



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

HEARING DATE: JULY 23, 2015

*Project Name:* **Rooftop Appurtenances and Infill Spaces for Noncomplying Structures in C-3**

*Case Number:* **2015-006753PCA** [Board File No. 150456]

*Initiated by:* Mayor Edwin M. Lee / Introduced May 5, 2015

*Staff Contact:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362

*Recommendation:* **Recommend Approval**

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### PLANNING CODE AMENDMENT

Ordinance amending the Planning Code, by adding a new Subsection 188(g), to modify the measurement methodology for rooftop appurtenances and create a process to authorize certain types of infill floor area in existing structures, located in a C-3 (Downtown Commercial) Zoning District, which exceed the current height limit.

#### The Way It Is Now:

1. Planning Code Section 260(b) allows certain building features to be exempt from the height limits, including but not limited to mechanical equipment and appurtenances necessary to the operation or maintenance of the building, elevator, stair and mechanical penthouses, fire towers, skylights and dormer windows. Depending on the feature and height district, the exemption from the height limit ranges from 10 to 16 feet. This limit is measured from the height limit, even if the building is a legal noncomplying structure constructed above the prescribed height limit.
2. Planning Code Section 188 allows noncomplying structures to be enlarged or altered provided that there is no increase in any discrepancy, or any new discrepancy, with the Planning Code at any level of the structure; therefore a building constructed above the prescribed height limit would be prohibited from infilling an area of the building above the height limit because it would be an intensification of the noncomplying portion of the building. A Zoning Administrator determination allows areas to be infilled above the height limit on a noncomplying structure only if the area to be infilled is enclosed on three sides and roofed.

#### The Way It Would Be:

1. The proposed Ordinance would amend the Planning Code so that for buildings in C-3 districts that are noncomplying with regards to height the datum for the vertical measurement of those features in Planning Code Section 260 would be the height of the existing, finished roof instead of the established height limit.

2. The proposed ordinance would allow buildings in C-3 districts that are noncomplying with regards to height to infill areas that are located above the applicable height limit and entirely covered by an existing ceiling, roof, or other overhang, subject to the following conditions:
  - (A) For buildings not designated as an Article 10 Landmark or an Article 11 Significant or Contributory building, the proposed infill would be considered under the provisions of Section 309(b) (Permit Review in C-3 Districts, Design Review). As part of any administrative or Planning Commission approval of such application, and in addition to other considerations set forth in this Code, the facts presented must establish that the Building Infill (i) would have minimal visual impact and maximum architectural integration, (ii) would not negatively affect the aesthetic qualities and/or character of the building, and (iii) would contribute positively to the overall design quality of the building through attention to the design of the proposed addition and to the enhancement of the design of existing building elements, if appropriate.
  - (B) For Building Infill in a structure that is designated an Article 10 Landmark or an Article 11 Significant or Contributory building the proposed infill shall be subject to the provisions of Article 10 or Article 11 and considered as part of an application for a Certificate of Appropriateness or a Permit to Alter. Any application for Building Infill under Article 10 or Article 11 shall not be considered a Minor Alteration.

## **BACKGROUND**

Occasionally the Planning Department receives applications to add rooftop amenities or to infill balconies or decks on existing building that are noncomplying with regards to height. Typically these projects seek to modernize or rehab an older building for a new use. The most recent example is the proposed hotel (d.b.a. Yotel) at the corner of Market and 7<sup>th</sup> St. That project would change of use of the building from office to 202 room hotel with 3,992 square feet of ground floor retail. The proposal also includes a roof deck, but because the existing historic building is above the height limit, amenities, such as bathrooms, for the roof deck are not allowed to be constructed on the roof. The Chinatown Hilton is another example of a hotel wanting rooftop amenities, but which is above the permitted height limit. That project proposed to infill an existing rooftop swimming pool structure and to convert the area into a rooftop bar; however, because of the buildings noncomplying status the renovations were significantly limited.

The Department also encounters situations where building owners want to enclose portions of top floor terraces on existing building that are non-conforming with regards to height. A current Zoning Administrator interpretation allows the infill of an area that is enclosed on all three sides and roofed, but otherwise enclosing areas that are under a roof structure and not enclosed on three sides is not permitted. One recent examples of this is 601 California Street. This building is constructed above the height limit, and has a top floor balcony that is roofed; however, because the terrace is not enclosed on at least three sides, even a partial infill is prohibited by the Planning Code. Infilling a portion of the top floor terrace would not increase the height of the building, and if done with sensitivity to the buildings



601 California Street

architectural expression would not impact the way the building is perceived from the street or as part of the skyline.

This ordinance was developed by the Mayor's office in consultation with the Planning Department in order to find a solution to the issue described above. It is a very narrowly tailored ordinance that only applies to buildings in C-3 zoning districts, and seeks to provide more flexibility to existing buildings that are legal non-conforming with regard to height more flexibility in how they can be rehabilitated or remodeled to accommodate new uses or needs.

## **ISSUES AND CONSIDERATIONS**

### **The Downtown Plan**

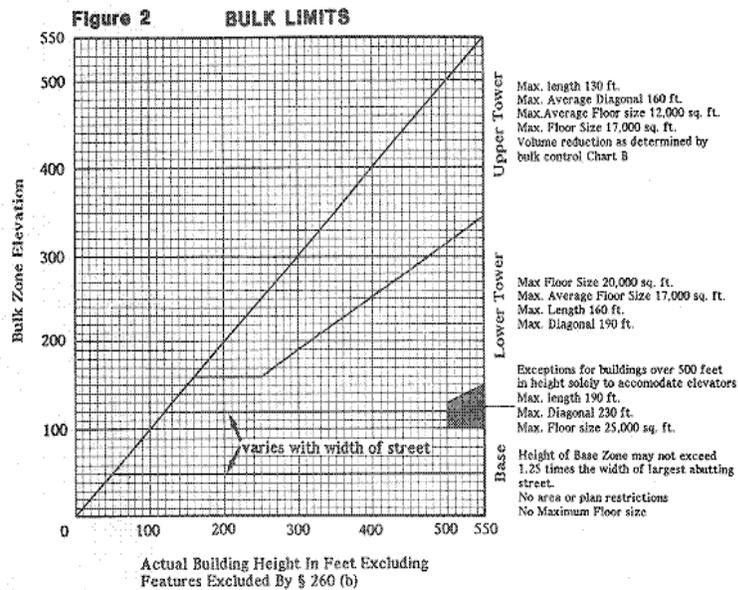
In 1985 San Francisco adopted the Downtown Plan, which makes specific recommendations for building height, bulk, and appearance for new construction in the C-3 District. The Plan considers the appearance of new construction as it relates to the skyline viewed from a distance, as well as how buildings meet the street. Specifically, the Plan calls for the clustering of tall buildings, heights that taper to surrounding districts and to the waterfront, and tower shapes that decrease in bulk as they increase in height and contain a visually interesting termination. Additionally, the Plan uses tower height and bulk requirements to allow sun and sky access to streets, and to minimize wind exposure at street level.

As a result of the Downtown Plan, height limits were lowered in much of downtown, and then lifted along Mission and Howard streets east of New Montgomery Street. The lowering of heights was done without regard to the heights of existing buildings, with the idea that the plan should reflect the heights the City wanted in the downtown, and not to accommodate what existed. While in the long run this makes sense, you should plan for what you want not what you have, it created an estimated 200+ buildings that are legal noncomplying structures with regard to height in the C-3 Districts.

The Downtown Plan's section on Urban Form identifies one main objective and four associated policies related specifically to height and bulk. Those are as follows:

- **Objective 13:** Create an urban form for the downtown that enhances San Francisco's stature as one of the world's most visually attractive cities.
- **Policy 13.1** Relate the height of buildings to important attributes of the city pattern and to the height and character of existing and proposed development.
- **Policy 13.2** Foster sculpturing of building form to create less overpowering buildings and more interesting building tops, particularly the tops of towers.
- **Policy 13.3** Create visually interesting terminations to building towers.
- **Policy 13.4** Maintain separation between buildings to preserve light and air and prevent excessive bulk.

The only acknowledgement or discussion of exemptions to the height limits is in Figure 2 (associated with Policy 13.2) that sets the ratio between height and bulk, and labels the height access as ‘Actual Building Height in Feet Excluding Features Excluded by Section 260(b)’.<sup>1</sup> There is no other reference to the treatment or measurement of roof top appurtenances or infills, suggesting that the plan is at least agnostic about adding new roof top appurtenances and infilling above the existing height limit on existing noncomplying structures.



**Planning Code Section 260(b)**

Planning Code Section 260(b) describes the types of features that are permitted above the height limit and under what conditions. The first list under 260(b) includes appurtenances like mechanical equipment and stair penthouses: solid four sided structures typically with a roof. These features are limited to 20 percent of the horizontal area of the roof or up to 30% of the roof area if they surrounded by unroofed screening designed either to obscure the features or to provide a more balanced and graceful silhouette for the top of the building or structure. These features are also limited anywhere between 10 and 16 feet in height depending on the feature and the lot’s height limit. The next list in this section describes features that are exempt from the height limits without regard to their horizontal area. This section includes unenclosed features such as railings, parapets, catwalks, flagpoles, unroofed recreation facilities and the like. Most of these features are limited between 4’ and 10’ in height above the permitted height limit depending on the feature.

The proposed ordinance does not amend Planning Code Section 260; it amends Planning Code Section 188, which outlines the rules for enlargements, alterations and reconstruction of noncomplying buildings. However, the impact of amending Section 188 would be that the features listed in Section 260 would now be permitted above the actual height of the building and not the prescribed height limit. The existing height limits and roof coverage for these appurtenances would still apply. The only difference would be that the datum point for measuring the allowable height would start at the finished roof rather than the permitted height limit.

<sup>1</sup> Planning Code Section 260(b) outlines the rooftop appurtenances that are exempt from the height limit.

## **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## **RECOMMENDATION**

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

The Planning Department supports the proposed ordinance because it allows existing noncomplying structures with regard to height to be modernized or rehabbed for a new uses and needs without impacting the building's overall scale and form. When the Downtown Plan was passed in 1985, it lowered heights across the C-3 Districts, creating over 200 buildings that were noncomplying with regard to height. While the City had reason to lower the height limits as part of the Downtown Plan, it did create situations where existing building could not add reasonable roof top appurtenances or infills if the area was above the height limit. This Ordinance seeks to correct this issue in a very target and thoughtful way. Further, and propose rooftop appurtenances would still be subject to the height limits and roof top coverage limits outlined in Planning Code Section 260(b) and any infill would need to go through design review to ensure that it contributes positively to the overall design quality of the building.

## **ENVIRONMENTAL REVIEW**

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 150456



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution HEARING DATE JULY 23, 2015

*Project Name:* **Rooftop Appurtenances and Infill Spaces for Noncomplying Structures in C-3**

*Case Number:* **2015-006753PCA [Board File No. 150456]**

*Initiated by:* **Mayor Edwin M. Lee / Introduced May 5, 2015**

*Staff Contact:* **Aaron Starr, Manager of Legislative Affairs  
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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE BY ADDING A NEW SUBSECTION 188(G), TO MODIFY THE MEASUREMENT METHODOLOGY FOR ROOFTOP APPURTENANCES AND CREATE A PROCESS TO AUTHORIZE CERTAIN TYPES OF INFILL FLOOR AREA IN EXISTING STRUCTURES, LOCATED IN A C-3 (DOWNTOWN COMMERCIAL) ZONING DISTRICT, WHICH EXCEED THE CURRENT HEIGHT LIMIT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on May 5, 2015, Mayor Edwin M. Lee introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 150456, which would amending the Planning Code, by adding a new Subsection 188(g), to modify the measurement methodology for rooftop appurtenances and create a process to authorize certain types of infill floor area in existing structures, located in a C-3 (Downtown Commercial) Zoning District, which exceed the current height limit;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 23, 2015; and,

WHEREAS, the proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve** the proposed ordinance.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The proposed amendments allow existing noncomplying structures with regard to height to be modernized or rehabbed for a new uses and needs without impacting the building's overall scale and form.
2. When the Downtown Plan was passed in 1985, it lowered heights across the C-3 Districts, creating over 200 buildings that were non-complying with regard to height. While the City had reason to lower the height limits as part of the Downtown Plan, it did create situations where existing building could not add reasonable roof top appurtenances or infills if the area was above the height limit. This Ordinance seeks to correct this issue in a very target and thoughtful way.
3. Any propose rooftop appurtenances would still be subject to the height limits and roof top coverage limits outlined in Planning Code Section 260(b) and any infill would need to go through design review to ensure that it contributes positively to the overall design quality of the building.
4. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is consistent with the following Objectives and Policies of the General Plan.

## Downtown Plan

### OBJECTIVE 13

CREATE AN URBAN FORM FOR THE DOWNTOWN THAT ENHANCES SAN FRANCISCO'S STATURE AS ONE OF THE WORLD'S MOST VISUALLY ATTRACTIVE CITIES.

**Policy 13.1** Relate the height of buildings to important attributes of the city pattern and to the height and character of existing and proposed development.

*The proposed amendments will not amend height limits in the Downtown District. TI will allow a small and reasonable roof top appurtenances and infills on existing legal non-complying buildings with regard to height.*

**Policy 13.2** Foster sculpturing of building form to create less overpowering buildings and more interesting building tops, particularly the tops of towers.

*Any proposed rooftop appurtenances and infills would be required to undergo a design review and to not negatively impact the sculptural form of the building.*

**Policy 13.3** Create visually interesting terminations to building towers.

*Any proposed roof top appurtenances and infills would need to be visually integrated or screened so that they did not negatively impact existing visually interesting terminations of building towers.*

5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance requires that any modifications proposed under the amendments would need to be reviewed under Articles 10 or 11 respectively.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas.*

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 21, 2013.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: July 23, 2015

1 [Planning Code - Measurement of Rooftop Appurtenances and Infill Spaces for Noncomplying  
2 Structures in C-3 Zoning Districts]

3 **Ordinance amending the Planning Code by adding a new Subsection 188(g) to modify**  
4 **the measurement methodology for rooftop appurtenances and create a process to**  
5 **authorize certain types of infill floor area in existing structures, located in a C-3 Zoning**  
6 **District, which exceed the current height limit; affirming the Planning Department's**  
7 **California Environmental Quality Act determination, and making findings of**  
8 **consistency with the General Plan, Planning Code, Section 302, and the eight priority**  
9 **policies of Planning Code, Section 101.1.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
23 determination.

24 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
2 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
4 amendments will serve the public necessity, convenience, and welfare for the reasons set  
5 forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such  
6 reasons herein by reference.

7  
8 Section 2. The Planning Code is hereby amended by revising Section 188, to read as  
9 follows:

10 **SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS**  
11 **AND RECONSTRUCTION.**

12 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180  
13 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or  
14 relocated, or undergo a change or intensification of use in conformity with the use limitations  
15 of this Code, provided that with respect to such structure there is no increase in any  
16 discrepancy, or any new discrepancy, at any level of the structure, between existing  
17 conditions on the lot and the required standards for new construction set forth in this Code,  
18 and provided the remaining requirements of this Code are met.

19 \* \* \* \*

20 (g) Notwithstanding Subsection (a) of this Section 188, a structure that is located within the C-3  
21 Zoning District and is a legal non-complying structure with respect to height, shall be subject to the  
22 following provisions:

23 (1) The datum for the vertical measurement of those features listed in Planning Code Section  
24 260(b) shall be the height of the existing, finished roof of the building located immediately below such  
25 feature, rather than the height limit set forth in the Planning Code, as would otherwise be the case.

1           (2) Building Infill, defined as floor area or building volume that is (i) located above the  
2 applicable height limit and (ii) entirely covered by an existing ceiling, roof, or other overhang, may be  
3 permitted notwithstanding applicable height and bulk limits, provided that the City approves such  
4 Building Infill in accordance with the following procedures:

5           (A) An application for Building Infill in a structure that is not designated an Article 10  
6 Landmark or an Article 11 Significant or Contributory building shall be considered under the  
7 provisions of Section 309(b) of this Code. As part of any administrative or Planning Commission  
8 approval of such application, and in addition to other considerations set forth in this Code, the facts  
9 presented must establish that the Building Infill (i) would have minimal visual impact and maximum  
10 architectural integration, (ii) would not negatively affect the aesthetic qualities and/or character of the  
11 building, and (iii) would contribute positively to the overall design quality of the building through  
12 attention to the design of the proposed addition and to the enhancement of the design of existing  
13 building elements, if appropriate.

14           (B) An application for Building Infill in a structure that is designated an Article 10 Landmark  
15 or an Article 11 Significant or Contributory building shall be subject to the provisions of Article 10 or  
16 Article 11 of this Code and considered as part of an application for a Certificate of Appropriateness or  
17 a Permit to Alter, as appropriate. Any application for Building Infill under Article 10 or Article 11  
18 shall not be considered a Minor Alteration under Sections 1006.2(a) or 1111.1 of this Code.

19  
20           Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By: \_\_\_\_\_  
11 KATE H. STACY  
12 Deputy City Attorney

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