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AGENDA REPORT

TO: President Pro-Tempore Reid and members of the Community and Economic Development Committee

FROM: Councilmember Annie Campbell Washington

SUBJECT: An Ordinance Implementing AB 2188 Formalizing Streamlined Residential Solar Permitting Procedures

DATE: September 3, 2015

COUNCIL DISTRICT: Citywide

RECOMMENDATION

The City Council is asked to adopt an ordinance amending the Oakland Municipal Code to adopt Chapter 15.33, which provides a standardized and streamlined permitting process for small residential rooftop solar systems in compliance with Assembly Bill 2188 (Chapter 521, Statutes 2014).

EXECUTIVE SUMMARY

Passage of this ordinance will amend the Oakland Municipal Code to create Chapter 15.33, which will provide a streamlined and standardized permitting process for small residential solar systems, including online posting of solar permitting requirements and a consolidated single inspection for each small residential rooftop solar system by the Bureau of Building, in compliance with AB 2188. The ordinance requires Bureau of Building to adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 90 days of adoption of the ordinance. By complying with AB 2188, the City of Oakland will help to reduce administrative cost and overall cost for residents to purchase and install solar energy systems. Timely compliance with AB 2188 will also maintain eligibility for grant funding programs for solar and other renewable energy programs operated by the California Energy Commission.

BACKGROUND / LEGISLATIVE HISTORY

With the cost of solar panels and other hardware declining steeply over recent years, the focus for cost cutting by the solar industry is concentrated heavily on reducing "soft costs", including the time value of delays in solar permitting for processing and inspections. The solar industry estimates that such "soft costs" currently represent fully 25% of the overall cost of any residential solar installation.

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September 15, 2015

AB 2188 (Muratsuchi) requires all California cities to implement a standardized and streamlined protocol for small residential rooftop solar permitting by September 30, 2015. Among the key measures required by AB 2188 are a single, consolidated inspection for each small residential rooftop solar system; online posting of requirements for such permits, consistent with the most recent version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research (OPR); and administrative approval of applications to install solar energy systems through the issuance of a building permit, with review limited to whether the application meets all health and safety requirements of local, state and federal law. Failure to comply with the requirements of AB 2188 may result in the City's inability to receive funds from California Energy Commission renewable energy grant and incentive programs. Because Oakland is a charter city, the requirement of Government Code section 65850.5(d) that limited building official decisions be appealable to the City Planning Commission does not apply. However, the City seeks to provide an appeal remedy consistent with the intent of AB 2188, and as detailed in Section 15.33.100 of Exhibit A to the Ordinance, certain limited building official decisions are appealable to the Hearing Examiner, consistent with section 15.040.025 of the Oakland Municipal Code.

The City of Oakland has a legacy of leadership for low cost, streamlined permitting of small residential rooftop solar energy systems. Between 2011 and 2013, Oakland participated with eight other cities in Alameda and Contra Costa counties, under the auspices of the East Bay Green Corridor, to develop a standardized and streamlined regional solar permitting system. This work was supported by grant funds provided by the U.S. Department of Energy's Sun Shot program, and the final report from the East Bay Green Corridor project helped to inform content in the *California Solar Permitting Guidebook* created by OPR. In turn, this work by OPR led directly to development of AB 2188.

During the earlier regional work via the East Bay Green Corridor, Oakland's standard practices in small residential solar permitting were shown to already be more user friendly to solar contractors and their customers than the regional standard that was ultimately established as the norm for other participating cities. However, these practices have never been fully formalized and standardized in the Oakland Municipal Code.

ANALYSIS

Passage of this ordinance will bring the City of Oakland into full compliance with AB 2188, formalizing and enhancing the City's already streamlined permitting process for small residential solar permitting. Perhaps the most significant step forward that will be achieved by complying with AB 2188 in Oakland will be the formal consolidation of a single inspection by Bureau of Building staff, in coordination with the Fire Prevention Bureau. By complying with state law in a timely way, the City will maintain eligibility for renewable energy grants and other incentives administered by the California Energy Commission. Adopting this ordinance in compliance with AB 2188 will also help the City to improve its approach to meeting aggressive, Council approved goals for adoption of renewable energy and greenhouse gas reduction. The ordinance requires Bureau of Building to adopt an administrative, nondiscretionary review process to expedite

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approval of small residential rooftop solar energy systems within 90 days of adoption of the ordinance.

FISCAL IMPACT

Because implementation of this ordinance should lead to enhanced coordination and integration of building and fire permitting procedures in the context of the existing system, this measure will improve efficiency in the permitting and review of affected projects. It is also expected to increase permit volume, resulting in increased revenues to the City. Funding to implement changes prescribed by this ordinance are already in place, inasmuch solar permits are already being processed by Bureau of Building, and streamlining the process should ultimately decrease the time and cost of processing per project.

PUBLIC OUTREACH / INTEREST

At a gathering of ten leading Oakland based solar and renewable energy advocates this past spring known informally as the Solar Roundtable, Mayor Schaaf was asked to ensure that the City of Oakland would take a leadership role in implementing compliance with AB 2188. Interest in residential solar energy systems also continues to grow in Oakland and elsewhere, with the number of installations and overall energy generated by residential solar systems in Oakland growing steadily over the past 10 years. As a benchmark, according to the most recent information provided by PG&E, Oakland had 1,706 small residential solar systems installed as of the end of 2013, generating a total of 5,663 kilowatts of electricity. With the 30% federal solar investment tax credit due to expire at the end of 2016, formalizing standardized and streamlined permitting is critical to facilitation of more rooftop solar photovoltaic (PV) systems while incentives remain available.

COORDINATION

Reaching agreement on implementation of AB 2188 involved extensive coordination between at least four departments of the City, including Bureau of Building, Fire Prevention, Environmental Services, and Economic Development. The City's Sustainability Program Manager led discussions between key personnel in Bureau of Building and the Fire Prevention Bureau to develop a joint approach to implementing a single, consolidated inspection for each residential solar system in Oakland, as required by AB 2188. This coordination is a testimony to the fact that increased adoption of solar energy in Oakland is good for the local economy, helps the city to make headway on climate action goals, and also maintains compliance with building and fire prevention codes.

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SUSTAINABLE OPPORTUNITIES

Economic: Formalizing and further streamlining the residential solar permitting process in the City of Oakland should save the city money based on more efficient operations. Economic savings should also be realized by solar contractors and potentially for their customers, as “soft costs” and process time are reduced. Finally, if the adoption of solar energy is accelerated appreciably by this change, money saved from the use of solar vs. other sources of electricity could mean increased purchasing power for users of residential solar systems.

Environmental: If implementation of this ordinance increases the rate of adoption of solar power or water heating, this will reduce the environmental impact of the use of electricity in the City of Oakland, given the lower carbon footprint of solar electricity vs. other sources. Such enhanced performance will also accelerate progress toward the City’s utilization of renewable energy, and achievement of benchmarks in the Energy and Climate Action Plan (ECAP).

Social Equity: To the extent that implementation of a streamlined small residential solar permitting system is achieved in Oakland, and if savings from such a system are reflected in lower prices for residential solar, then overall access to solar energy and financing options should become more broadly available and accessible to citizens of Oakland than is the case currently.

CEQA

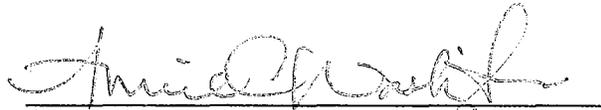
The City previously prepared and certified/adopted a set of applicable CEQA documents, including: (1) 1998 Land Use and Transportation Element EIR; (2) 1996 Open Space Conservation and Recreation Element Mitigated Negative Declaration; (3) 2004 Safety Element Negative Declaration and 2012 Addendum; (4) 1998 Historic Preservation Element EIR; (5) 2005 Noise Element Negative Declaration; (6) 2007 Bicycle Master Plan EIR; (7) 2002 Pedestrian Master Plan Mitigated Negative Declaration; (8) 1999 and 2006 Estuary Policy Plan EIRs and 2013 Supplemental EIR; (9) 2010 Housing Element EIR and 2014 Addendum; and (10) 2012 Energy and Climate Action Plan Addendum. Collectively, these are known as the “Previous CEQA Documents.” No legal actions were filed challenging the Previous CEQA Documents, and thus they are presumed valid.

None of the circumstances necessitating further CEQA review, including without limitation Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163, are present. Thus, prior to approving the Ordinance, the City can rely on the Previous CEQA Documents. In addition, as a separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15302 (replacement or reconstruction), 15303 (new construction or conversion of small structures), and 15309 (inspection), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

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For questions regarding this report, please contact Steve Lautze, Green Business Specialist,
Economic Development Dept., at slautze@oaklandnet.com or 510-238-4973.

Respectfully submitted,



Annie Campbell Washington
Councilmember, District 4

Prepared by:
Steve Lautze, Green Business Specialist
Economic Development Dept.

Attachments (1):

- A. Draft Ordinance Implementing AB 2188 in the Oakland Municipal Code

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APPROVED AS TO FORM AND LEGALITY

Ellen Chen
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER ANNIE CAMPBELL WASHINGTON

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADOPT CHAPTER 15.33 RESIDENTIAL ROOFTOP SOLAR REQUIREMENTS, WHICH PROVIDES A STANDARDIZED AND STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

WHEREAS, the Oakland City Council seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of a standardized and streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, AB 2188 requires cities to adopt an ordinance that creates an expedited permitting process for small residential rooftop solar energy systems on or before September 30, 2015. AB 2188 further requires cities to inspect a small residential rooftop solar energy system eligible for expedited review within specified time limits, and prohibits cities from conditioning the approval of any solar energy system permit on approval of that system by an association that manages a common interest development; and

WHEREAS, the City Council wishes to simplify and encourage the use of solar energy by all of its citizens; and

WHEREAS, the City Council seeks to meet the goal of producing 62 million kilowatt hours of renewable electricity generation annually by 2020, as set forth in the City's Energy and Climate Action Plan; and

WHEREAS, solar energy creates local jobs and economic opportunity; and

WHEREAS, the City Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents, making funds available for other expenses; and

WHEREAS, it is in the interest of the health, welfare and safety of the people of Oakland to provide an expedited permitting process to assure the effective deployment of solar technology; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. Addition of Chapter 15.33 to the Oakland Municipal Code. Title 15 of the Oakland Municipal Code is hereby amended to add a new Chapter 15.33 Residential Rooftop Solar Requirements, attached hereto as **Exhibit A** and incorporated as if fully set forth herein.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. California Environmental Quality Act. The City previously prepared and certified/adopted a set of applicable CEQA documents, including: (1) 1998 Land Use and Transportation Element EIR; (2) 1996 Open Space Conservation and Recreation Element Mitigated Negative Declaration; (3) 2004 Safety Element Negative Declaration and 2012 Addendum; (4) 1998 Historic Preservation Element EIR; (5) 2005 Noise Element Negative Declaration; (6) 2007 Bicycle Master Plan EIR; (7) 2002 Pedestrian Master Plan Mitigated Negative Declaration; (8) 1999 and 2006 Estuary Policy Plan EIRs and 2013 Supplemental EIR; (9) 2010 Housing Element EIR and 2014 Addendum; and (10) 2012 Energy and Climate Action Plan Addendum. Collectively, these are known as the "Previous CEQA Documents." No legal actions were filed challenging the Previous CEQA Documents, and thus they are presumed valid. The City Council, based on its own independent review, consideration, and exercise of its independent judgment, finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review, including without limitation Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163, are present. Thus, prior to approving the ordinance, the City can rely on the Previous CEQA Documents. In addition, as a separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15302 (replacement or reconstruction), 15303 (new construction or conversion of small structures), and 15309 (inspection), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

SECTION 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -
ABSENT -
ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

EXHIBIT A

The following Chapter 15.33 is hereby adopted by this Ordinance and incorporated into the Oakland Municipal Code.

**Title 15 – Buildings and Construction
Chapter 15. Residential Rooftop Solar Requirements**

Sections:

Article I – Title

15.33.010 Title

Article II – Administrative

15.33.020 Definitions

15.33.030 Conflict

15.33.040 Amendments

Article III – Solar Energy System Requirements

15.33.050 Purpose

15.33.060 Applicability

15.33.070 Requirements

15.33.080 Duties of City of Oakland and Building Official

15.33.090 Permit Review and Inspection Requirements

15.33.100 Appeal Procedure

Article I – Title

Section 15.33.010 Title

This Chapter shall be known as the “Residential Rooftop Solar Requirements” and is referred to herein as this Chapter.

Article II – Administrative

Section 15.33.020 Definitions

As used in this Chapter, the following terms shall have the meanings set forth herein. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

ASSOCIATION means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

COMMON INTEREST DEVELOPMENT means any of the following: community apartment project; a condominium project; a planned development; and/or a stock cooperative.

ELECTRONIC SUBMITTAL means the utilization of one or more of the following: email; the internet; and/or facsimile.

FEASIBLE METHOD TO SATISFACTORILY MITIGATE OR AVOID THE SPECIFIC, ADVERSE IMPACT includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City of Oakland on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

REASONABLE RESTRICTIONS on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

SIGNIFICANTLY means:

- a. For solar domestic water heater systems or solar swimming pool heating systems: an amount exceeding ten (10) percent of the initial estimated total installed cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding ten (10) percent, as originally specified and proposed.
- b. For photovoltaic systems that comply with state and federal law: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding ten (10) percent as originally specified and proposed.

SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEM means all of the following:

- a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
- b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City of Oakland and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.
- c. A solar energy system that is installed on a single or duplex family dwelling.
- d. A solar panel or module array that, as installed, does not exceed the maximum legal building height as defined by the City of Oakland.

SOLAR ENERGY SYSTEM means either of the following:

- a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electricity generation, or water heating.
- b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

SPECIFIC, ADVERSE IMPACT means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

15.33.030 Conflict

Wherever the provisions of this Chapter conflict with each other or with the provisions of other associated codes, regulations, or ordinances, the more restrictive provision or standard shall control.

15.33.040 Amendments

Where any section, subsection, sentence, clause, phrase, or other part of this Chapter and the referenced law recited herein are amended subsequently, all provisions of the original recitation not so specifically amended shall remain in full force and effect and all amended provisions shall be considered as added thereto.

Article III – Solar Energy System Requirements

15.33.050 Purpose

The purpose of the Chapter is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Chapter encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City of Oakland, and facilitating the ability of property owners to install solar energy systems. The Chapter allows the City of Oakland to achieve these goals while protecting the public health and safety.

15.33.060 Applicability

This Chapter applies to the permitting of all small residential rooftop solar energy systems in the City of Oakland. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Chapter are not subject to the requirements of this Chapter unless physical modifications or alterations are undertaken

that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting.

15.33.070 Requirements

A. All solar energy systems shall meet applicable health and safety standards and requirements imposed by state and local law, consistent with Section 65850.5 of the Government Code, as well as Pacific Gas & Electric requirements for all grid-connected systems.

B. Solar energy systems for heating water in single-family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

C. Solar energy systems for producing electricity shall also meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.33.080 Duties of City of Oakland and Building Official

A. The City of Oakland Bureau of Building in the Department of Planning and Building (Bureau of Building) shall adopt a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.

B. The permit application and a list of all documents required for the submission of an expedited solar energy system application shall be made available on the Bureau of Building section of the City of Oakland Website.

C. Electronic submittal of the required permit application and documents shall be made available to all small residential rooftop solar energy system permit applicants.

D. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

E. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

15.33.090 Permit Review and Inspection Requirements

A. The City of Oakland Bureau of Building shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 90 days of the adoption of this Chapter. The Bureau of Building shall approve the application and issue a building permit or other nondiscretionary permit on the same day for over-the-counter applications (or within 1-3 business days for electronic applications) of receipt of a complete application that meets the requirements of the approved checklist and standard plan. If an application is deemed incomplete, the City shall issue a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance.

1. Review of the application shall be limited to the building official's review of whether the application meets all health and safety requirements of local, state, and federal law. However, if the building official makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health or safety, the building official may require an applicant to apply for a use permit.

2. The building official may not deny an application for a use permit to install a solar energy system unless he or she makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives for preventing the adverse impact.

B. Any conditions imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost. Furthermore, the City shall not condition approval of an application on the approval of an association.

C. If an inspection is required, only one inspection shall be required and performed by the Bureau of Building for small residential rooftop solar energy systems eligible for expedited review. Inspections for permit requirements of the Uniform Fire Code Section 105.7 shall be performed by the Bureau of Building as part of this inspection.

D. The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request. If a small residential rooftop solar energy system fails inspection, subsequent inspections deemed necessary by the City are authorized, however the subsequent inspection need not conform to the requirements of this Section.

15.33.100 Appeal Procedure

The decision of the building official pursuant to Section 15.33.090(A)(1)-(2) may be appealed to a Hearing Examiner in accordance with Section 15.040.025 of the Oakland Municipal Code.

NOTICE AND DIGEST

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO
ADOPT CHAPTER 15.33 RESIDENTIAL ROOFTOP SOLAR
REQUIREMENTS, WHICH PROVIDES A STANDARDIZED AND
STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL
ROOFTOP SOLAR SYSTEMS**

This ordinance will amend the Oakland Municipal Code to create Chapter 15.33, which will provide a streamlined and standardized permitting process for small residential solar systems, including online posting of solar permitting requirements and a consolidated single inspection for each small residential rooftop solar system by the Bureau of Building, Department of Planning and Building, in compliance with AB 2188. The new permitting process will help to reduce administrative cost and overall cost for residents to purchase and install solar energy systems. Timely compliance with AB 2188 will also maintain the City's eligibility for grant funding programs for solar and other renewable energy programs operated by the California Energy Commission.

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