Is the action in line with stated goals and objectives (such as the strategic plan and local government principles)?
3. Is it the 'right' thing to do?
4. What will the outcome be for the council, your colleagues and you?
5. Can the action be justified?
6. Would the action stand up to public scrutiny?

Your general conduct

The issue of personal interests is relevant to Councillors in day-to-day behaviour and interactions as well as in council meetings. In general, it is up to you to recognise your various interests and manage them with transparency and accountability. This is particularly important when exercising delegated responsibility or providing discretionary funding.

It is strongly recommended that you discuss the issues with someone else (such as the Mayor or CEO or delegated officer) and also consider:

- Could someone from outside the council or outside your family perceive that you have a conflict of interest?
- What you would think if you saw someone else doing this — would you be suspicious?

- How you would feel if your actions were printed on the front page of the newspaper?
- Who could be hurt and who could benefit?
- Might people think you are unfair or the council is unfair?
- Should you consult with someone who knows more about these things than you do?

If you answered yes to any of these questions, the following steps will assist you in managing the situation in an ethical, transparent and accountable manner.

Step 1. Recognise the type of interest

The first step is to recognise the various interests that you have and, if in doubt, to seek independent advice from the Mayor, CEO or another suitable person. Some of the interests may include:

- material personal interests
- conflicts of interest.

A **material personal interest** (s. 172(2)) involves the ability for you or an associate to *gain a material benefit or suffer a material loss as a result of a decision that is made*. It includes interests that arise from personal or family relationships (real estate, shareholdings, family or business trusts).

A **conflict of interest** is a conflict between your personal interests and the public interest that might lead to a decision that is contrary to the public interest.

Step 2. Disclose the interest by documenting it

A Register of Interests is a compilation of all financial and non-financial interests that you hold (as prescribed in Part 5 and schedule 4 of the Local Government Regulation 2012).

You will be required to formally declare all known financial and non-financial interests on a Register of Interests maintained by the CEO. This includes declaring interests of related persons such as a spouse, dependent or associate. You must update the records within 30 days after knowing of the interest or change to an interest. Your council will have access to standard forms. Note that failure to comply may result in a criminal conviction and dismissal from the council.

Step 3. Disclose it verbally where relevant

Where matters relating to your interests are under discussion at any council or committee meeting, you must disclose them. It is also good practice to restrict your involvement in other formal or informal discussions or proposals or to remove yourself from same if they could give rise to a conflict of interest. This is explained in more detail in the following section.

Disclosing interests at meetings

You need to be able to recognise personal interests of any kind and be aware of the correct procedures for disclosing them at a meeting.

Disclosing a material personal interest at a meeting

A material personal interest must be disclosed at a meeting when a relevant matter arises. Failure to comply may result in a criminal conviction and dismissal from the council.

In certain situations a material personal interest will be exempted — for example, decisions relating to the making of a rate or charge, remuneration of Councillors, or a planning scheme with general application to the local government area (see the definition of ‘ordinary business matter’ in Schedule 4 of the Act). Additionally, a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in the local government area.

If you have disclosed a material personal interest you must leave the meeting and the meeting room (including any public area). The only exemption to this is where the Minister grants approval for you to take part in a meeting (having assessed the terms of your interest). The exemption must be sought prior to the meeting date.

Disclosing a conflict of interest at a meeting

When a relevant matter arises at a meeting, you must disclose any real or perceived conflict of interest. Section 173 provides guidance to manage the conflict of interest, including requirements to:

- deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way
- inform the meeting of your personal interests in the matter
- outline how you intend to deal with the conflict of interest, if you participate in the meeting.

In certain situations a conflict of interest will be exempted — for example, decisions relating to the making of a rate or charge, remuneration of Councillors, or a planning scheme with general application to the local government area (see the definition of 'ordinary business matter' in Schedule 4 of the Act).

Section 173(8) requires certain information to be recorded in the minutes of the meeting. Using this section as a template, council may develop a guidance document to assist Councillors in complying with the administrative aspect of the section. The guidance document should provide sufficient prompts for Councillors to self-assess and prepare information for the meeting.

A Councillor may be a member of a community group, sporting club or similar organisation or be invited to act as patron. There are certain exemptions provided under s. 173(3)(a). However, you should be cognisant of situations or matters that may arise which raise a perceived conflict of interest and ensure you manage them accordingly. In some cases (particularly requests to be a patron or similar) it is sensible to advise the council of your intention to accept and it is good practice to update your Register of Interests.

If your local government nominates you to be a member of a board of a corporation or other association and you are subsequently appointed, you will not have a personal interest merely because of the nomination or subsequent appointment.

These provisions mean that conflicts of interest can be handled in ways other than non-participation at meetings. This allows for greater decision making by you and the council. Therefore, you need to be objective and consultative when determining the most appropriate way to deal with conflicts of interest. Do not underestimate the consequences of a real or perceived conflict of interest; if in doubt, seek advice and declare it to the meeting.

Scenario

A Councillor is a patron of a local community organisation that has a funding application before the council. In accordance with the Act, the Councillor declares a perceived conflict of interest to the council meeting. The Councillor explains why the interest is perceived (rather than real) and confirms that the role of patron is honorary with no administrative or management obligations or influence.

The amount of funding being sought is minor. The Councillor remained independent of the funding assessment process and has no administrative or management role with the community organisation. For these reasons, the Councillor considers they have dealt with the perceived conflict of interest by declaring it to the council.

The minutes record that the Councillor voted to approve the funding along with all other Councillors at the meeting.

Caretaker period

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During the caretaker period, a Councillor and the local government have certain obligations. Sections 90A–D limit the major policy decision-making powers during the caretaker period. This includes decisions on appointing, terminating or remunerating a CEO and entering into a contract above specified thresholds. There is also an obligation on the local government to not publish or distribute election matter for the election.

Part 6 of the *Local Government Electoral Act 2011* (LGEA) provides for the disclosure of gifts and loans (donations). In broad terms, you must disclose the full details of all gifts given to you, or to any group of candidates to which you belong, for electoral purposes. This includes the proceeds of fundraising events. Those giving such gifts, raising funds or incurring election expenditure on your behalf must also declare their contributions. You should make yourself aware of these provisions and in cases of complex or sensitive matters seek independent legal advice.

Councillors should be aware of the conflict of interests or material personal interests that may arise as a result of receiving a gift or loan from a donor particularly where consideration of a matter involves that donor. In various circumstances a conflict of interest or material personal interest may arise, for example:

1. You expect that, depending on the outcome of the issue, the donor, you or someone closely connected to you stand to gain a benefit or suffer a loss.¹

Given the terminology used in the LGEA it is apparent that this paraphrases the material personal interest provisions of the Local Government Act. Where this is the case you must take action to document and disclose your interest as outlined in section 3 of this guide.

2. You expect that if you support the donor's interests in the issue, you will be offered (and you intend to accept) further campaign donations from the donor.

Note that electoral donations do not necessarily involve a material personal interest. However, if you intend to accept further donations from the donor and you expect, or could reasonably expect, that the offer of donations is dependent on the outcome of the matter before the council, you have a material personal interest in the issue.

3. The degree or size of the campaign donation is such that an independent observer who knows the relevant facts would perceive that the donation could influence your support for the donor's interests in the issue.

¹ For guidance refer to s. 172(2) of the Act and ss. 289–297 of the Local Government Regulation 2012.

Even if the donation does not amount to a material personal interest, having accepted it, you should declare it as a potential conflict of interest in any matter relating to the donor. Each matter must be considered on a case-by-case basis, particularly with respect to the specific issue and the relative size of the donation. Declaring the interest at relevant meetings and disclosing all the relevant facts will ensure a transparent outcome.

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Interactions with council staff

Requests for information

In order to maintain the integrity of the relationship between the strategic (your role) and the administrative (staff and operations) elements of the council, it is important for Councillors to understand their obligations in dealing with council staff.

Section 170A of the Act provides a framework for Councillor–staff interactions. As part of that framework, Councillors must deal with staff in accordance with the council’s Acceptable Requests Guidelines. You should familiarise yourself with these guidelines and seek advice from the Chief Executive Officer (CEO) to resolve any uncertainties or matters not clearly defined in the guidelines.

The guidelines will specify the channels to use when requesting information or advice from council staff, and the appropriate ways to provide staff with information or knowledge about specific matters.

A Councillor (including the mayor) must **not** under any circumstances give a direction to a staff member and only the mayor may give a direction to the CEO or senior executive employees. This includes ‘requests’ framed in such a way that staff interpret them as instructions, or that seem to be an attempt to exert improper influence over a process or a decision.

The purpose of the provision is to enhance working relationships between staff and Councillors by providing a framework for constructive interactions.

Recruitment

It is important that you distance yourself from any recruitment process and you are not perceived as abusing your elected office by seeking to improperly influence decisions relating to employing or promoting council staff.

References

You should take great care in giving references to people. Any reference you may choose to give should be carefully worded to clearly show that it is a personal reference from you, and not an official statement endorsed by the council or the council administration.

Accordingly, you should not use council letterhead for giving references or use council records or databases to provide information for a personal reference.

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Use of information by Councillors

As a Councillor (current or past) you must not use information obtained through your role as a Councillor in order to gain a financial or other advantage for yourself, a relative or an associate, or to cause detriment to the local government. This extends to providing inside information to another person whether you are currently a Councillor or were previously a Councillor.

Respecting the classification (confidential, restricted etc.) given to information is important in protecting the content of the information (including references to people or commercial-in-confidence information) and the integrity of your council. The only exception to s. 171 is when the information used or provided to a person was lawfully available to the public in the first instance. Failure to comply may constitute official misconduct and risk a criminal conviction and dismissal.

Scenario

During a tender process a Councillor provides confidential information to an associate which provides an advantage to the associate's tender. The Councillor stands to gain directly (through a cash payment) or indirectly (through the provision of work for their family).

The Act prohibits using information gained from council, not ordinarily available to the public, to gain directly or indirectly a financial or other advantage for yourself, a relative or an associate. A breach of the Act in this way may result in a penalty of up to 1000 penalty units or two years imprisonment (under s. 171A) and could constitute official misconduct.

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Using official resources

Using official resources ethically is important. As a Councillor you have access to a range of resources to assist you in carrying out your official duties. These may be assets, services or consumables — in other words, anything paid for or provided by the council. They include:

- time which is being paid for by the council (staff, contractors or your own time)
- council money (for example, petty cash, general fund money and trust fund money)
- communication and information devices (computer equipment and phones, internet and email services)
- services provided by council staff
- office space, fit-outs and furniture
- motor vehicles, fuel, spare parts and motor accessories
- office equipment (photocopiers, staplers, guillotines, laminators etc.) and stationery (paper, staples, binders etc.)
- tools, machinery or other equipment (from offices, libraries, vehicles etc.)
- participation in conferences, seminars and other events
- travel, accommodation and transportation.

You must never use official resources for private purposes unless approved under specific circumstances, such as when:

- you are authorised by council policy or contract to do so (for example, private use of a motor vehicle)
- you have written approval from the CEO
- you have paid the appropriate hire fee
- the particular use is defined by a council policy as reasonable use.

The public interest must come first at all times and, as such, approved personal use of official resources should never interfere with council operations.

When using publicly funded resources, always consider whether the use is reasonable, whether it might be perceived as misuse, and whether it could involve any possible risk of damage to property or the council's reputation.

The interpretations applied to 'reasonable use' vary significantly and must be assessed on a case-by-case basis. As a guide, 'reasonable use' would apply to use that is infrequent, of a limited nature, and not involving great expense or time. Therefore occasional and minor use of a basic office resource — for example, making a personal telephone call to make a doctor's appointment — may be considered appropriate. Frequent and extensive use, on the other hand, may be regarded as unreasonable — for example, making numerous lengthy personal calls, including interstate and overseas.

Scenario

A Councillor is provided access to council resources including a photocopier, phone and administrative support to carry out their role and functions. On regular occasions, however, the Councillor also uses those resources to copy and email information and have lengthy conversations with clients related to their private interests (running a personal business).

The misuse of resources and equipment creates a cost burden to council and sets a poor ethical example. A Councillor conducting private business through the use of council's resources may create a conflict of interest or bring the council into disrepute through their actions.

Entitlements and claims

You may be eligible for a range of entitlements and remunerations associated with your role. However, you can only claim expenses and facilities that are expressly catered for in the Expenses Reimbursement Policy. Although each council's policy will differ to some extent, reasonable expenses incurred by Councillors for discharging their duties and responsibilities may include:

- travel allowances
- meal allowances
- accommodation allowances.

Claims for reimbursement in excess of actual expenses, or for expenses of a political or private nature and unrelated to council business, are not acceptable and may constitute fraud. Examples may include:

- claiming a travel allowance to visit a friend
- claiming meal allowances for meals that have been paid for as part of a conference registration
- claiming the cost of equipment that you retain for private use
- billing repairs of private equipment to the council
- claiming expenses that were not incurred by you or that were incurred on private business
- claiming the costs of election advertising
- claiming the costs of mail-outs or other information which are political advertisements as opposed to general information related to the council.

Fraud is a criminal offence and as such could result in a criminal conviction and dismissal from the council.

Managing gifts and benefits

From time to time you may be offered a gift or some other benefit in your official capacity as a member of the council. It is important to consider the implications of accepting, since poor choices can lead to embarrassment, an investigation and even disciplinary or criminal action.

A gift can be any item of value — money, voucher, entertainment, hospitality, travel, commodity, services, property — that a person provides to you. Gifts may be offered as an expression of appreciation with no expectation of anything in return; equally, however, they may be given to create a feeling of obligation or indebtedness. If a gift, or a series of gifts from the same source, is valued at over \$500, they must be recorded on your Register of Interests.

A benefit is similar to a gift in that it is of value to the recipient or associate but is less tangible. Examples may include benefits to you such as preferential treatment (discounts or bonuses), personal services, access to confidential information, honorary memberships, or benefits to a friend, relative or associate such as a new job or promotion. Schedule 4 of the Local Government Regulation 2012 also prescribes criteria regarding sponsored hospitality benefits which must be recorded on your Register of Interests.

As a Councillor you have an obligation to maintain transparency and integrity at all times. A fundamental principle in relation to accepting gifts is that of 'ownership based on employment'. This means that a gift offered to you in your official capacity does not belong to you as an individual but to the council you represent.

You must declare a gift or benefit in accordance with your council's policy. The CEO or other delegated official will make a decision as to what should be done with it. While policies vary, they will generally provide:

- a value threshold (based on a fair market value of the gift or benefit) below which a small or token gift need not be declared
- a process by which declared gifts may be retained by the recipient
- special conditions for gifts of cultural or historical significance
- arrangements to ensure that any Fringe Benefits Tax obligations are properly met
- a process to ensure that the Register of Gifts and Benefits is properly maintained and publicly available.

As a Councillor, you have additional obligations. All gifts should be considered as possibly creating a real or perceived conflict of interest, and should be declared at meetings where matters concerning the donor are under discussion. Remember, it is not whether anything was done in return that matters, but whether the acceptance of the gift could be perceived as possibly influencing your conduct.

In the context of government, a 'bribe' can be defined as anything offered to someone in public office in order to influence their behaviour in that office, and to induce them to act in a way that is contrary to the known rules of honesty and integrity. It is therefore an unethical and non-transparent process.

Any offer of a bribe is illegal. It should be declined and reported immediately to the CEO who can determine whether to refer it to the police (as it is an offence to bribe a public official) and/or the CMC.

Example

Between 2001 and 2006, a Minister of the Crown accepted a number of private payments from businessmen associated with companies that had dealings with the minister's various departments.

He was subsequently convicted on more than 40 charges of official corruption and received a lengthy prison sentence. He will not be eligible for parole until 2014.

The *Integrity Act 2009* regulates the contact between a government representative (you as a Councillor) and lobbyists advocating on behalf of third parties (third party lobbyists). Various strategies are now in place across the public sector to ensure that there is transparency in the way interest groups present their cases to government agencies.

Lobbying is a valuable source of information to government, and there is nothing intrinsically wrong in someone seeking to present a case in support of something they wish government to do. However, problems can arise when attempts are made to disguise the source of advice and opinions conveyed to government, or to use undue influence to give force to those opinions.

As a Councillor, it is considered good practice to:

- record anything relevant to you making a determination or decision
- adequately document all contacts with lobbyists
- have no dealings with third party lobbyists who are not registered on the Integrity Commissioner's Register of Lobbyists
- record all contacts with registered lobbyists on a council Register of Contacts where one exists
- report any contact from third party lobbyists who are not registered; you may report directly to the Integrity Commissioner or you may delegate your CEO or other senior council officer to report on your behalf
- have no dealings with any former government official (Councillor, Minister, senior public servant) on any matter with which they were formerly connected (for a period of two years after they leave government service).

The Integrity Act does not make any provisions in relation to people or organisations lobbying on their own behalf (such as developers, charities, community organisations or persons making applications or submitting bids to the council), but your council's policy may place requirements on you for reporting these contacts. You should check your local policy to ensure that your dealings with members of the public reach the required standards of transparency.

For more information



To gain the most from this guide you should examine your council's policies and procedures and liaise with the CEO or their delegate. Further information is also available through the Department of Local Government, Community Recovery and Resilience website, the Local Government Association of Queensland (LGAQ) and Misconduct Prevention Advisers within the CMC.

Information of direct relevance to this guide and your role as a Councillor includes the:

- *Local Government Act 2009*
 - Local Government Regulation 2012
- *Local Government Electoral Act 2011*
- *City of Brisbane Act 2010*
 - City of Brisbane Regulation 2012
- *Crime and Misconduct Act 2001*
- *Public Sector Ethics Act 1994*
- Department of Local Government, Community Recovery and Resilience guidance
 - 2012, *Councillor Resource Kit*
 - Information available at <www.dlg.qld.gov.au>
- Queensland Ombudsman guidance <www.ombudsman.qld.gov.au>
 - 2008, *Local Government case book*
 - 2010, *Complaints matter: a review of the complaints management systems of local councils in Queensland*
- Queensland Audit Office <www.qao.qld.gov.au>
- Office of the Information Commissioner (Queensland) <www.oic.qld.gov.au>
- Public Service Commission <www.psc.qld.gov.au>

All Queensland legislation is available at <www.legislation.qld.gov.au/OQPChome.htm>.

For further information about misconduct prevention please email <mailbox@cmc.qld.gov.au> or contact a misconduct prevention adviser on 3360 6060.

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