

**Los Angeles County
Advisory Working Group
on Cannabis Regulation**

Meeting Seven:

EQUITY

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PREPARATION PACKET

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SECTION 1:

Cannabis Legalization and Equity

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I. THE “WAR ON DRUGS”

In 1971, President Richard Nixon declared that drug abuse was “America’s public enemy number one.”¹ This declaration marked the beginning of what would come to be known as the “war on drugs,” resulting in increased criminalization of drug possession and use, the introduction of mandatory drug sentencing laws, and, through the Reagan years, an emphasis on incarcerating individuals who use drugs.²

The “war on drugs” has been widely criticized as a failure.³ Critics cite to the increasing availability of drugs and drug overdoses as evidence that the war on drugs has done little to control drug abuse in the United States.⁴ In addition, drug enforcement policies resulted in disproportionate impacts to minority communities, in particular black and Latino communities, with some scholars referring to the “war on drugs” as the “new Jim Crow.”⁵ For example, Human Rights Watch reported in 2009 that from 1980 to 2007, drug arrest rates for African Americans were 2.8 to 5.5 times higher than those of whites.⁶

Specific to cannabis, according to a study conducted by the American Civil Liberties Union, the vast majority of cannabis arrests in the United States from 2001 to 2010 (approximately 88 percent) were for possession offenses, not drug sales, indicating that those most affected by criminal cannabis laws are individuals who use cannabis, not cannabis producers or dealers.⁷

Moreover, although cannabis usage rates are comparable among whites, African Americans, and Latinos,⁸ in 2010 African Americans were approximately 3.73 times more likely nationally than whites to be arrested for cannabis possession.⁹ In Los Angeles County cities between 2006 and 2008, Latinos were arrested for cannabis possession about twice as often as whites.¹⁰

II. EFFECTS OF DRUG ARREST AND INCARCERATION

In 2016, the San Francisco Cannabis State Legalization Task Force (Task Force) published a report documenting some of the adverse effects that cannabis and other drug arrests and incarceration have had on individuals and communities, in particular communities of color. Among those effects, the Task Force explained that individuals may find it difficult to obtain and sustain employment, housing, public assistance, loans,

and financial aid, and may face reduced educational opportunities.¹¹ Communities that experienced drug arrest and incarceration on a large scale have been socially and economically disadvantaged, with serious adverse impacts to long term community outcomes.¹²

Citing to a report by the California Blue Ribbon Commission on Marijuana Policy, the Task Force also identified the often exacerbated effects of drug arrest and incarceration on youth, including:

- The sometimes lifetime stigma of having been arrested or jailed;
- Ineligibility for federal student loans;
- Reduced job opportunities due to pre-employment criminal background screening;
- Fines and attorneys' fees, which disproportionately affect lower income and poor individuals; and
- Increased immigration or naturalization problems.¹³

III. THE CONNECTION BETWEEN CANNABIS LEGALIZATION AND EQUITY

For many, cannabis legalization is a matter of social justice and is necessary to end historical and present day disparate impacts to communities of color from the “war on drugs.”¹⁴ Proposition 64, approved by California voters in November 2016, recognized these principles of social justice by legalizing the use, transportation, and possession of cannabis by adults age 21 and over (within certain quantity limits), and by providing those convicted of cannabis offenses that are now either legal or carry lesser penalties the opportunity to have their sentences reduced or their conviction records destroyed.¹⁵ Proposition 64 also set aside up to \$50 million annually in cannabis tax revenue for program grants “for communities disproportionately affected by past federal and state drug policies.”¹⁶

However, concerns about the disparate enforcement of drug laws persist post-cannabis legalization. For example, adult-use (recreational) cannabis became legal in Colorado in 2014. Since then, the overall number of cannabis arrests has plummeted by over 80 percent.¹⁷ Despite falling arrest rates, data from 2015 show that people of color are still approximately 2.5 times more likely than whites to be arrested for a cannabis offense.¹⁸

Disparate law enforcement impacts in minority communities present a complex, layered, and deeply challenging problem that extends well beyond the scope of the LA County Advisory Working Group on Cannabis Regulation.¹⁹ There is one area in particular, however, where commercial cannabis regulation intersects with potentially disparate law enforcement impacts: public consumption. Because California law precludes the smoking of cannabis in any public place,²⁰ and because landlords are free under state law to preclude the consumption of cannabis in rental units,²¹ many worry this will leave no place for minorities to consume cannabis legally, resulting in higher rates of citations and arrests.²²

Additionally, many are concerned that poor and minority communities will be left behind by the cannabis “green rush,” as individuals in those communities generally have less access to capital and other resources, and many have criminal convictions that could disqualify them from receiving a state or local license to operate a cannabis business.²³ Framed in this way, equity would ensure not only that cannabis legalization stops the harm caused by the “war on drugs” to certain communities, but also that poor and minority communities do not face inequitable barriers to entry into the cannabis market.

At the same time, individuals who live in communities hardest hit by the “war on drugs” are sometimes skeptical of the benefits that cannabis legalization will bring to their community.²⁴ These individuals are concerned that an influx of legal cannabis and cannabis retailers may compound existing neighborhood problems, such as relatively higher crime and poverty rates, a high density of alcohol outlets, and lack of access to healthy foods.²⁵ Through this lens, equity must also take into account the long term health outcomes for communities hardest hit by the war on drugs, sometimes referred to as “health equity.”

This preparation packet addresses each of these aspects of equity in turn.

SECTION 2:

Addressing Barriers to Entry

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I. BARRIERS TO OWNING A CANNABIS BUSINESS

A. Criminal barriers

As discussed above, past enforcement of drug laws disproportionately impacted minorities. Because of this legacy, minority applicants are more likely to face barriers due to prior arrests and convictions for drug-related offenses. For those seeking to participate in the commercial cannabis industry, prior criminal convictions could prevent a person from obtaining a license to own and operate a cannabis business. In some circumstances, individuals with criminal histories could also be precluded from employment opportunities within cannabis businesses.

In Colorado, state law prohibits issuing cannabis licenses to applicants who have any felony conviction within the past five years or any drug-related felony within the past ten years after a sentence has been served.²⁶ In addition to felony convictions that trigger a mandatory denial, the state licensing authority can consider the applicant's aggregate criminal history when assessing suitability for issuing a license.²⁷ Employees of cannabis businesses must also be licensed in Colorado, and the state rejects occupational licensing to individuals who have a drug felony that was discharged within the past ten years.²⁸ If the applicant's conviction is for a crime that would not lead to a criminal conviction under present day laws, the state has discretion to approve the application.

Washington State evaluates an individual's entire criminal history and assesses points for each conviction, which could lead to the denial of a license application.²⁹ The licensing agency may choose not to assess points against applicants with certain drug-related misdemeanors. Otherwise, Washington prohibits licensing to applicants with a felony conviction within the last ten years.³⁰

In California, rules regarding criminal history are more liberal than in Colorado or Washington. California licensing authorities have broad discretion to review the totality of one's criminal history when considering whether to grant cannabis licenses. According to state law, an application *may* be denied if "the applicant, owner, or licensee has been convicted of an offense that is substantially related to the

qualifications, functions, or duties of the business or profession for which the application is made.”³¹ The law defines offenses that are “substantially related” to “include, but not be limited to” the following:

- Violent or serious felony convictions (as those terms are defined by law);
- Felony convictions involving fraud, deceit, or embezzlement;
- Felony convictions for selling or giving away any controlled substance to a minor; and
- Felony convictions for drug trafficking with enhancements.³²

However, even if an applicant has been convicted of a “substantially related” crime, the licensing authority can still grant the license if it determines that the applicant is “otherwise suitable” and that granting the license “would not compromise public safety,” after conducting “a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner.”³³

Moreover, the law specifically states that prior convictions for possession or sale of a controlled substance shall *not* be considered “substantially related” and shall not be the sole grounds for application denial if the sentence has already been served.³⁴ Further, the law states that a “substantially related” conviction shall not be the sole basis for denying a license if the applicant has obtained a certificate of rehabilitation.³⁵

In addition to state licensing rules, cities and counties in California are likely able to impose their own criminal background requirements for cannabis licensing. These local requirements could be more restrictive than under state law and could result in fewer opportunities for minority applicants, depending on the specific regulations.

B. Economic barriers

Another major barrier that may limit minority participation in the cannabis industry is the significant amount of capital required to open and operate a licensed cannabis business. One source estimated in early 2016 that it would take at least \$250,000 to open a licensed cannabis business, and these funds generally need to be in the form of cash, as banks will not grant business loans to cannabis-related businesses.³⁶ Many of these costs are driven by complex regulatory requirements and uncertainty around licensing timeframes. Intense competition within the industry could increase the costs of available real estate, especially in jurisdictions that restrict where cannabis businesses can locate.³⁷ These capital requirements make it harder for members of lower income minority neighborhoods to enter the marketplace as owners.³⁸

One source estimated in early 2016 that it would take at least \$250,000 to open a licensed cannabis business, which would need to be liquid as banks will not grant business loans to cannabis-related businesses.

C. *Technical barriers*

Complex permitting and compliance requirements are a third major obstacle to participation in the licensed cannabis industry. The licensing process can be difficult to navigate due to a complex array of local and state regulations, multiple interconnected timelines, and technical requirements from various different agencies. Many prospective applicants hire attorneys to help navigate the legal process of filling out and submitting lengthy forms and attachments. These forms have legal consequences and often require a great deal of business planning in advance of submitting the applications.

In some jurisdictions, there is a limit or cap on the total number of cannabis business licenses that may be issued. This creates a highly competitive environment for those licenses. Applicants have to invest a significant amount of time and resources constructing a competitive application, and must have the ability to navigate a complex bureaucratic process. The combination of these factors can act as a deterrent for under-resourced groups.³⁹

A lack of education about business opportunities in the cannabis industry is also cited as a technical barrier to minorities entering the cannabis space.⁴⁰

II. *EFFORTS IN OTHER JURISDICTIONS TO REDUCE BARRIERS TO OWNING A CANNABIS BUSINESS*

A. *Set-asides*

A growing number of states and local jurisdictions have taken measures to address equity issues in the cannabis industry. Among the most significant economic benefits offered by the industry are opportunities for business ownership. Because of this, many jurisdictions have addressed equity through their processes for allocating cannabis business licenses. The chart below summarizes some of the efforts outside of California to set aside business opportunities for minorities and individuals in communities disproportionately affected by the “war on drugs.”

Jurisdiction	Set-asides	Considerations
Florida	One of approximately 10 statewide licenses must be issued to a company where the owner is a member of the Florida Chapter of the Black Farmers and Agriculturalists Association (BFAA) ⁴¹	African Americans make up approximately 16.8 percent of Florida’s population, according to U.S. census statistics ⁴²

Jurisdiction	Set-asides	Considerations
Maryland	Governor has ordered a “disparity study” to determine whether minorities face barriers to entering the state’s medical cannabis industry (this study is a legal prerequisite for the state to consider race explicitly when awarding licenses) ⁴³	Study ordered in response to a lawsuit challenging the Maryland Medical Cannabis Commission’s proposal to award cannabis business licenses to 15 cultivation companies, none of which were black-owned. ⁴⁴
Ohio	15 percent of medical cannabis business licenses must be awarded to minority groups	This approach gives regulators clear benchmarks for minority participation in the cannabis industry, but it does not give regulators guidance on how to implement a process that arrives at minority participation, nor does it give guidance on how to proceed if there are not enough qualified minority applications to meet the 15-percent threshold ⁴⁵
Massachusetts	Recent law establishes a 25-member panel to advise the state’s cannabis commission, and this panel will include five seats for individuals with backgrounds in social justice, criminal justice reform, and minority business development ⁴⁶	Gives minority groups a voice in the initial rollout and subsequent monitoring of Massachusetts’ regulatory framework for adult-use and medical cannabis
Washington, D.C.	Law requires a preference to local minority-owned companies when applying for licenses to operate medical cannabis businesses ⁴⁷	Regulations to implement the law have not yet been adopted

In California, the City of Oakland has been at the forefront of equity cannabis licensing.⁴⁸ Oakland requires a “one to one” application process where, for every license the city grants to a “general” applicant, one license must be issued to an “equity” applicant.⁴⁹ To qualify as an “equity” applicant, an Individual must make less than 80 percent of Oakland’s median income, and either have been arrested for a drug crime within the last 10 years, or have lived in neighborhoods with high rates of criminal drug enforcement.⁵⁰

Whether and how well each of the above-described set-asides works to incentivize minority cannabis business ownership is not yet known. Further study and, likely, legislative and regulatory adjustments will be necessary to ensure that equity measures achieve their intended goals.

B. Other strategies to reduce barriers to owning a cannabis business

The chart below summarizes other potential strategies to reducing barriers to entry into the cannabis industry:

Strategy	Description
Incubators	Incubators specialize in developing startup businesses in competitive markets, which could be helpful to minority businesses formed for the purpose of participating in the regulated cannabis industry. For example, Oakland offers application priority to non-equity applicants that provide free rent or real estate to equity applicants. ⁵¹
Business loans and financial assistance	A system for providing business loans and other financial assistance, for façade improvements, for example, to certain small businesses could relieve barriers due to lack of access to capital. However, because loan funding is often backed by federal dollars, traditional business loans and financial assistance may not be available for cannabis businesses.
Business assistance	Incorporating cannabis businesses into existing governmental programs supporting and incentivizing small business development could help cannabis “mom-and-pops” and under-resourced applicants establish a cannabis business and compete in the industry. Small business assistance programs often include a “concierge,” which serves as a point of contact for small business owners and provides assistance navigating a complex regulatory system.
Incentives for small businesses	The State of California offers license types for small-scale and cottage cultivators, as well as microbusinesses, which allow for cultivation, manufacturing, distribution and retail of limited amounts of cannabis with a single license. ⁵² Prioritizing these license types, or setting aside a certain number for these types of licenses, could increase opportunities for small and minority-owned businesses. However, whether such businesses will be able to remain competitive against other larger, well-capitalized businesses is unknown. Reduced application and compliance fees represent another potential way to encourage small and minority business participation.

III. POTENTIAL SOLUTIONS TO PROMOTE EQUITABLE EMPLOYMENT OPPORTUNITIES

The cannabis industry has the potential to create tens of thousands of jobs in California through the end of this decade. A 2016 white paper estimated that California’s licensed cannabis industry could eventually generate between 81,000 and 103,000 total jobs, with total labor income (wages and salaries) ranging between \$3.6 and \$4.5 billion.⁵³ Another recent study estimated that Colorado’s legal cannabis industry directly and indirectly generated approximately 18,000 jobs as of 2015.⁵⁴

However, many are concerned that minorities and low-income individuals could be excluded from employment opportunities in the cannabis industry, either because of criminal background pre-screening, lack of education about opportunities to participate in the cannabis industry, or other reasons. Some of the solutions that local governments already utilize to create inclusive job environments and reduce relatively high rates of unemployment in certain communities are also potentially available to cannabis businesses. Some of these solutions are described in the chart below.

Potential Solution	Description
Local hiring requirements	Local worker hiring is a standard requirement in many government contracts, including contracts with LA County. ⁵⁵ Requiring licensed businesses to hire some or all of their employees locally may help achieve greater rates of minority hiring. However, local worker hiring requirements could lead to shortfalls of qualified staff, especially in the absence of a robust pool of local applicants.
Diversity plans	LA County could offer incentives to business applicants that present detailed plans to hire, train, and advance minority and women applicants. However, whether regulators can adequately enforce such diversity planning remains an open question.
Training programs	Any incentives or requirements that businesses hire minority workers should be coupled with training programs offered by employers to allow individuals holding entry level positions to move up within the organization or establish their own businesses.
Living wage requirements	LA County could incentivize businesses to provide “living wages” to every employee, over and above existing minimum wage. However, such wages could result in higher costs for businesses that are expensive for LA County to offset.

Discussion Questions

1. What types of criminal background check requirements should LA County implement for applicants seeking a cannabis license? How would those requirements balance equity concerns with the need to protect public safety and prevent organized crime from participating in the legal cannabis marketplace?
2. What programs, policies, or incentives should LA County consider to ensure that small businesses and individuals living in communities hardest hit by the war on drugs are able to own cannabis businesses?
3. How can LA County partner with the cannabis industry to increase the proportion of minority-owned cannabis businesses?
4. What types of outreach would be most effective to engage potential minority cannabis business owners or employees?

SECTION 3:

Public Consumption

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I. ISSUE BACKGROUND

Proposition 64 did not change existing law making it illegal to consume cannabis in a public place or in any place where tobacco smoking is prohibited.⁵⁶ Nor did Proposition 64 limit the rights of owners of rental property to restrict the cultivation or consumption of cannabis within rental units.⁵⁷

While these prohibitions under Proposition 64 are arguably well supported by sound policy, some suggest these prohibitions create a “trap,” leading to increased citations and arrests for minorities.⁵⁸ As explained above, data from Colorado indicates that while cannabis arrests decreased substantially post-legalization, African Americans were still much more likely than whites to face arrest for illegal cultivation or possession beyond the legal limit,⁵⁹ and cannabis arrest rates for school-aged youth was more racially disproportionate after legalization.⁶⁰ Citing these studies, one scholar predicts that minorities will continue to face increased rates of cannabis-related arrest post-legalization for two principal reasons:

- Poor residents, disproportionately racial minorities, are forced into public places for much of their day due to overcrowding in the home, causing them to consume cannabis in a public place rather than at home, where it would be legal; and
- Racial minorities, which are more likely to be renters than whites, are subject to residential lease provisions outlawing smoking or the consumption of cannabis, and may be more likely to consume cannabis outside their residences in public places.⁶¹

II. LEGAL ON-SITE CONSUMPTION AS A POTENTIAL SOLUTION TO INEQUITABLE ENFORCEMENT OF PUBLIC CANNABIS CONSUMPTION LAWS

One potential solution offered to address inequities in the criminalization of public cannabis consumption is for local governments to allow places where it is legal to consume onsite. Under California law, a local government may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a licensed cannabis retailer or microbusiness, so long as:

- Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age and older;
- Cannabis consumption is not visible from any public place or non-age-restricted area; and
- The sale or consumption of alcohol or tobacco is not allowed on the premises.⁶²

Onsite or social consumption laws are controversial. In November 2016, Denver voters approved Initiative 300, granting businesses the ability to apply for a license to allow for adult cannabis consumption in designated areas.⁶³ However, many anti-social consumption advocates cited concerns about driving under the influence and the potential for mixing alcohol and cannabis, which affected how Denver implemented the initiative.⁶⁴ Some have asked local governments to take a wait-and-see approach to onsite consumption, until state cannabis regulations are finalized, licensing begins, standards for driving under the influence of cannabis are established, and the cannabis industry develops.⁶⁵

Discussion Questions

1. How can LA County balance the equity concerns regarding public consumption of cannabis with the health and safety concerns of allowing onsite cannabis consumption?
2. What types of education and outreach would be effective to alert people about the risks of consuming cannabis in public or possessing more than the legal limit of cannabis?

SECTION 4:

Health Equity

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I. ISSUE BACKGROUND

In February 2017, the LA County Board of Supervisors, concerned that the County’s “most vulnerable communities [would be] left alone to shoulder the burdens of marijuana legalization”,⁶⁶ adopted a motion directing LA County departments to prepare regulations for commercial cannabis that took into account “equitable development” principles, including regulations that promote positive benefits for communities disproportionately impacted by the “war on drugs” while protecting those same communities from potential negative impacts from cannabis legalization.⁶⁷

The concept of “health equity,” understood as the attainment of the highest level of health for all people,⁶⁸ is a key factor that County departments must consider when implementing the Board of Supervisors’ directives on cannabis regulation. Communities hardest hit by the “war on drugs” often have higher rates of crime, lower educational attainment, a lack of access to essential services, such as mental health treatment, drug abuse treatment services, and health care, and limited choices when it comes to accessing healthy foods.⁶⁹ A regulatory priority, therefore, is ensuring that adding legal, licensed cannabis retailers to these communities does not negatively impact overall health outcomes in these communities.

II. POTENTIAL HEALTH IMPACTS TO COMMUNITIES ASSOCIATED WITH LEGALIZED CANNABIS

A. A high density of cannabis retailers could impact neighborhood health and ecology

As local jurisdictions develop laws and local policies for legalized cannabis use, it is essential to better understand the impacts of neighborhood ecology and cannabis dispensary density on public health.⁷⁰ For example, one study found that the density of local cannabis dispensaries is associated with a greater number of hospitalizations for primary or secondary marijuana abuse/dependence.⁷¹ In addition, because lower-income minority communities generally have less access to healthy food outlets but an overabundance of liquor stores, which is part of the legacy of several decades of systematic disinvestment in low-income neighborhoods of color,⁷² adding a high density of cannabis dispensaries could potentially compound these existing problems.⁷³

Cannabis retail density was discussed at length in the preparation packets for *Meeting Two: Youth Access and Exposure*⁷⁴ and *Meeting Four: Cannabis Retailers*.⁷⁵ Some of the strategies identified in the preparation packet for reducing the density of cannabis retailers include establishing buffers between cannabis retailers and sensitive uses, setting concentration limits based on population size, land area, or other factors, and placing a limit on the overall number of licenses that will be issued to cannabis retailers. These strategies can be implemented not only to reduce youth access and exposure to recreational cannabis, but also to ensure that an overconcentration of cannabis retailers does not negatively impact LA County communities.

B. Effects of secondhand cannabis smoke

The known health risks of secondhand exposure to cigarette smoke – to the heart or lungs, for instance – raise questions about whether secondhand exposure to cannabis smoke poses similar health risks. A 2016 study in rats found that secondhand exposure to cannabis smoke affected blood vessel function as much as secondhand tobacco smoke, and the effects were independent of THC concentration.⁷⁶ Similar research has not yet been conducted with human subjects, but the toxins and tar levels known to be present in cannabis smoke raise concerns about exposure among vulnerable populations, such as children, people with asthma, and those living in multifamily and subsidized housing.⁷⁷

In addition to the potential health risks from secondhand smoke, general exposure can be a nuisance to neighbors.⁷⁸ This is especially true in multi-unit residential settings, and affected residents sometimes have few options to stop neighbors' smoke from infiltrating their living spaces.⁷⁹

Comprehensive secondhand smoking ordinances that include tobacco and cannabis smoke are practical and effective ways local governments can deal with the issue of secondhand smoke among residential housing units. Landlords are also free to enforce smoking restrictions within rental properties.⁸⁰ These restrictions could provide some relief to residents affected by neighbors' secondhand smoke.

With respect to public housing, in December 2016, the federal Housing and Urban Development Department instituted a rule requiring all public housing agencies implement a "smoke-free" policy banning the use of prohibited tobacco products in order to improve indoor air quality, benefit the health of residents, visitors and staff, reduce the risk of fires, and lower overall maintenance costs.⁸¹ While these same benefits could apply to policies against cannabis smoke as well, consideration must be made for the potential hardships to residents using medical cannabis.⁸² Similarly, as explained above, such restrictions could impact minority communities disproportionately by driving cannabis smoking outdoors into public places where it is illegal.

It is expected that the issue of secondhand cannabis smoke will continue to be a source of friction between neighbors living near each other or in the same multifamily housing

complex. Any regulations adopted by LA County should strive to balance the interests of those who wish not to be affected by secondhand smoke with the equity concerns outlined above.

C. Access to drug treatment resources

Racial and ethnic disparities in access to the health care system in the United States are well documented.⁸³ Minorities often have less access to services critical to health maintenance and improvement than whites do, including substance abuse disorder treatment.⁸⁴

Cannabis legalization could result in increased rates of cannabis use and abuse over time. The outcomes of increased rates of cannabis abuse could be felt disproportionately in communities of color, absent efforts to provide those communities with adequate education, prevention, intervention and treatment services.

Discussion Questions

1. What policies should LA County implement to ensure that communities hit hardest by the “war on drugs” are not harmed by the proliferation of cannabis retailers in their communities?
2. What regulations should LA County adopt regarding secondhand cannabis smoke? How do those regulations balance the rights of those who do not wish to be exposed to cannabis with equity concerns and compassion for those who use cannabis to treat serious illnesses?

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