

TOWN OF DALTON

SPECIAL TOWN MEETING

NESSACUS MIDDLE SCHOOL – NOVEMBER 19, 2007 – 7:00 P.M.

The Moderator, Ronald J. Marcella, Sr., called the Meeting to order at 7:00 p.m.

Elizabeth Erb and Victoria M. Sedgwick were appointed tellers and were sworn by Town Clerk, Barbara L. Suriner. There was a total of 92 Registered Voters checked at the door as follows:

PRECINCT 1 - 52  
PRECINCT 2 - 40  
92

It was moved, seconded and voted that the Moderator waive the reading of the Warrant.

CARRIED. UNANIMOUSLY.

ARTICLE 1. It was moved, seconded and voted that the Town appropriate \$1,110,000.00 for the design, engineering and construction of Town Hall renovations, including borrowing costs associated with said project; that to meet this appropriation the Treasurer with the approval of the Select Board is authorized to borrow said sum under G.L. c.44, §7(3A) or any other enabling authority; and that the Select Board is authorized to take any other action necessary to carry out this project provided, however, that this vote shall not take effect until the Town votes to exempt from the limitation on total taxes imposed by G.L. c.59, §21C (Proposition 2½) amounts required to pay the principal of and interest on the borrowing authorized by this vote.

TWO-THIRDS VOTE REQUIRED

CARRIED. DECLARED 2/3 MAJORITY. (QUESTION PASSED AT 1/7/08 STE)

ARTICLE 2. It was moved, seconded and voted that the Town adopt an amendment to the Animal Control By-law by striking Section 3.I (S/B J) in its entirety and substituting a new Section 3.I (S/B J) as set forth below: "Should any owner or keeper of an animal fail to license that animal as required under MGL Chapter 140, before February 1, the owner or keeper shall pay a late fee as established by the Select Board before obtaining said license, except for a dog brought into the Town as provided by MGL Chapter 140, Section 138. This late fee shall be applicable from the sixty-first day after arrival of such dog. Any person maintaining a commercial kennel in the Town of Dalton who fails to license as prescribed by this section and the laws of the Commonwealth, shall pay a late fee as established by the Select Board, commencing February 1."

CARRIED. UNANIMOUSLY.

ARTICLE 3. It was moved, seconded and voted that the Town adjust the eligibility factor for the property tax exemption for senior citizens under Massachusetts General Laws Chapter 59 Section 5 Clause 41C, by reducing the requisite age of eligibility to any person 65 years of age or older, effective for exemptions granted for any fiscal year beginning on or after July 1, 2008.

CARRIED. DECLARED MAJORITY.

ARTICLE 4. It was moved, seconded and voted that the Town adjust the eligibility factors for the property tax exemption for senior citizens under Massachusetts General Laws Chapter 59 Section 5 Clause 41C, by increasing the gross receipts allowed from all sources for a person from less than \$13,000 to not more than \$20,000 for said person; or if married, combined gross receipts with his spouse from less than \$15,000 to not more than \$30,000, effective for exemptions granted for any fiscal year beginning on or after July 1, 2008.

CARRIED. UNANIMOUSLY.

ARTICLE 5. It was moved, seconded and voted that the Town adjust the eligibility factors for the property tax exemption for senior citizens under Massachusetts General Laws Chapter 59 Section 5 Clause 41C, by increasing the whole estate allowed to a person from not in excess of \$28,000 to not more than \$40,000; or if married, from not in excess of \$30,000 to not more than \$55,000, effective for exemptions granted for any fiscal year beginning on or after July 1, 2008.

CARRIED. UNANIMOUSLY.

ARTICLE 6. It was moved, seconded and voted that the Town appropriate and transfer \$20,000.00 from the Capital Stabilization Fund to match fifty percent of a grant from the Massachusetts Historical Commission for the purpose of repair and correction of hazardous grave stones in the town's three historic cemeteries provided that the Cemetery Trustees shall appropriate an equal amount from the Cemeteries Expendable Trust Fund, and provided that the Massachusetts Historical Commission shall award the Town said grant.

TWO-THIRDS VOTE REQUIRED

CARRIED. DECLARED 2/3 MAJORITY.

ARTICLE 7. It was moved, seconded and voted that the Town appropriate and transfer \$25,000 from the Capital Stabilization Fund to the Reserve Fund for the purpose of reimbursing extraordinary and unforeseen capital expenditures made from said Reserve Fund for the Town Hall Renovation Project

TWO-THIRDS VOTE REQUIRED

CARRIED. YES-67 NO-12.

ARTICLE 8. It was moved, seconded and voted that the Town refer this Article to the Select Board to be brought back to the Annual Town Meeting on May 5, 2008.

CARRIED. DECLARED MAJORITY.

ARTICLE 9. It was moved, seconded and voted that the Town adopt the following Illicit Discharge Detection and Elimination By-law, available at Special Town Meeting of November 19, 2007, for the purpose of establishing methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with the requirements of the National Pollutant Discharge Elimination System general permit.

ILLICIT DISCHARGE DETECTION & ELIMINATION BYLAW

1.0 PURPOSE/INTENT

The purpose of this bylaw is to protect Dalton's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

This bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) general permit. The objectives of this bylaw are:

- 1) Prevent pollutants from entering Dalton's municipal separate storm sewer system (MS4);
- 2) Prohibit illicit connections and unauthorized discharges to the MS4;
- 3) Require the removal of all such illicit connections;
- 4) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with state and federal statutes and regulations relating to stormwater discharges; and
- 5) Establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

2.0 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of this bylaw.

**AUTHORIZED ENFORCEMENT AGENCY:** The Board of Health and its employees or agents are designated to enforce this by-law. For the purposes of this bylaw, Agents of this Board include the Town Health Agent, the Superintendent of Public Works, or the Town Building Inspector.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff. It also includes schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

**GROUNDWATER:** Water beneath the surface of the ground.

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 8 of this by-law.

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

**INDUSTRIAL ACTIVITY:** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Dalton.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

**STORMWATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

**NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of stormwater.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- 1) paints, varnishes, and solvents;
- 2) oil and other automotive fluids;
- 3) non-hazardous liquid and solid wastes and yard wastes;
- 4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- 5) pesticides, herbicides, and fertilizers;
- 6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- 7) dissolved and particulate metals;
- 8) animal wastes;
- 9) rock, sand, salt, soils;
- 10) construction wastes and residues; and
- 11) noxious or offensive matter of any kind.

**PREMISES:** Any building, lot, parcel of land, or portion of land whether improved or unimproved.

**PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

**RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

**STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

**SURFACE WATER DISCHARGE PERMIT:** A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

**STORMWATER POLLUTION PREVENTION PLAN:** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**TOXIC OR HAZARDOUS MATERIAL or WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

**WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

**WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

**WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

### 3.0 APPLICABILITY

This bylaw shall apply to all water entering the municipally owned storm drainage system unless explicitly exempted by an authorized enforcement agency.

### 4.0 AUTHORITY

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

### 5.0 RESPONSIBILITY FOR ADMINISTRATION

The Board of Health shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Board of Health may be delegated in writing by the Board of Health to employees or agents of the Board of Health.

### 6.0 REGULATIONS

The Board of Health is authorized to promulgate rules and regulations to effectuate the purposes of this by-Law. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

### 7.0 PROHIBITED ACTIVITIES

#### A. Prohibition of Illicit Discharges

No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the MS4, into a watercourse, or into the waters of the Commonwealth.

#### B. Illicit Connections

No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

#### C. Obstruction of Municipal Storm Drain System

No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Board of Health.

## 8.0 EXEMPTIONS

A. Discharge or flow from fire fighting activities.

B. The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwater provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- 1) Waterline flushing;
- 2) Flow from potable water sources;
- 3) Springs;
- 4) Natural flow from riparian habitats and wetlands;
- 5) Diverted stream flow;
- 6) Rising groundwater;
- 7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- 8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- 9) Discharge from landscape irrigation or lawn watering;
- 10) Water from individual residential car washing;
- 11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- 12) Discharge from street sweeping;
- 13) Dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
- 14) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- 15) Discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare or the environment.

## 9.0 SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

A. Suspension due to Illicit Discharges in Emergency Situations.

The Board of Health its employees or agents designated to enforce this by-law may, without prior notice, suspend municipal storm drain system access when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Board of Health may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

B. Suspension due to the Detection of Illicit Discharge

The Board of Health its employees or agents designated to enforce this by-law may terminate all access to the municipal storm drain system that is not in compliance with this bylaw. The Board of Health will notify a violator of the proposed termination. The violator may petition the Board of Health for a reconsideration and hearing as provided in Section 12(E). In the event any person fails to comply with a termination order, the Board of Health may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

## 10.0 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Board of Health, its employees or agents designated to enforce this by-law prior to the allowing of discharges to the municipal storm drain system.

### 11.0 NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release.

In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and Board of Health. In the event of a release of non-hazardous material, the reporting person shall notify the Board of Health no later than the next business day. The reporting person shall provide to the Board of Health written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### 12.0 ENFORCEMENT

The Board of Health its employees or agents shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations as noted below:

#### A. Civil Relief

If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the Board of Health may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

#### B. Orders

The Board of Health its employees or agents designated to enforce this by-law may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- 1) elimination of illicit connections or discharges to the MS4;
- 2) performance of monitoring, analyses, and reporting;
- 3) that unlawful discharges, practices, or operations shall cease and desist; and
- 4) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

#### C. Criminal Penalty

Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

#### D. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Dalton may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, which has been adopted by the Town in Sec. 15.8.2 of the general bylaws, in which case the Town Health Agent, Town Environmental Engineer, Town Engineer, the Superintendent of Public Works, or the Town Building Inspector of the Town of Dalton shall be the enforcing persons. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

#### E. Appeals

The enforcement decisions or orders of the Board of Health its employees or agents shall be final. Persons aggrieved by an enforcement action by the Board of Health its employees or agents designated to enforce this by-law may request a public hearing with the Board of Health within fourteen (14) days of receipt of written enforcement action to review the circumstances and decisions related to the enforcement action. The Board of Health will hold a public hearing within thirty (30) days of receipt of a request for a public hearing. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive

The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local bylaw.

13.0 MONITORING OF DISCHARGES

A. Applicability

This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

B. Access to Facilities

Access to facilities shall be governed by the following:

- 1) To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Board of Health, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations and may make or cause to be made such examinations, surveys or sampling as the Board of Health deems reasonably necessary. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Board of Health.
- 2) The Board of Health, its employees or agents designated to enforce this by-law shall have the right to set up such devices as are necessary in the opinion of the Board of Health to conduct monitoring and/or sampling of the facility's stormwater discharge.
- 3) The Board of Health, its employees or agents designated to enforce this by-law has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- 4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Board of Health, its agents, officers, and employees designated to enforce this by-law and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- 5) If the Board of Health, its agents, officers, and employees designated to enforce this by-law has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Board of Health may seek issuance of a search warrant from any court of competent jurisdiction.

14.0 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The Board of Health, its employees or agents designated to enforce this by-law may adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs.

Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Compliance with the requirements of the Board of Health pursuant to this section shall not relieve a person of that person's responsibility under this Bylaw to prevent, abate, or remediate such discharges or releases of pollutants into the municipal storm drain system or watercourses that occur, notwithstanding the implementation of BMPs.

15.0 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Board of Health, at its discretion, may agree to allow the violator to undertake alternative compensatory actions such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

16.0 SEVERABILITY

The provisions of this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this by-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this by-law.

17.0 TRANSITIONAL PROVISIONS

Residential property owners shall have 60 days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

CARRIED.                      DECLARED MAJORITY.

ARTICLE 10. It was moved, seconded and voted that the Town approve the vote of the Central Berkshire Regional School District to borrow \$ 286,600.00 for replacement of carpeting at Craneville School; provided, however, that this vote shall not take effect until the Town votes to exempt from the limitation on total taxes imposed by G.L. c.59, §21C (Proposition 2½) amounts required to pay the principal of and interest on the borrowing authorized by this vote.

CARRIED.                      DECLARED MAJORITY.    (QUESTION FAILED AT 1/7/08 STE)

Meeting closed at 8:19 p.m.

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Barbara L. Suriner, TOWN CLERK

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