ORDINANCE NO. 17-0499

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, RELATING TO COMPREHENSIVE PLANNING UNDER THE GROWTH MANAGEMENT ACT, ADOPTING CONCURRENCY REGULATIONS FOR THE REVIEW OF LEGISLATIVE AND QUASI-JUDICIAL APPLICATIONS, AS MANDATED BY THE GMA FOR TRANSPORTATION FACILITIES, REPEALING SECTION 18.90.030 OF CHAPTER 18.90 AND ADOPTING A NEW CHAPTER 18.105 TO THE EDGEWOOD MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Growth Management Act ("GMA," chapter 36.70A RCW) requires that cities planning under GMA "adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development (RCW 36.70A.070(6)(b));" and

WHEREAS, the City has adopted concurrency regulations in chapter/section 18.90.030 of the Edgewood Municipal Code which need to be updated; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on April 17, 2017, and made a recommendation of approval to the City Council; and

WHEREAS, on May 2, 2017, the City Council considered this Ordinance, together with the Planning Commission's recommendation, during a regular Council meeting; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, ORDAINS AS FOLLOWS:
Section 1. Section 18.90.030 of the Edgewood Municipal Code is hereby repealed.

Section 2. A new Chapter 18.105 is hereby added to the Edgewood Municipal Code, which shall read as follows:

CHAPTER 18.105
CONCURRENCY MANAGEMENT

Sections:

18.105.010 Purpose.
18.105.020 Authority.
18.105.030 Exempt development.
18.105.040 Capacity evaluation required for a change of use.
18.105.050 Capacity evaluations required for certain rezones or comprehensive plan amendments.
18.105.060 All capacity determinations exempt from project permit processing.
18.105.070 Level of Service standards.
18.105.080 Effect of LOS standards.
18.105.090 Capacity evaluations required prior to issuance of CRC.
18.105.100 Water, transportation and sewer – Application for capacity evaluation.
18.105.110 Submission and acceptance of an application for a CRC.
18.105.120 Method of capacity evaluation.
18.105.130 Purpose of capacity reservation certificate.
18.105.140 Procedure for capacity reservation certificates.
18.105.150 Use of reserved capacity.
18.105.160 Transfer of reserved capacity.
18.105.170 Denial letter.
18.105.180 Notice of concurrency determination.
18.105.190 Expiration and extensions of time.
18.105.200 Appeals.
18.105.210 Purpose and procedure for administration.
18.105.220 Annual reporting and monitoring.
18.105.230 Road LOS monitoring and modeling.
18.105.240 Traffic impact analysis standardized format.

18.105.010 Purpose. The purpose of this Chapter is to implement the concurrency provisions of the transportation and utilities elements of the City’s comprehensive plan, the water and sewer comprehensive plans, all in accordance with RCW 36.70A.070(6)(b), consistent with WAC 365-195-510 and 365-195-835. All applications that are not exempt (as defined herein) shall be processed under and shall comply with this Chapter, which shall be cited as the City’s "concurrency management ordinance."
18.105.020 **Authority.** The Director of Public Works or his/her designee, shall be responsible for implementing and enforcing this concurrency management ordinance.

18.105.030 **Exempt development.**

A. No development activity (as defined in Section 18.20.070 EMC) shall be exempt from the requirements of this chapter, unless the permit is listed below. The following types of permits are not subject to the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on transportation facilities:

1. Administrative interpretations;
2. Sign permit;
3. Street vacations;
4. Demolition permit;
5. Street use permit;
6. Interior alterations of a structure with no change in use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire code permit;
20. Design review approval.

Notwithstanding the above, if any of the above permit applications will generate any new p.m. peak hour trips, require additional sewer capacity, or increase water consumption, such application shall not be exempt from the requirements of this Chapter.

B. **Transportation.** This Chapter shall apply to all applications for development or redevelopment if the proposal or use will generate any new p.m. peak-hour trips. Every application for development shall be accompanied by a concurrency application. Developments or redevelopments, excluding an individual single-family residence, that will generate one or more new projected vehicle trips that will pass through an intersection or roadway section identified with a level of service below the acceptable level noted in the transportation element in the City’s comprehensive plan, or that will generate 15 or more new p.m. peak hour trips shall also be required to have the City prepare a traffic report as defined in EMC Section 18.105.090.

18.105.040 **Capacity evaluation required for a change in use.** Any non-exempt development activity shall require a capacity evaluation in accordance with this Chapter.
A. **Increased Impact on Road Facilities.** If a change in use will have a greater impact on road facilities than the previous use, as determined by the Director, based on review of information submitted by the applicant and such supplemental information as available, a CRC shall be required for the net increase only. Provided that: the applicant shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five-year period prior to the date of application for the capacity evaluation.

B. **Decreased Impact on Road Facilities.** If a change in use will have an equal or lesser impact on road facilities than the previous use as determined by the Director, based on review of information submitted by the applicant and supplemental information as available, a CRC will not be required.

C. **No Capacity Credit.** If no use existed on the site for the five-year period prior to the date of application, no capacity credit shall be issued pursuant to this Section.

D. **Demolition or Termination of Use.** In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact on road facilities for the new or proposed land use, as compared to the land use existing prior to demolition. Provided that: such credit is utilized through a CRC within five years of the date of the issuance of the demolition permit.

**18.105.050 Capacity evaluations required for certain rezones and comprehensive plan amendments.** A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment.

**18.105.060 All capacity determinations exempt from project permit processing.** The processing of applications pursuant to the authority in this Chapter shall be exempt from project permit processing procedures as described in Chapter 18.40 of the Zoning Code, except that the appeal procedures of Chapter 18.40 shall apply as indicated in this Chapter. The City’s processing of capacity determinations and resolving capacity disputes involves a different review procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation and utilities elements of the comprehensive plan.

**18.105.070 Level of Service Standards.**

A. **Generally.** Level of Service (LOS) is the established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need, as mandated by chapter 36.70A RCW. LOS standards shall be used to determine if public facilities or services are adequate to support a development’s impact. The concept of
Concurrency is based on the maintenance of specified levels of service through capacity monitoring, allocation and reservation procedures. Concurrency describes the situation in which road facilities are available when the impacts of development occur. For road facilities, this time period is statutorily established as within six years from the time of development. (See, RCW 36.70A.070(6)(b) and WAC 365-195-210.)

1. **Roads.** The City has designated levels of service for road facilities in the transportation element of the City’s comprehensive plan:

   a. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;

   b. to reflect realistic expectations consistent with the achievement of growth aims;

   c. for road facilities according to WAC 365-195-325; and

   d. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City’s comprehensive plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

**18.105.080 Effect of LOS standards.**

A. **Roads.** The Director shall use the LOS standards set forth in the transportation element of the City’s comprehensive plan to make concurrency evaluations as part of the review of any application for a transportation concurrency reservation certificate (CRC) issued pursuant to this chapter.

**18.105.090 Capacity evaluations required prior to issuance of CRC.**

A. A capacity evaluation for transportation shall be required for any of the nonexempt activities identified in Section 18.105.030 of this chapter.

B. The Director shall utilize the requirements in Sections 18.105.070 through 18.105.080 to conduct a capacity evaluation prior to issuance of a CRC. In addition to the requirements set forth in these sections, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency, which may be established from time to time by administrative rule. In cases where LOS standards do not apply, the Director shall have the authority to utilize other factors in preparing capacity evaluations to include, but not be limited to, independent LOS analysis.

C. A capacity reservation certificate (CRC) will not be issued except after a capacity evaluation performed pursuant to this Chapter, indicating that capacity is available in all applicable City road facilities.
Application for capacity evaluation.

A. An application for a CRC and the application for the underlying development permit, or other activity, shall be accompanied by the requisite fee, as determined by City Council resolution. An applicant for the CRC shall submit the following information to the Director, on a form provided by the Director, together with the underlying development application:

1. Date of submittal;
2. Developer’s name, address, telephone number and e-mail;
3. Legal description of property as required by the underlying development permit application, together with an exhibit showing a map of the property;
4. Proposed use(s) by land use category, square feet and number of units;
5. Phasing information by proposed uses, square feet and number of units, if applicable;
6. Existing use of property;
7. Acreage of property;
8. Proposed site design information, if applicable;
9. The applicant’s proposed mitigation (if any) for the impact on the City’s transportation facilities;
10. Written consent of the property owner, if different from the developer;
11. Proposed request of capacity by legal description, if applicable;
12. Stormwater drainage report prepared by a licensed professional engineer.

B. Additional information for transportation capacity evaluations only:

1. A preliminary site plan, which is a plan showing the approximate layout of proposed structures and other development, type and number of dwelling units, type and number of nonresidential building areas with gross square footage, the land use codes per the most recent edition of Trip Generation from the Institute of Transportation Engineers (ITE) and an analysis of the points of access to existing and proposed roadways;

2. The applicant is not required to submit a traffic impact analysis from an independent traffic engineer. Instead, those applicants with a transportation CRC application that are required to have the City provide a traffic report in accordance with shall instead pay to the City a deposit equal to the estimated fee for the City’s preparation of a traffic report. The amount of the fee shall be determined by City resolution and paid at the time the transportation CRC application is submitted. The fee shall be vary based on the number of new p.m. peak-hour trips produced by the development. The applicant shall be subject to repayment of fees for any subsequent revisions to the original traffic report. Fees for revisions may be calculated in proportion to the original fee depending on the effort involved to revise the traffic report. Even if the traffic report is based on
an estimate of the impact, the applicant will still be bound by the estimate of the impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: (a) a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; (b) mitigation of the additional impact under SEPA; (c) revocation of the CRC.

18.105.110 Submission and acceptance of a CRC application.

A. Notice of application. Issuance of a notice of application for the underlying permit application shall be handled by the planning director or designee, following the process in Section 18.40. The notice of application required by Section 18.40 shall state that an application for a concurrency determination has been received by the City.

B. Determination of Completeness. The planning director shall immediately forward all CRC applications received with development applications to the public works/engineering staff. Within twenty-eight (28) days after receiving an application for a CRC, the public works/engineering staff shall mail or personally deliver to the applicant a determination which states either:

1. That the concurrency application is complete; or

2. That the concurrency application is incomplete and what is necessary to make the application complete.

C. Additional information. An application for a CRC is complete for purposes of initial processing when it meets the submission requirements in Section 18.105.100. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The Director’s determination of completeness shall not preclude the Director’s ability to request additional information or studies.

D. Incomplete applications.

1. Whenever the City issues a determination that the CRC is not complete, the CRC application shall be handled in the same manner as a project permit application under Section 18.40.

2. Date of Acceptance of Application. An application for a CRC shall not be officially accepted or processed until it is complete and the underlying development application has been determined complete. When an application is determined complete, the Director shall accept it and note the date of acceptance.
18.105.120 Method of capacity evaluation.

A. Generally. In order to determine concurrency for the purposes of issuance of a transportation CRC, the Director shall make the determination described in subsections B and C of this Section. The Director may deem the development concurrent with transportation facilities, with the condition that the necessary facilities or services shall be available through a financial commitment in an enforceable development agreement (see, chapter 18.50.090 of this Code). In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying application.

B. Transportation.

1. Upon submission and acceptance of a complete transportation CRC application, the Director shall conduct a traffic impact analysis and issue a traffic report for those applications meeting the requirements of Section 18.105.110(B)(1).

2. In performing the concurrency evaluation for transportation facilities, and to prepare the transportation CRC, the Director shall determine, based on the conclusions of the traffic report, whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities. This shall involve the following:

   a. A determination of anticipated total capacity at the time the proposed impacts of development occur or within six years of such time;

   b. Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;

   c. Calculation of the available capacity for the proposed development;

   d. Calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation identified by the applicant to be provided by the applicant at the applicant’s cost;

   e. Comparison of available capacity with proposed development impacts.

3. The Director shall determine if the capacity of the City’s transportation facilities, less the capacity which is reserved, can be provided while meeting the level of service performance standards set forth in the City’s comprehensive plan, and if so, shall provide the applicant with a transportation CRC. The Director’s determination will be based on the application materials provided by the applicant, which
must include the applicant’s proposed mitigation for the impact on the City’s transportation facilities.

C. Lack of Concurrency.

1. Transportation. If the director determines that the proposed development will cause the LOS of a City-owned transportation facility to decline below the standards adopted in the transportation element of the City’s comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a transportation CRC and the underlying development permit, if such an application has been made, shall be denied. Upon denial, the applicant may perform one of the following:

   a. Appeal the findings of the traffic report in accordance with Section 18.40; or

   b. Offer alternative data and/or perform an independent traffic impact analysis at the applicant’s sole expense in support of alternative conclusions. Any study shall be in accordance with Section 18.105.090; or

   c. Modify the development proposal to lessen the traffic impacts and/or identify voluntary transportation improvements as mitigation to be provided by the applicant at the applicant’s cost and re-apply for capacity review. Re-application shall require repayment of the traffic report preparation fee in accordance with Section 18.105.100(2); or

   d. Withdraw the CRC application.

18.105.130 Purpose of Capacity Reservation Certificate.

A. A transportation CRC is a determination by the Director that: (1) the proposed development identified in the CRC application does not cause the level of service on a City-owned transportation facility to decline below the standards adopted in the transportation element of the City’s comprehensive plan; or (2) that a financial commitment (embodied in a development agreement) is in place to complete the necessary improvements or strategies within six (6) years. Upon issuance of a transportation CRC, the Director will reserve transportation facility capacity for this application until the expiration of the underlying development permit or as otherwise provided in Section 18.40. Although the CRC may identify the number of projected trips associated with the proposed development, nothing in this Chapter (including the trip transfer procedures) shall imply that the applicant “owns” or has any ownership interest in the projected trips.

18.105.140 Procedure for capacity reservation certificates. After receipt of a complete application for a CRC, the Director shall process the application in accordance with this Chapter and issue the CRC or a denial letter.
18.105.150 Use of reserved capacity. When a CRC and a development permit issues for a project, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without issuance of a certificate of occupancy.

18.105.160 Transfer of reserved capacity. Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the applicant in the CRC application. The applicant may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

18.105.170 Denial letter. If the Director determines that there is a lack of concurrency under the above provisions, the Director shall issue a denial letter, which shall advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter shall also be sent to the property owner. At a minimum, the denial letter shall identify the application and include the following information:

A. For roads:

1. An estimate of the level of the deficiency on the transportation facilities; and

2. The options available to the applicant such as the applicant’s agreement to construct the necessary facilities at the applicant’s cost.

B. For all. A statement that the denial letter may be appealed if the appeal is submitted to the City Engineer within ten (10) days after issuance of the denial letter, and that the appeal must conform to the requirements in Section 18.40. Any appeal of a denial letter must be filed according to this section, prior to issuance of the City’s decision on the underlying development application. If an appeal is filed, processing of the underlying development application shall be stayed until the final decision on the appeal of the denial letter.

18.105.180 Notice of concurrency determination.

A. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the SEPA threshold determination for the underlying development permit, unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination. In the case of an approved CRC, any mitigation identified by the applicant to be provided by the applicant at the applicant’s cost shall be included in the SEPA threshold determination or underlying permit decision (if categorically exempt from SEPA).
B. If a denial letter is not timely appealed, the underlying permit application will be processed and in most instances, will result in a denial. If a denial letter is appealed, any mitigation or conditions included in the appeal decision shall be included in the SEPA threshold decision or underlying permit decision (if categorically exempt from SEPA).

18.105.190 Expiration of CRC and extensions of time.

A. Expiration. If a certificate of occupancy has not been requested prior to the expiration of the underlying permit or termination of the associated development agreement, the Director shall convert the reserved capacity to available capacity for the use of other developments. The act of requesting a certificate of occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes. If a complete underlying project permit application is expired as provided for in Section 18.40, the Director shall convert any reserved capacity allocated to the underlying project permit for use by other developments.

B. Extensions for Road Facilities. The City shall assume that the developer requests an extension of transportation capacity reservation when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the transportation CRC or any subsequent extension.

C. If a CRC has been granted for a rezone or comprehensive plan amendment, the CRC shall expire when the development agreement for the comprehensive plan or rezone terminates. If there is no associated development agreement, the CRC shall expire within five years after the CRC approval anniversary date.

18.105.200 Appeals. Upon receipt of an appeal of the denial letter, the Director shall handle the appeal as follows:

A. A meeting shall be scheduled with the applicant to review the denial letter and the application materials, together with the appeal statement.

B. Within fourteen (14) days after the meeting, the Director shall issue a written appeal decision, which will list all of the materials considered in making the decision. The appeal decision shall either affirm or reverse the denial letter. If the denial letter is reversed, the Director shall identify the mitigation that the applicant proposes to provide at the applicant's cost, which will be imposed on the application approval in order to achieve concurrency.

C. The mitigation identified in the appeal decision shall be incorporated into the City's SEPA threshold decision on the application.
D. The appeal decision shall state that it may be appealed with any appeal of the underlying application or activity, pursuant to Section 18.40.

18.105.210 Purpose and procedure for administration.

A. “Capacity” refers to the ability or availability of water in the City’s water system. “Capacity” refers to the ability to treat effluent in the City’s wastewater treatment plant to the levels and volume limits in the City’s NPDES permit. “Capacity” also refers to the ability or availability of road facilities to accommodate users, expressed in an approximate unit of measure, such as LOS for road facilities. “Available capacity” represents a specific amount of capacity that may be reserved by or committed to future users of the City’s road facilities.

B. There are two capacity accounts to be utilized by the Director in the implementation of this Chapter for water, sewer and transportation. These accounts are:

1. The available capacity account; and
2. The reserved capacity account.

Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an occupancy certificate is issued, the capacity is considered “used.” Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

18.105.220 Annual reporting and monitoring.

A. The Director is responsible for completion of annual transportation capacity availability reports. These reports shall evaluate reserved capacity and permitted development activity for the previous 12-month period, and determine existing conditions with regard to available capacity for roads. The evaluations shall report on capacity used for the previous period and capacity available for the six-year capital facilities of the City’s comprehensive plan, six-year transportation plan for road facilities, based on LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections, and shall, at a minimum, include:

1. A summary of development activity;
2. The status of each capacity account;
3. The six-year transportation plan;
4. Actual capacity of selected street segments and intersections and current LOS;
5. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element of or to the comprehensive plan;
B. The findings of the annual capacity availability report shall be considered by the Council in preparing the annual update to the capital improvement element, any proposed amendments to the CIP and six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

C. Based upon the analysis included in the annual capacity availability reports, the Director shall recommend to the City Council each year any necessary amendments to the CIP, TIP and comprehensive plan. The Director shall also report on the status of all capacity accounts when public hearings for comprehensive plan amendments are heard.

18.105.230 Road LOS monitoring and modeling.
   A. The City shall monitor level of service standards through an annual update of the six-year transportation plan which will add data reflecting development permits issued and trip allocations reserved.

   B. A new trip allocation shall be assigned for each traffic analysis zone, based on the results from the traffic demand model used by the City, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the comprehensive plan.

   C. Amendments to the trip allocation program that exceed the total aggregate annual trip allocation per zone for any given year shall require an amendment to the comprehensive plan. Monitoring and modeling shall be required and must include anticipated capital improvements, growth projections, and all reserved and available capacity.

18.105.240 Traffic Impact Analysis standardized format. Incorporated herein by this reference are the standardized Traffic Impact Analysis Guidelines, originally dated March 2012 or subsequently updated, of the required format for any submitted developer’s independent traffic impact analysis. The traffic impact analysis may be completed at the time of submittal of the original application or upon denial of a transportation CRC application.

Section 2. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.
Section 4. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Edgewood, this 9th day of May, 2017.

CITY OF EDGEWOOD

[Signature]
Mayor, Daryl Eidinger

ATTEST/AUTHENTICATED:

[Signature]
City Clerk, Rachel Pitzel

APPROVED AS TO FORM:
Office of the City Attorney

[Signature]
City Attorney, Carol Morris

PASSED BY THE CITY COUNCIL: 05/09/17
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EFFECTIVE DATE: 05/16/17
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