

# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 538

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,  
RELATING TO BUSINESS LICENSES AND REGULATIONS;  
AMENDING CHAPTER 5.05 OF THE BURIEN MUNICIPAL CODE;  
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN  
EFFECTIVE DATE**

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WHEREAS, the City Council adopted Ordinance 281 on December 13, 1999, which established new business licenses fees and regulations; and

WHEREAS, the City Council adopted Ordinance 318 on November 27, 2000 to ratify and re-adopt Ordinance 281; and

WHEREAS, the City Council adopted Ordinance 360 on October 7, 2002 amending the Business License Regulations; and

WHEREAS, the City Council adopted Ordinance 433 on May 16, 2005 amending Title 5.05.110 regarding business license fees; and

WHEREAS, certain sections are no longer applicable or modification to the regulations will more fairly apply the code requirements and clarify code applicability;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amendments to Burien Municipal Code Title 5, Chapter 5.05: The City Council of the City of Burien hereby amends Burien Municipal Code Title 5, Chapter 5.05 as shown on Exhibit A and incorporated by this reference as if fully set forth herein.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force August 1, 2010.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2010, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010.

CITY OF BURIEN

\_\_\_\_\_  
Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Monica Lusk, City Clerk

Approved as to form:

\_\_\_\_\_  
Craig D. Knutson, City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No. 538  
Date of Publication:

**Ordinance 538**  
**Exhibit A**

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Sections:

- 5.05.010 Exercise of revenue license power.
- 5.05.020 Dedicated revenue.
- 5.05.030 Licensing authority.
- 5.05.040 Licensing program – Adopted by reference.
- 5.05.050 Definitions.
- 5.05.060 Business license required.
- 5.05.070 Separate licenses required.
- 5.05.075 Notification of exemption or termination of business activities.
- 5.05.080 Change in nature or location of business.
- 5.05.090 Exemptions from license requirement.
- 5.05.091 Exemptions for nonprofit festivals.
- 5.05.092 Exemptions – Fee waiver.
- 5.05.100 License – Application.
- 5.05.110 Business license fee.
- 5.05.120 Fee – Prorating.
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- 5.05.160 License – Term.
- 5.05.170 License – Renewal.
- 5.05.180 Penalty for late application.
- 5.05.190 Administrative rules and regulations.
- 5.05.200 Licenses – General provisions.
- 5.05.210 Independent contractors to be licensed.
- 5.05.220 Confidentiality of information.
- 5.05.230 Business license fee owed in 2000.
- 5.05.240 Required – Display.
- 5.05.250 Inspections – Right of entry.

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**5.05.010 Exercise of revenue license power.**

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. The provisions of this chapter prescribing license fees shall be strictly construed in favor of the applicability of the license fee. [Ord. 318 § 1, 2000; Ord. 281 § 3, 1999]

**5.05.020 Dedicated revenue.**

The revenue generated from business license fees shall be dedicated to maintenance or capital improvements in commercial areas of the city of Burien, promotion of economic development, and costs associated with periodic auditing and collection to assure accurate business participation in the payment of the business license fee. [Ord. 318 § 1, 2000; Ord. 281 § 4, 1999]

**5.05.030 Licensing authority.**

Pursuant to interlocal agreements, King County and its manager of the general services division, King County department of executive administration, or their designee, are designated as the city's agent for processing, including any related license enforcement, and any of the various specialty licenses required pursuant to KCC Title 6. A copy of the interlocal agreements shall be available in the office of the city clerk for use and examination by the public. [Ord. 318 § 1, 2000; Ord. 281 § 5, 1999]

#### **5.05.040 Licensing program — Adopted by reference.**

(1) The following chapters of the King County Code, as now in effect and as may be subsequently amended, are adopted by reference in their entirety, including that, if the context requires, the word "county" and the words "King County" may refer to the city of Burien:

KCC

—6.01 General Licensing Provisions

(2) The various specialty license provisions adopted by reference in Chapters 5.10 through 5.55 BMC are expressly reserved, and this chapter is not intended, nor shall it be construed, to repeal any of the various specialty license provisions contained in Chapters 5.10 through 5.55 BMC. [Ord. 318 § 1, 2000; Ord. 281 § 6, 1999]

#### **5.05.050 Definitions.**

For purposes of this title and unless otherwise provided, the following definitions shall apply:

(1) "Engaging in business" has the same meaning as that term is defined in BMC 3.11.030 and, to the extent not included therein, also includes activities of the type subject to taxation under Chapter 3.12 BMC, nonprofit or public "persons," contractors engaged temporarily at a job location within the city, on-site apartment management personnel, and home occupations.

(2) "Person" means any person, firm, corporation, company, person acting in a fiduciary capacity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, or nonprofit.

(3) "Home occupation" has the same meaning as that term is defined in the Burien Zoning Code but, for purposes of this chapter, includes businesses based in a dwelling unit or an accessory building outside as well as inside the city.

(4) "Employee" means an individual, whether employed full-time or part-time, located within the city, either permanently or temporarily, on the payroll of the business at the time of application for the business license.

(5) "New business" is defined as an individual, partnership, or corporation desiring to "engage in business," within the city as that term is defined in subsection (1) of this section, and to whom a business license has never before been issued by the city of Burien for the particular business enterprise contemplated. For purposes of this subsection, "new business" shall not include any individual, partnership, or corporation "engaging in business" without a valid business license or in violation of any provision of the Burien Municipal Code. [Ord. 433 § 2, 2005; Ord. 360 § 1, 2002; Ord. 322 § 13, 2001; Ord. 318 § 1, 2000; Ord. 281 § 7, 1999]

#### **5.05.060 Business license required.**

Unless otherwise exempted by this chapter, ~~a~~Any person engaging in business within the city, whether any office or physical facility of such business shall be located within or outside the city, will first apply for and obtain a business license and pay the fees as prescribed in this chapter~~herein~~.

~~;~~ provided, however, nonprofit and public "persons" shall be exempt from paying the fees, but not from filing the license application requirement established in this chapter. [Ord. 360 § 2, 2002; Ord. 322 § 14, 2001; Ord. 318 § 1, 2000; Ord. 281 § 8, 1999]

#### **5.05.070 Separate licenses required.**

A separate business license will be obtained for each separate location within the city at which the business is conducted. A separate business license will be obtained for each different and distinct business conducted by any person, whether at the same location, within the city, as another licensed business, or at a different location within the city. A business with no permanent place of business within the city shall be required to obtain only one business license even if such business delivers the same general type of goods or services to several locations within the city or performs the same general type of work at several locations within the city. [Ord. 360 § 3, 2002; Ord. 318 § 1, 2000; Ord. 281 § 9, 1999]

#### **5.05.075 Notification of exemption or termination of business activities.**

A. Every person who has obtained a business license required by this chapter and who thereafter ceases to engage in business within the city shall, prior to expiration of the current business license, notify the city clerk, in writing that the business activities that have ceased. Any business for which a license has been issued shall be presumed to continue in operation within the city unless notice of termination of business activities has been given and enforcement proceedings may be commenced on the basis of such presumption.

B. Every person who engages in business in the city, which is exempt or becomes exempt from the provisions of this chapter under federal, state, or local laws, shall notify the license officer/city clerk in writing of the exemption and the basis therefor.

#### **5.05.080 Change in nature or location of business.**

Each business license shall authorize a particular type of business at the designated location. Any change in the nature of the business will require a new ~~new application for a~~ business license. A change of location shall be reported to the city clerk, in writing, within 10 days of the change of location ~~and, if in compliance with zoning and business regulatory ordinances, the existing business license shall be transferred to the new location.~~ [Ord. 318 § 1, 2000; Ord. 281 § 10, 1999]

#### **5.05.090 Exemptions from license requirement.**

Notwithstanding the requirements of BMC 5.05.060, the following shall not be required to apply for and obtain a business license:

(1) Casual or isolated sales made by persons who are not engaged in the business of selling the type of property involved, providing that not more than four such sales-transactions are made during any tax year;

(2) Sales, delivery, or peddling of any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by any farmer, gardener, or other person; and

(3) Minors engaged in babysitting, delivery of newspapers, mowing lawns, washing cars, and similar activities; and-[Ord. 318 § 1, 2000; Ord. 281 § 11, 1999]

(4) Any instrumentality of the United States, the state of Washington, or political subdivisions thereof, including but not limited to any county, city, or special purpose district, with respect to exercise of governmental functions.

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#### 5.05.091 Exemptions for nonprofit festivals.

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A. No license shall be required of any person who operates a business in conjunction with nonprofit community festivals, as approved by the city manager or designee; provided all of the following criteria are met:

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1. The business does not operate within the city more than three consecutive days;

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2. The business does not operate within the city more than 12 days in a calendar year; and

3. The business is authorized to participate in the community festival by the sponsor of the festival.

B. Any person claiming the exemption set forth in this section shall register with the city, on a form prescribed by the city manager or designee, each time he or she engages in business within the city to track the number of days said person does business within the city.

#### 5.05.092 Exemptions – Fee waiver.

The licensing provisions of this chapter shall apply to the following persons and organizations; however, the business license fees shall be waived for:

A. Any person or organization engaged in a not-for-profit (i.e., nonprofit) enterprise, either regularly or temporarily, when it is without private profit, for a public, charitable, funding-raising, educational, literary, fraternal, or religious purpose when such persons sufficiently demonstrate their not-for-profit status through Internal Revenue Service documentation or other means acceptable to the city manager or designee; and

B. Any person whose gross business income is derived from service activity in the City generating gross income of less than \$1,000 per month and who does not maintain a permanent place of business within the City. Any Ssuch persons shall provide the city with an affidavit at the beginning of each license year, confirming the income for the prior license year. A copy of the person's Internal Revenue Service Schedule C, Profit or Loss from Business, or other applicable federal income tax forms may be requested and required as verification of gross income.

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**5.05.100 License – Application.**

(1) No business license shall be issued except upon application made upon a form furnished by the city manager or designee, on which the applicant shall state the company name and address, the nature of the business activity or activities in which the applicant desires to engage, the place where the business will be conducted, the number of employees, and such other information pertaining to the business as shall be reasonably required by the city manager or designee.

(2) Each application shall be accompanied by the license fee as set forth in this chapter or subsequent resolutions. Such license fee shall be nonrefundable unless the city manager or designee determines, in the his or her city manager's sole discretion, that discretion that refunding a license fee is in the best interests of the city. Upon approval of the application, the business license shall be issued by the city. [Ord. 360 § 4, 2002; Ord. 318 § 1, 2000; Ord. 281 § 12, 1999]

**5.05.110 Business license fee.**

Fees will be established by separate resolution. See Resolution No. 214 and any subsequent amendments thereto. [Ord. 433 § 1, 2005]

**5.05.120 Fee – Prorating.**

The business license fee provided for in BMC 5.05.110 shall be for the license year, as set forth in BMC 5.05.160. If a business commences operations at any time on or after February 1st of a license year, the fee for such license year shall be equal to one-half the applicable fee set forth in BMC 5.05.110, irrespective of when during the period from February 1st to July 31st of such license year such business commences operations, and each applicant must pay the full or partial fee for the current license year or any portion thereof during which the applicant has engaged in business. [Ord. 360 § 6, 2002; Ord. 318 § 1, 2000; Ord. 281 § 14, 1999]

**5.05.130 General qualifications of licensees.**

No license shall be issued to any of the following applicants:

(1) Any applicant who has been convicted of a crime, which relates directly to the specific business for which the license is sought; provided, that the time elapsed between the conviction and the date of license application is less than five years for a felony conviction, and less than one year for a gross misdemeanor or misdemeanor conviction.

(2) Any applicant who has suffered a civil judgment based upon fraud, misrepresentation, violation of the Washington Consumer Protection Act, or similar state or federal statutes, or any other judgment or cease and desist order, or consent degree, relating to business activities; provided, that the time elapsed between the entry of judgment and the date of application is less than two years.

(3) Any applicant who does not possess a current and valid state license for operation of their business, if a state license is required. [Ord. 318 § 1, 2000; Ord. 281 § 15, 1999]

**5.05.140 License – Grounds for suspension or revocation.**

The city manager or designee may deny, suspend or revoke a business license, with cause. Cause for denial, suspension or revocation shall include, but not be limited to, the following:

- (1) The license was procured by fraud or misrepresentation of fact;
- (2) The licensee has failed to make timely payment of any amounts due to the City, or failed to comply with any of the provisions of this chapter, or any other city ordinance including but not limited to the zoning code and other development regulations;
- (3) The licensee, or licensee's management personnel, have been convicted of a crime, or suffered civil judgment or consent decree which bears a direct relationship to the conduct of the business licensed pursuant to this chapter;
- (4) The licensee, or licensee's employees or agents, have violated any law or ordinance relating to the regulation of the business licensed pursuant to this chapter, or any other ordinance;
- (5) The licensee has caused or permitted a public nuisance to exist;
- (6) The licensee, or licensee's employees or agents, have engaged in, have permitted or have acquiesced in unlawful activity on the business premises;
- (7) The licensee has failed to pay a civil penalty or to comply with any notice and order of the city clerk; or
- (8) The licensee's continued conduct of the business will, for any other reason, result in a substantial danger to the public health, safety or welfare. [Ord. 318 § 1, 2000; Ord. 281 § 16, 1999]

#### **5.05.150 Appeal of denial, suspension or revocation.**

(1) Any person, firm or corporation whose license has been denied, suspended or revoked may appeal to the hearing examiner from such finding by filing a written notice of appeal with the city manager or designee within 14 calendar days from the time such business was given notice of such denial, suspension or revocation.

(2) Appeals from the denial, suspension or revocation of a business license under this chapter will be governed by the provisions of Chapter 2.20 BMC. [Ord. 318 § 1, 2000; Ord. 312 § 7, 2000; Ord. 281 § 17, 1999]

#### **5.05.160 License – Term.**

All business licenses shall be effective for the license year of issuance. A license year shall be from August 1st through the following July 31st. Licenses issued shall be effective from the date of issue until the following July 31st, unless sooner suspended or revoked as provided in this chapter. [Ord. 318 § 1, 2000; Ord. 281 § 18, 1999]

#### **5.05.170 License – Renewal.**

Application for renewal of all business licenses shall be made on or before July 31st of the year following the year of issuance, and each succeeding year, if the business is to be continued. Application for renewal shall be made on forms prescribed by the city manager or designee. A business which has an existing business license, and which has applied for renewal of such license on or before July 31st of the license year, may remain in business under its existing license

until such time as the renewal license is either approved or denied. [Ord. 360 § 7, 2002; Ord. 318 § 1, 2000; Ord. 281 § 19, 1999]

**5.05.180 Penalty for late application.**

Any applicant or licensee who shall fail to make application or pay the fees for an original business license, or for renewal of an existing business license prior to July 31st of the applicable year, shall be subject to a penalty equal to one-half of the business license fee for the delinquent period, if the application or renewal business license fee is 30 or more days delinquent. [Ord. 360 § 8, 2002; Ord. 318 § 1, 2000; Ord. 281 § 20, 1999]

**5.05.190 Administrative rules and regulations.**

The city manager or designee is authorized but not required to adopt and enforce rules and regulations, not inconsistent with the provisions of this chapter, and any other business license or regulation ordinance, and it shall be unlawful for any person to violate or fail to comply with any of these rules and regulations. All such rules and regulations promulgated by the city manager or designee shall be reduced to writing, shall be provided to the licensee with each new or renewal business license upon request, or shall be mailed to each licensee for information of the licensee and the licensee's employees and agents. Such rules and regulations shall also be available for public inspection at the offices of the city manager or designee. [Ord. 318 § 1, 2000; Ord. 281 § 21, 1999]

**5.05.200 Licenses – General provisions.**

(1) Exemptions. The license fee provisions of this chapter shall not apply to any business, firm or corporation which the city is forbidden to tax by law.

(2) Renewal. The city manager or designee is authorized, but not required, to mail to businesses forms for application for licenses, but failure of the business to receive any such form shall not excuse the business from making application for and securing the license required and payment of the license fee when and as due hereunder.

(3) Penalties.

(a) Collection. Any license fee, penalty or tax due and unpaid and delinquent under this chapter, and all penalties thereon, may be collected by civil action, which remedy shall be in addition to any and all other existing remedies and penalties. (b) Nuisance. Any business failing to obtain or maintain a business license and yet conducting business within the city limits of the city is hereby declared to be a nuisance and is subject to applicable enforcement provisions for nuisances contained in the BMC or otherwise at law.

(c) Beginning with the 2002-2003 license period, if any person engaged in business fails or refuses to pay the license fee for any year as herein provided, he shall not be granted a license for the current year until such delinquent license fees as set forth in BMC 5.05.180 have been paid, in addition to the current year's required fee. Such fees may be collected by the city by proper legal action brought for that purpose if any person engaged in business fails or refuses to pay the license fee. This remedy is cumulative and not exclusive.

(d) Criminal Penalties. In addition to or as an alternative to any other penalty provided herein or by any other business license or regulation ordinance, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or by both such imprisonment and fine.

(4) Appeal of Assessed Fee.

(a) Any business aggrieved by the amount of the fee found by the city manager or designee to be required under the provisions of this chapter may appeal to the hearing examiner from such assessment by filing a written notice of appeal with the city manager or designee within 15 days from the time such business was given notice of such amount.

(b) The city manager or designee shall, as soon as practicable, fix a time and place for the hearing of such appeal, which time shall be not more than 30 days after the filing of the notice of appeal. The city manager or designee shall cause a notice of the time and place thereof to be mailed to the appellant.

(c) At the hearing the business shall be entitled to be heard and to introduce evidence in its own behalf. The hearing examiner before which the appeal is to be heard may, by subpoena, require the attendance of any person and may also require them to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of them pertinent to the appeal, and it shall be unlawful for them to fail or refuse so to do.

(d) The hearing examiner shall ascertain the correct amount of the fee and make a written finding, supported by the record. The written finding will be sent to the city and the business.

(e) Failure of any business to file an appeal in accordance with the provisions of this subsection shall constitute a waiver of the right to an administrative hearing to contest the amount of the assessed fee.

(f) Any business aggrieved by the decision of the hearing examiner may seek review of that decision in the superior court of the state of Washington for King County by application for writ of certiorari, or other judicial review, within 20 calendar days following the decision of the hearing examiner. If the aggrieved party fails to obtain such judicial review within 20 calendar days following the hearing examiner's decision, the city attorney may invoke the aid of the appropriate court to secure enforcement and compliance with the hearing examiner's decision.

(g) Enforcement of any fee assessment will be stayed during the pendency of any timely appeal therefrom.

(5) Statute of Limitations for Unlicensed Businesses. No penalties shall be imposed or remedies sought under subsection (3) of this section more than three years following the close of the license year in which there is noncompliance with the provisions of this chapter, commencing with the license year ending July 31, 2002. The previous sentence shall not apply if the city shows that the business's

operation without a business license resulted from such business's willful intent to operate its business without a new or renewal business license.

(6) Assignability and Transferability of Business License. A business license is not transferable or assignable except, in the case of continuation of an existing business:

(a) To the surviving corporation into which a licensed corporation is merged or consolidated;

(b) To one or more individual partners or to a new partnership consisting solely of a portion the partners of an existing partnership upon death of a partner or dissolution of the partnership;

(c) To a partnership or a corporation formed by a licensed sole proprietor who has at least a majority interest in such corporation or partnership;

(d) To a surviving spouse; or

(e) In circumstances similar to subsections (6)(a) through (d) of this section, as approved by the city manager. [Ord. 360 § 9, 2002; Ord. 318 § 1, 2000; Ord. 281 § 22, 1999]

#### **5.05.210 Independent contractors to be licensed.**

Any person, firm or corporation doing business in Burien will not employ any independent contractors who have not obtained a Burien business license under the provisions of this chapter. [Ord. 318 § 1, 2000; Ord. 281 § 23, 1999]

#### **5.05.220 Confidentiality of information.**

The current provisions of RCW 82.32.330 and subsequent amendments are hereby adopted by reference as if fully set forth herein. [Ord. 318 § 1, 2000; Ord. 281 § 24, 1999]

#### **5.05.230 Business license fee owed in 2000.**

For those businesses possessing a business license on or before December 22, 1999, there will be no additional business license fee owed until the time of renewal in the year 2000. [Ord. 318 § 1, 2000; Ord. 281 § 25, 1999]

#### **5.05.240 Required – Display.**

It is unlawful for any person to engage in or carry on any business activity in the city without first procuring a license as provided in this chapter. The license shall thereafter be prominently displayed in the place of business of the applicant. [Ord. 360 § 10, 2002]

#### **5.05.250 Inspections – Right of entry.**

The city manager, or designee, may make such inspections of licensed premises and take such action as may be necessary to enforce the provisions of any business license ordinance. The city manager may designate any appropriate city employees, including the code enforcement officer and commissioned police officers, to undertake such inspections. Inspections shall, to the extent possible, be in compliance with the following procedures:

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A. Whenever possible inspections will be conducted at a reasonable time and seek to minimize interference with lawfully conducted business in the licensed premise.

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B. If the place of business is occupied, the inspector shall first present proper credentials and request entry and right to inspect.

C. If the place of business is unoccupied, the inspector shall first make a reasonable effort to locate the licensee or other person having charge or control of the premises, by at a minimum checking City and County records, and shall then present proper credentials and request entry and right to inspect.

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D. No licensee, employee, or agent, shall fail or neglect, after proper request, to admit the inspector, acting within the scope of the inspector's employment, to any location licensed for business, or to interfere with the inspector while in the performance of the inspector's duty.

E. Nothing herein shall prevent or prohibit undercover investigations or inspections by appropriate officers in appropriate circumstances, provided such investigations or inspections are conducted consistent with constitutional and legal requirements.

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