

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: *MR* Michael Faden, Senior Legislative Attorney
Robert H. Drummer, Senior Legislative Attorney *RF*

SUBJECT: **Worksession:** Temporary Executive Regulation 11-13T, Property Disposition

Temporary Executive Regulation 11-13T was submitted for the purpose of implementing the County's property disposition law. The regulation will implement Bill 11-12, County Property Disposition (reenacted on May 15, 2012 after an Executive veto) and supersedes the current property disposition regulations.

Background

Bill 11-12, County Property – Disposition, amended the law governing the County's disposition of surplus property. One of the major changes was increasing the role of the Council in determining whether County property should be declared surplus and disposing of surplus property for less than fair market value. County Code §2A-15(j) authorizes the Executive to issue a temporary regulation, effective immediately, if:

- (A) A public or fiscal emergency requires its adoption; or
- (B) The public interest will be materially harmed if the regulation does not take effect immediately.

A temporary regulation may not be effective for more than 90 days, but may take effect without prior publication or Council approval. Code §2A-15(j)(5) authorizes the Council, by resolution, to revoke a temporary regulation.

Issue

Does ER 11-13T broaden the grandfather clause in Bill 11-12 to exclude the disposition of certain properties from the disposition rules that the Council intended to include?

Bill 11-12 contained the following grandfather clause for existing contracts:

County Code Section 11B-45, as amended by Section 1 of this Act, does not apply to any disposition of County property for which a legally enforceable contract, lease, or other agreement was signed by all parties before that date.

ER 11-13T contains the following exclusion from the new property disposition rules:

H. any disposition of County property for which a legally enforceable contract, lease, or other agreement was signed by all parties before May 15, 2012, *including the exercise of options contained in those contracts, leases or other agreements where the material terms of the option period are set forth in the original document.*

The purpose of this grandfather clause was to exclude a property disposition where the parties had already entered into a contract of sale but had not yet completed settlement. The Action packet drafted by Council staff for Bill 11-12 explained the purpose of this clause:

Executive staff and representatives of other parties argued that any property transfer for which the parties have finalized and signed a legally enforceable agreement should not be subject to the processes in this Bill, even if the transaction has not yet been “completed” – i.e. ownership of the property has not been legally transferred. To do this, amend ©5, lines 91-92 as follows:

County Code Section 11B-45, as amended by Section 1 of this Act, [[applies]] **does not apply** to any disposition of County property [[completed on or after]] **for which a legally enforceable contract, lease, or other agreement was signed by all parties before that date.**

One example of how ER 11-13T might exclude a disposition that the Council intended to be included is the County’s lease with Round House, Inc. for 3 properties in Silver Spring. The 10-year Round House lease was entered into in 2004 and expires on June 30, 2014. Although the lease contains an automatic renewal clause, the County has the legal right under the lease to terminate the lease after providing 12 months notice. Therefore, the County’s renewal of the 10-year lease is an affirmative decision to dispose of this property for another 10 years even though it can be accomplished by inaction. It appears that the exclusion in ER 11-13T attempts to exempt a lease renewal, such as the Round House lease, from the new property disposition rules. There may be other existing leases of County property that would be similarly excluded.

Council staff recommendation: revoke ER 11-13T and request the Executive to submit an amended temporary regulation that limits this exclusion to the situations the Council intended to exclude from the Bill.

This packet contains

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 18, 2013

TO: Nancy Navarro, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 11-13T – Property Disposition

With this memorandum, I am transmitting Executive Regulation 11-13T – Property Disposition for the purpose of implementing the County's property disposition law. The regulation will implement Bill 11-12, County Property Disposition (enacted on May 1, 2012) and will supersede the current property disposition regulations.

A temporary regulation is needed for clarification purposes. The reuse analysis procedures in the current property disposition law create a conflict with the County's Capital Improvement Program (CIP) procedures. The attached temporary regulation provides an opportunity to exempt those properties that have been approved for reuse as part of or related to a Capital Improvement Project which resolves the conflict.

If there are any questions, please contact Greg Ossont, Deputy Director, Department of General Services at 240-777-6192.

IL:rbp

Attachment



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Property Disposition	Number 11-13T
Originating Department Department of General Services	Effective Date June 18, 2013

Temporary Regulation

PROPERTY DISPOSITION

DEPARTMENT OF GENERAL SERVICES

Issued by: County Executive
Regulation No. 11-13T

Authority: Montgomery County Code (2004) Sections 2A-15(j) and 11B-45(a)

Effective Date: June 18, 2013

Summary: For the purpose of implementing the County's property disposition law which took effect May 1, 2012.

Staff contact: Greg Ossont, Deputy Director, Planning and Development, 240-777-6192

Address: Department of General Services, 101 Monroe Street, 9th Floor, Rockville, MD 20850



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Subject Property Disposition	Number 11-13T
Originating Department Department of General Services	Effective Date June 18, 2013

11B.45.01.01 Purpose

1.0 To provide policies and procedures for the disposition of real property owned or controlled by Montgomery County.

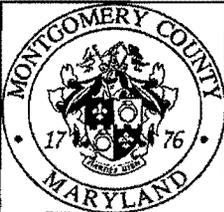
11B.45.01.02 Applicability

2.0 This regulation applies to the Disposition of all County owned or controlled real property except:

- A. surplus school facilities;
- B. a lease of, or license to use, any parkland, or any facility located on parkland, that the Parks Department operates or manages for the County;
- C. a license to use County real property that is coterminous with a contract for services performed by the licensee;
- D. a license to use County real property to provide child or adult day care services;
- E. a sale or lease of real property to the Housing Opportunities Commission for housing development;
- F. a sale of one or more housing units obtained by the County using its right of first refusal under Sections 11A-3 or 11A-4, Chapter 25A, or Chapter 53A, and resold for not less than the amount paid for by the County;
- G. a transfer of County right-of-way that is needed to implement a road or transit project that is included in the applicable master or other land use plan; or
- H. any disposition of County real property for which a legally enforceable contract, lease or other agreement was signed by the parties before May 15, 2012, including the exercise of options contained in those contracts, leases or other agreements where the material terms of the option period are set forth in the original document.

11B.45.01.03 Definitions

- 3.0 CAPITAL IMPROVEMENTS PROGRAM (CIP) –means the comprehensive six-year program for capital improvements submitted by the County Executive to the County Council under Section 302 of the Charter
- 3.1 COUNTY AGENCY – Means the Washington Suburban Sanitary Commission; the Maryland-National Capital Park & Planning Commission; the Revenue Authority; the Housing Opportunities Commission; Montgomery County Public Schools; Montgomery College; and, municipalities located in Montgomery County.
- 3.2 COUNTY DEPARTMENT - Any department or agency within the executive branch of the Montgomery



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County Government.

- 3.3 COUNTY OWNED OR CONTROLLED REAL PROPERTY – Real property either owned by the County in fee simple or which the County has a contractual right to use pursuant to a lease or license.
- 3.4 DECLARATION OF NO FURTHER NEED – An Executive Order by which the Executive declares that County owned or controlled real property is no longer needed for public use.
- 3.5 DIRECTOR – The Director of the Department of General Services or designee. With respect to the potential disposition of any real property owned by the County that is listed as an asset of any of the Parking Lot District enterprise funds (“PLD Property”), the term “Director” refers to the Director of the Department of Transportation or designee.
- 3.6 DISPOSITION – The sale of County owned or controlled real property; the lease or license of County owned or controlled real property for a term of 2 years or longer or for an initial term of less than 2 years that is extended or renewed beyond 2 years; or, a lease or other agreement that provides the lessee with an option to buy the County owned or controlled real property.
- 3.7 FULL MARKET VALUE – For the purposes of any Disposition, “Full Market Value” means “Fair Market Value” as that term is defined in the Uniform Standards of Professional Appraisal Practice, and in the case of a sale must be determined by at least one professional appraisal of the County owned or controlled real property obtained by the Director no more than 12 months before a Declaration of No Further Need is submitted to the Council.
- 3.8 LEASE – An agreement which establishes a landlord and tenant relationship for the use of real property for two years or more.
- 3.9 LICENSE – Revocable permission to use real property for a specific purpose or use for 2 years or more that does not establish any real property interest in the County owned or controlled real property.
- 3.10 NOMINAL VALUE – County owned or controlled real property which has an appraised Full Market Value lower than \$100,000 as adjusted on July 1 of every third year by the percentage increase or decrease in the applicable Consumer Price Index (CPI) or any successor index during the previous 3 calendar years, rounded to the nearest \$1000. Also, a lease or license of County owned or controlled real property in which the total rent to be received during the term of the lease or license has a Full Market Value lower than \$100,000, as determined by a market study, or is lower than the figure adjusted every third year as specified above.



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- 3.11 PRELIMINARY REUSE REVIEW – An initial review by the Office of Management and Budget (OMB), in consultation with the Department of General Services (DGS), the Department of Transportation (DOT), and other departments as appropriate, to determine whether a County owned or controlled real property should be reused by a County Department or placed in Reservation for future use by the County.
- 3.12 RESERVATION - Action taken by Executive Order to reserve County owned or controlled real property for an alternative public use by the County.
- 3.13 REUSE ANALYSIS – An analysis conducted by the Executive Branch if OMB’s Preliminary Reuse Review determines that a County owned or controlled real property should be considered for an alternative public use. The Reuse Analysis is conducted before the Executive issues a Declaration of No Further Need.
- 11B.45.01.04 Initiation of Disposition Process
- 4.0 If the Director deems County owned or controlled real property to be suitable for disposition, the Director must refer the real property to OMB for a Preliminary Reuse Review, unless the reuse of the real property has been approved as part of a CIP, in which case the real property is not subject to the preliminary reuse review or the reuse analysis.
- 11B.45.01.05 Preliminary Reuse Review
- 5.0 Within 60 days after the Director refers a property to OMB for Preliminary Reuse Review, OMB, in consultation with DGS, DOT and other County Departments as appropriate, must investigate whether the real property identified: (a) has been designated for a particular public use in an approved Master Plan (including real property which may be needed for road improvements), (b) is suitable for approved CIP projects or (c) is appropriate for future reuse by the County.
- 5.1 If OMB determines that a property: (a) has been designated for a particular public use in an approved Master Plan (including real property which may be needed for road improvements), (b) is suitable for approved CIP projects or (c) is appropriate for future reuse by the County, the Director must recommend to the Executive that the real property be placed in Reservation.
- 5.2 If OMB determines that a property: (a) has not been designated for a particular public use in an approved Master Plan (including real property which may be needed for road improvements), (b) is not suitable for approved CIP projects or (c) is not appropriate for future reuse by the County, OMB must recommend to the Director that the real property is no longer needed for public use by the County and



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the Director may proceed with a Reuse Analysis.

11B.45.01.06 Reuse Analysis

6.0 If OMB's preliminary recommendation is that the real property is no longer needed for public use by the County, the Director or designee must prepare and distribute to all County Departments and County Agencies, information pertaining to the real property and invite them to propose a reuse of the real property within 30 calendar days. Information and comments received by the Director or designee from County Departments and County Agencies must be included in a recommendation prepared and submitted by the Director or designee to the Chief Administrative Officer concerning whether the Executive should find that the real property is no longer needed for public use. The Director or designee's recommendation about the proposed reuse of the real property must be in the form of a memorandum to the Chief Administrative Officer which also contains a fiscal analysis prepared by OMB and an economic analysis prepared by the Department of Finance.

6.1 After considering the Reuse Analysis and recommendation of the Director or his designee, the Executive may determine that:

- A. The real property is appropriate for reuse by a County Department and place the real property in Reservation or issue an Executive Order directing that the real property be assigned to a County Department;
- B. The real property is appropriate for reuse by a County Agency; or
- C. The real property is no longer needed for public use and is appropriate for Disposition.

6.2. For a proposed Disposition, the Executive must conduct a public hearing. Notice of the public hearing must be sent to all County Council members, the directors of all County Departments, the heads of all County Agencies, and the heads of all civic associations whose areas encompass or abut the real property. A public hearing is not required for real property assigned to a County Department or placed in Reservation.

11B.45.01.07 Council Comment

7.0 Before seeking Council approval of a Declaration of No Further Need, the Executive must submit the proposed Disposition of the real property to the Council and allow the Council at least 30 days to comment on:

- A. all known or available material terms of the proposed Disposition, including the price or rent to be paid and any associated economic incentives;



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B. any appraisal, or in the case of leases and licenses, market studies, that the Executive relied on or will rely on in determining the real property's or the lease's or license's Full Market Value.

7.1 When practicable, the Executive should submit for Council review the parameters and material terms of any proposed Disposition that has not yet begun to be negotiated.

11B.45.01.08 Declaration of No Further Need

8.0 After determining that County owned or controlled real property is no longer needed for public use, the Executive must cause a Declaration of No Further Need to be published in the County Register and must cause the Declaration of No Further Need to be posted on the County website. A Declaration of No Further Need must specify whether the real property proposed for Disposition will be sold in fee simple or will be disposed of under a lease or license for a period of more than 2 years.

8.1 A Declaration of No Further Need is not required for properties with a Nominal Value.

11B.45.01.09 Council Action

9.1 Except as provided in § 11B.45.01.10, the Executive must submit for Council action, the Declaration of No Further Need for the real property and all necessary information supporting the Declaration of No Further Need.

9.2 The Executive must provide the Council at least 15 days advance notice of the Executive's intention to forward the Declaration of No Further Need to the Council for hearing.

9.3 The Executive must also advise the Council whether the proposed Disposition will be for less than Full Market Value if the Disposition does not fall within the exceptions in § 11B.45.01.11, below.

9.4 Except as provided in § 11B.45.01.09.5 and § 11B.45.01.09.6, if the Council does not hold a public hearing and approve the Executive's Declaration of No Further Need within 60 days of the Executive's submission, the Declaration of No Further Need is automatically approved.

9.5 The Council may extend the 60 day hearing period by resolution if the Council President informs the Executive within 30 days of the Executive's submission that the Council has not received all information necessary to review the Declaration of No Further Need.



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- 9.6 If the 60 day deadline provided in § 11B.45.01.09.4 falls during the month of August or during the period of December 15 through December 31, the deadline is automatically extended until the next scheduled Council session.
- 9.7 The Council may waive the public hearing if it determines that a hearing is not necessary to properly assess the Declaration of No Further Need.
- 11B.45.01.10 Dispositions Not Requiring Council Action:
- 10.0 The Executive must submit the Disposition of the following categories of properties to the Council and allow the Council at least 30 days to comment, but their Disposition does not require the Council to hold a public hearing or to approve the Executive's Declaration of No Further Need if:
- A. the real property, lease, or license has Nominal Value; or
 - B. the real property will be used primarily for a housing development and the developer of the housing legally commits that at least 30% of the housing units built on the real property will be MPDUs or other units that are exempt from development impact tax under Section 52-49(g)(1)-(4).
- 11B.45.01.11 Exceptions to Disposition for Less Than Fair Market Value:
- 11.0 The Executive must not dispose of any real property owned or controlled by the County at less than Full Market Value except when:
- A. the real property, lease, or license has Nominal Value; or
 - B. the Disposition pertains to real property that will be used primarily for a housing development and the developer of the housing legally commits that at least 30% of the housing units built on the real property will be MPDUs or other units that are exempt from development impact tax under Section 52-49(g)(1)-(4).
- 11B.45.01.12 Methods of Disposal
- 12.0 After the Council has approved by resolution the Executive's Declaration of No Further Need, the Executive may dispose of the real property by any method that the Executive approves under an Executive Order. The method must comply with any requirements imposed under local and State local law, including the Express Powers Act and the Land Use Article, Division II.



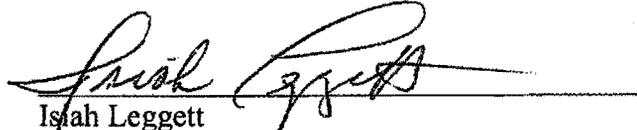
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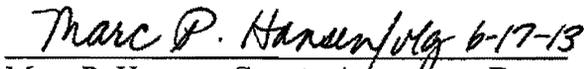
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11B.45.01.13 Severability

13.0 The provisions of these regulations are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts of these regulations or their application to other persons or circumstances.


Isiah Leggett
County Executive

Approved as to form and legality:


Marc P. Hansen, County Attorney Date

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Resolution to Revoke Temporary Executive Regulation 11-13T – Property Disposition

Background

1. On May 15, 2012, the Council reenacted Bill 11-12, County Property – Disposition after a veto by the Executive.
2. Bill 11-12 contained a limited grandfather clause that excluded dispositions for which the parties have finalized and signed a legally enforceable agreement even if the transaction has not yet been “completed” – i.e. ownership of the property has not been legally transferred.
3. ER 11-13T was transmitted to the Council on June 18, 2013 and takes effect on that date.
4. ER 11-13T includes a grandfather clause for existing leases that is broader than the grandfather clause in Bill 11-12.
5. County Code §2A-15(j)(5) authorizes the Council, by resolution, to revoke a temporary regulation.

Action

The County Council for Montgomery County Maryland approves the following resolution:

Executive Regulation 11-13T, Property Disposition is revoked.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council