

ORDINANCE NO. 2010-887

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 8.04 OF THE DEER PARK MUNICIPAL CODE; DEFINING NUISANCES; DECLARING SUCH NUISANCES UNLAWFUL; ESTABLISHING A VOLUNTARY CORRECTION PROCEDURE; ESTABLISHING HEARING PROCEDURES; ESTABLISHING CIVIL PENALTIES FOR VIOLATIONS; REPEALING CHAPTER 12.16 OF THE DEER PARK MUNICIPAL CODE; AMENDING SECTION 18.94.030 OF THE DEER PARK MUNICIPAL CODE; CONTAINING A SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE.

WHEREAS, regulation of nuisances is authorized by RCW 35.22.280(30); and

WHEREAS, prevention and correction of nuisances are necessary to protect public health and safety; and

WHEREAS, the City staff have reviewed the existing City code provisions related to nuisances and determined that the provisions in this Ordinance are necessary to further protect the public health and safety, and the Mayor and Council agree; now, therefore,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. Chapter 8.04 of the Deer Park Municipal Code is hereby amended to read as follows:

Chapter 8.04

NUISANCES

Sections:

8.04.010 Construction
8.04.020 Definitions
8.04.030 Nuisances unlawful
8.04.040 Exempted acts
8.04.050 Prohibited conduct

- 8.04.060 Authorized act not a nuisance
- 8.04.070 Successive owners or occupant liable
- 8.04.080 Abatement does not preclude action for damages
- 8.04.090 Voluntary correction
- 8.04.100 Notice of civil violation
- 8.04.110 Hearing before the Court
- 8.04.120 Abatement by the City
- 8.04.130 Additional enforcement procedures
- 8.04.140 Conflicts

8.04.010 Construction.

This ordinance is an exercise of the police power of the City of Deer Park and is deemed necessary for the continued peace, health, safety, and welfare of the City. Therefore all of its provisions shall be liberally construed for the accomplishment of such purposes.

8.04.020 Definitions.

The words and phrases used in this Chapter, unless the context otherwise indicates, shall have the following meanings:

A. "Abate" or "Abatement" means to repair, replace, remove, destroy, or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the enforcement officer, in his or her judgment, determines is necessary in the interest of the general health, safety, and welfare of the community.

B. "Building" means any building dwelling, structure, or mobile home, factory built house, or part thereof, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

C. "Building Materials" means and includes, but is not limited to, lumber, plumbing materials, wall board, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing materials, cans of paint, and similar materials.

D. "City" means the City of Deer Park, Washington.

E. "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the State of Washington Department of Ecology.

F. "Enforcement Officer" means the "Code Enforcement Officer" of the City of Deer Park or his/her designee.

G. "Litter" means all waste material including, but not limited to, disposable packages or containers thrown or deposited on public or private property, including

depositing handbills on vehicles or public property, but not including the waste of primary processes of mining, logging, saw milling, farming, or manufacturing.

H. "Nuisance" means:

1. An act or omission to act, or a condition or use of property which either annoys, injures, or endangers the comfort, repose, health or safety of the public; offends public decency; decreases the value of nearby property; or in any way renders other persons insecure in life or in the use of property.

2. The erecting, maintaining, using, placing, depositing, causing, allowing, leaving or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, right of way, alley, avenue, alley, park, parkway, public water (including lakes, rivers, streams, drainage ways, and/or gulleys), or other public or private place in the City, any one or more of the following conditions, things, or acts:

a. Accumulations of refuse, except a compost pile not visible from a public street, alley, road, sidewalk, park, public right-of-way, or other public area so covered or concealed as not to affect the health, safety or depreciation of adjoining property;

b. Carcasses of animals not buried or destroyed within twenty-four (24) hours after death;

c. All limbs of trees overhanging a public sidewalk which are less than ten (10) feet above the surface of said sidewalk, or overhanging a City street which are less than fifteen (15) feet above the surface of said street;

d. The existence of any vines or climbing plants growing into or over any street, public hydrant, power or light pole; or the existence of any shrub, vine or plant growing on, around or in front of any hydrant, stand pipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto; or obstruct or interfere with the proper diffusion from the light from any street lamp;

e. Any use of property abutting on a public street, road, alley, right-of-way, or sidewalk, or any use of such public street, road, alley, right-of-way, or sidewalk which causes any obstruction of traffic and the free use of the streets, roads, alleys, right-of-ways, or sidewalks; provided, that this Subsection shall not apply to events, programs or parades authorized by the City Council;

f. Any poisonous or harmful substance which is reasonably accessible to persons or to animals;

g. Any attractive nuisances which may prove detrimental to children which is left in any place exposed or accessible to children. This includes but is not limited to, unused or abandoned refrigerators, freezers, or like containers, or other large appliances or equipment or parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; any lumber, trash, debris or vegetation which may prove a hazard for minors;

h. The existence of any dead, diseased, infested or dying tree or other vegetation that may constitute a danger to property or persons;

i. The existence of any fence, structure, or other thing which creates any traffic safety problem through obscured sight distance, including but not limited to any violations of Chapter 18.94 DPMC, as the same now exists or may hereafter be amended;

j. The existence of any fence or other structure which is in a sagging, leaning, fallen, decayed, or other dilapidated or unsafe condition on private property abutting or fronting upon any public street, sidewalk or place;

k. The existence of any fence or other structures located in a public right of way without specific approval from the City;

l. Any accumulation of material on property including, but not limited to animal matter, ashes, bottles, boxes, broken stone, building materials which are not properly stored or neatly piled, cans, cement, crates, empty barrels, dead animals or animal waste, glass, litter, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, iron or other scrap metal, packing cases, packing material, plaster, plastic, rags, wire, yard waste or debris or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided that nothing herein shall prevent the temporary retention of waste in covered receptacles approved by the enforcement officer;

m. Any dangerous building as defined in the most current edition of the Uniform Code for the Abatement of Dangerous Buildings, which code is hereby adopted by the City for this purpose, or any building, structure, or addition to such, commenced and left unfinished six months beyond the expiration of the building permit issued for that building or 12 months from the date of building commencement if no building permit was required to be issued;

n. The non-emergency repair of an automobile, truck, or other motor vehicle of any kind upon the public streets, alleys or other public property of the City;

o. The erection, continuance, or use of any building, room, or other place in the City for the exercise of any trade, employment, or manufacture which,

by producing noxious fumes, offensive odors, or other annoyances, is discomforting, offensive or detrimental to the health of individuals or of the public;

p. Any unguarded or abandoned excavation, pit, well, or holes which would endanger health or safety;

q. Dumping, depositing, placing, or leaving of any litter, refuse, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable water course, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps, or brush upon the banks or in the bed or channel of any navigable water-course;

r. All noxious weeds upon public or private property;

s. All unmaintained grass, weeds, and/or other similar vegetation growth in excess of twelve inches high, and in an area 50% or more of which is developed. For purposes of this provision, an "area 50% or more of which is developed," shall mean and include: (i) 50% or more of a City block if the potentially offending property is located on a standard City block; or (ii) in an area that is not a standard City block, an area which consists of a single division of a plat, 50% or more of which is developed; or

t. Any accumulation of litter or other material on property that leads to infestation by mice, rats, rodents, raccoons, stray animals, and/or insects.

3. The keeping or maintenance in any area on private Premises which is not screened and is clearly visible from a public street, right of way, alley, sidewalk, park or other public area of any accumulation, collection or untidy storage of any of the following: refuse, old appliances or parts thereof; old iron, steel, aluminum or other metal; apparently inoperable or junk vehicles, including dismantled, apparently unlicensed, and/or wrecked vehicles, vehicle parts, machinery or equipment; mattresses, bedding, clothing, rags, or cloth; straw, packing material, cardboard or paper; tin cans, wire, bottles, glass, cement; and wood or timber not neatly stacked or piled. The term "screened" shall be defined as the construction of a wood fence of appropriate height, designed to not allow the enclosed area to be visible between boards, or the construction of a steel fence of chain link or welded link fabric of appropriate height designed to receive slats and which has slats in place of the appropriate size designed to, as nearly as possible, completely obstruct the view of the enclosed area. Any fence shall conform to local zoning and building code standards.

I. "Occupant" means any person having actual or constructive possession of the property, including but not limited to an owner, agent, or lessee.

J. "Owner" means any person having any ownership interest in the property in question as indicated on the property tax records maintained by Spokane County.

K. "Person" means any individual, firm, partnership, corporation, association or other entity, public or private, whether acting by themselves or by a servant or employee.

L. "Person responsible for the violation" or "person responsible for the Nuisance" means any Person who has an interest in or resides on the Premises, whether as owner, lessor, tenant, occupant or other person entitled to control, use and/or occupy the Premises.

M. "Premises" means any building, lot parcel, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

N. "Property" means any object of value that a person may lawfully acquire and hold.

O. "Refuse" means vegetable offal, animal offal, discarded food, cans, bottles, waste paper, boards and boxes, tree limbs and all other waste substances from private and public establishments and from residences; but shall not include small amounts of weeds, twigs, grass, or other material resulting from the normal tending of lawns or gardens.

P. "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding twelve consecutive month period.

Q. "Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

8.04.030 Nuisances Unlawful.

Unless otherwise permitted by law and whenever the enforcement officer determines that any Nuisance exists upon any Premises, the Enforcement Officer may require or provide for the Abatement thereof pursuant to this Chapter.

8.04.040 Exempted Acts.

This Chapter shall not apply to the United States, the State of Washington, Spokane County, the City of Deer Park, or any of their respective officers, employees, or contractors when engaged in snow removal, street cleaning, emergency repair to any street, Building or Structure, fire suppression, or any other emergency for the preservation of life or Property. Government owned or authorized stockpiling of

materials for street construction and/or maintenance activities shall be exempt from this Chapter.

8.04.050 Prohibited Conduct.

It shall be unlawful for any person responsible for the violation to create, permit, maintain, suffer, carry on or allow, upon any Premises, any of the acts or things declared by this Chapter to be a Nuisance or to violate any of the provisions of this Chapter.

8.04.060 Authorized act not a nuisance.

No act which is done or maintained under the express authority of a statute or ordinance shall be deemed a Nuisance.

8.04.070 Successive owners or occupant liable.

Every successive owner or occupant of a Premises who neglects to Abate a continuing Nuisance upon or in the use of such Premises caused by a former owner is liable therefor in the same manner as the one who first created it.

8.04.080 Abatement does not preclude action for damages.

The Abatement of a Nuisance does not prejudice the right of any person to recover damages for its past existence.

8.04.090 Voluntary correction.

A. This section applies whenever the Enforcement Officer determines that a Nuisance is occurring.

B. The Enforcement Officer shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the nuisance where possible, explaining the Nuisance, and requesting correction.

C. A voluntary correction agreement may be entered into between the person responsible for the Nuisance and the City, acting through the Enforcement Officer.

1. The voluntary correction agreement is a contract between the City and the person responsible for the Nuisance under which such person agrees to abate the Nuisance within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

a. The name and address of the person responsible for the nuisance;

b. The street address or a description sufficient for identification of the building, structure, or Premises, upon or within which the Nuisance is occurring;

c. A description of the Nuisance;

d. The necessary corrective action to be taken, and a date or time by which correction must be completed;

e. An agreement by the person responsible for the Nuisance that the City may inspect the Premises as may be necessary to determine compliance with the voluntary correction agreement;

f. An agreement by the person responsible for the Nuisance that the City may Abate the Nuisance and recover its costs and expenses, including attorneys fees, and a monetary penalty pursuant to this Chapter from the person responsible for the Nuisance if terms of the voluntary correction agreement are not met; and

g. An agreement that by entering into the voluntary correction agreement the person responsible for the Nuisance waives the right to an appeal of the Nuisance and/or the required corrective action.

2. The person responsible for the Nuisance waives the right to an appeal of the Nuisance and the required corrective action upon entering into a voluntary correction agreement.

3. The City shall have the right to inspect the subject property to determine compliance with the terms of the voluntary correction agreement.

4. An extension of the time limit for correction or a modification of the required corrective action may be granted by the enforcement officer if the person responsible for the Nuisance has shown due diligence and/or substantial progress in abating the Nuisance but unforeseen circumstances render abatement under the original conditions unattainable.

5. The City may abate the Nuisance in accordance with Section 8.04.120 if the terms of the voluntary correction agreement are not met.

6. If the terms of the voluntary correction agreement are not met the person responsible for the Nuisance shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Subsection E of Section 8.04.100, plus all costs and expenses of abatement, as set forth in Subsection D of Section 8.04.120.

8.04.100 Notice of civil violation.

A. When the Enforcement Officer determines that a nuisance has occurred, or is occurring, and is unable to secure voluntary correction, pursuant to Section 8.04.090, the Enforcement Officer may issue a notice of civil violation to the person responsible for the nuisance. The Enforcement Officer may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 8.04.090 under the following circumstances:

1. When an emergency exists; or
2. When a repeat violation occurs; or
3. When the violation creates a situation or condition which cannot be corrected; or
4. When the person knows or reasonably should have known that a Nuisance is occurring; or
5. When the person cannot be contacted or refuses to communicate or cooperate with the City in correcting the violation.

B. The notice of civil violation shall include the following:

1. The name and address of the Person responsible for the Nuisance; and
2. The street address or description sufficient for identification of the building, structure, or Premises upon or within which the Nuisance is occurring; and
3. A description of the Nuisance; and
4. The required corrective action and a date and time by which the correction must be completed after which the City may abate the Nuisance in accordance with Section 8.04.120; and
5. The date, time and location of an appeal hearing before the Deer Park Municipal Court shall be scheduled not less than ten (10) calendar days and not more than forty (40) calendar days from the date the notice of Abatement is issued; and
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the Enforcement Officer approves the completed, required corrective action at least seventy-two (72) hours prior to the hearing; and
7. A statement that the costs and expenses of Abatement incurred by the City pursuant to Subsection D of Section 8.04.120 and a monetary penalty as

specified in Subsection E of Section 8.04.100 may be assessed against the person to whom the notice of civil violation is issued as specified and ordered by the Deer Park Municipal Court.

C. The Enforcement Officer shall cause the notice of civil violation to be served upon the person to whom it is issued, either personally or by mailing, certified, return receipt requested, a copy of the notice of Abatement to such person at his/her last known address. If the person to whom the notice is issued cannot after due diligence be personally served within Spokane County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of Abatement conspicuously on the affected Premises or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. No extension of the time specified in the notice of civil violation for correction of the Nuisance may be granted, except by order of the Deer Park Municipal Court.

E. The monetary penalty for each day, or portion thereof, that the Nuisance is permitted to continue or portion thereof shall be as follows:

1. First day One Hundred Dollars (\$100.00);
2. Second day Two Hundred Dollars (\$200.00);
3. Third day Three Hundred Dollars (\$300.00);
4. Fourth day Four Hundred Dollars (\$400.00);
5. Each additional day beyond four days, Five Hundred Dollars (\$500.00) per day.

F. Payment of a monetary penalty pursuant to this Chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the Nuisance.

G. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is issued. Any monetary penalty assessed must be paid to the City within ten (10) calendar days from the date of mailing of the Deer Park Municipal Court's decision and order or a notice from the City that penalties are due. The City Attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty, plus reasonable attorneys' fees and costs incurred in collecting said monetary penalty.

8.04.110 Hearing before the Court.

A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the Deer Park Municipal Court not less than ten (10) calendar days nor more than forty (40) calendar days after the notice of civil violation is issued. Continuances may be granted at the discretion of the court for good cause shown.

B. Prior correction of violation. The hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the Enforcement Officer approves the completed required corrective action seventy-two (72) hours prior to the scheduled hearing.

C. Procedure. The court shall conduct a hearing on the civil violation pursuant to the current applicable rules of civil procedure for courts of limited jurisdiction. The enforcement officer and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable under the circumstances. The determination of the Enforcement Officer as to the need for the required corrective action shall be accorded substantial weight by the court in determining the reasonableness of the required corrective action.

D. Decision of the Court.

1. The court shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable under the circumstances, and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The court shall issue an order to the person responsible for the violation which contains the following information:

a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

b. The required corrective action;

c. The date and time by which the correction must be completed;

d. The monetary penalties assessed based on the criteria in Section 8.20.110(D)(3); and

e. The date and time after which the City may proceed with Abatement of the unlawful condition if the required correction is not completed.

3. Assessment of monetary penalty. Monetary penalties assessed by the court shall be in accordance with the monetary penalty in Section 8.04.100(E).

a. The court shall have the following options in assessing monetary penalties:

(1) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter;

(2) Assess monetary penalties beginning on the correction date set by the Enforcement Officer or an alternate correction date set by the court and thereafter;

(3) Assess less than the established monetary penalty set forth in Section 8.04.100(E) based on the criteria of Section 8.04.110(D)(3)(b); or

(4) Assess no monetary penalties.

b. In determining the monetary penalty assessment, the court shall consider the following factors:

(1) Whether the person responded to the Enforcement Officer's attempts to contact the person, and cooperated to correct the violation;

(2) Whether the person failed to appear at the hearing;

(3) Whether the violation was a repeat violation;

(4) Whether the person showed due diligence and/or substantial progress in correcting the violation; and

(5) Any other relevant factors.

c. The court may double the monetary penalty schedule if the Nuisance violation is a repeat violation. In determining the amount of the monetary penalty for repeat violations the court shall consider the factors set forth in Section 8.04.110(D)(3)(b).

E. Failure to appear. If the person to whom the notice of civil violation was issued fails to appear without lawful excuse at the scheduled hearing, the court shall enter an order with findings pursuant to Section 8.04.110(D)(2) and assess the appropriate monetary penalty pursuant to Section 8.04.110(D)(3).

The City may enforce the court's order and recover all related expenses, including attorney fees, costs of the hearing and any monetary penalty from that person.

F. Appeal to Superior Court. Any appeal of the decision of the Court shall be pursuant to the then-current Rules for Appeal from Courts of Limited Jurisdiction (RALJ).

8.04.120 Abatement by the City.

A. Abatement. The City may abate a nuisance when:

1. The terms of voluntary correction agreement pursuant to Section 8.04.090 have not been met; or

2. A notice of civil violation has been issued pursuant to Section 8.04.100 and a decision and order has been issued pursuant to Section 8.04.110 and the required correction has not been completed by the date specified in the decision and order; or

3. The condition is subject to summary Abatement as provided for in Subsection B of this Section.

B. Summary Abatement. Whenever a Nuisance is occurring which constitutes an immediate and emergent threat to the public health, safety, or welfare, or to the environment, the City may summarily and without prior notice Abate the condition. Notice of such Abatement, including the reason for it, shall be given to the person responsible for the Nuisance as soon as reasonably possible after the Abatement.

C. Authorized action by City. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to Abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. Recovery of Costs and Expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use, and/or occupy the Premises and shall become due and payable to the City within ten (10) calendar days following billing. The term "incidental expenses" includes but is not limited to:

1. Personnel and out-of-pocket costs, both direct and indirect, including actual reasonable attorneys' fees and costs;

2. Costs incurred in documenting the violation;

3. Hauling, storage and disposal expenses;

4. Actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and

5. The costs of any required printing and mailing.

E. Obstruction Violation. Any person that a Deer Park Municipal Court Judge or Court Commissioner finds to have obstructed, impeded, or interfered with the City or its agents, or with the person responsible for the Nuisance in the performance of duties imposed by this Chapter, or a decision and order issued by the Deer Park Municipal Court or an agreement between the City and the person responsible for the Nuisance, shall be deemed to have committed a civil infraction and shall be subject to the penalties as set forth in Section 1.16.020 of the Deer Park Municipal Code.

8.04.130 Additional enforcement procedures.

The provisions of this Chapter are not exclusive, and may be used in addition to other enforcement alternatives authorized by the Deer Park Municipal Code or state law.

8.04.140 Conflicts.

In the event of a conflict between this Chapter and any other provision of the Deer Park Municipal Code or other City ordinance providing for an earlier adopted penalty for violations described in this Chapter, this Chapter shall control.

Section 2. Chapter 12.16 of the Deer Park Municipal Code is hereby repealed.

Section 3. Section 18.94.030 of the Deer Park Municipal Code is hereby amended to read as follows:

18.94.030 Violation.

Any and all violations of this Chapter 18.94 shall be deemed a nuisance and enforced as set forth in Chapter 8.04 DPMC.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or the constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall take effect and be in full force five (5) days after this ordinance or a summary thereof consisting of the title is published.

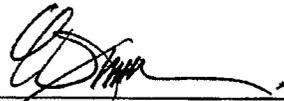
APPROVED:


MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:


DEBY CRAGUN, CITY CLERK

APPROVED AS TO FORM:


CHARLES D. ZIMMERMAN
CITY ATTORNEY

FILED WITH THE CITY CLERK :	4/1/10
PASSED BY THE CITY COUNCIL :	5/5/10
PUBLISHED :	5/11/10
EFFECTIVE DATE :	5/17/10
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