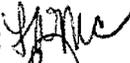


**MEMORANDUM**

September 20, 2013

TO: Government Operations and Fiscal Policy Committee

FROM: Linda McMillan, Senior Legislative Analyst   
Robert Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession: Executive Regulation 11-13, *Disposition of Real Property*,**  
(Department of General Services)

On September 16, 2013, the Council received proposed Executive Regulation 11-13, *Disposition of Real Property*, (Department of General Services). The regulation is promulgated under Method 2. Under Method 2, the Council may approve or disapprove a regulation within 60 days or may extend the time for consideration. If the Council does not approve or disapprove or extend the time for consideration within 60 days the regulation automatically takes effect. The Council amended the process for the disposition of real property through sale or lease and required the Executive to adopt these regulations by enacting Bill 11-12.

This proposed permanent regulation, if approved, will replace Temporary Regulation 11-13T-AM, *Disposition of Real Property*. Temporary Regulation 11-13T-AM was received by the Council on June 25, 2013, and the Council extended the effective date to December 22, 2013 on September 10, 2013.

The underlined version of the proposed regulation is attached at ©2-22 and the fiscal impact statement at ©23-25. A copy of County Code Section 11B-45, Disposition of real property, is attached at ©26-31.

**Bill 11-12, Property Disposition**

- Bill 11-12 requires regulations to “establish the process for the disposition of any real property owned or controlled by the County.”

- Disposition means, “a sale, a lease or license for a term of 2 years or longer, or a lease or other document which includes an option to buy.”
- If the initial lease is for a term of less than two years, a renewal or extension is considered a disposition.

**The law requires:**

- The Executive to provide the Council with the material terms of the disposition, including the price or rent to be paid and any economic incentives and any appraisal that is being used to set the property’s market value, 30 days before the Executive asks the Council to approve a “declaration of no further need.”
- The Executive must not dispose of any property owned or controlled by the County at less than full market value unless the Council waives this requirement. For a sale, full market value must be determined by an appraisal within 12 months of the Executive submitting a “declaration of no further need” to the Council.
- The Council must approve by resolution the Executive’s “declaration of no further need” and any disposition of property at less than full market value. The Council may hold a public hearing with at least 15 days notice. If the Council does not act on the Executive’s declaration within 60 days after the Executive submits it to the Council, the proposed action is automatically approved. The Council may extend the deadline if it informs the Executive that it has not received all information necessary to review the proposed action. If the 60 day deadline falls during August or between December 15 and 31 it is extended to the next Council session.
- Before the Executive disposes of the property, the Executive must publish notice in the County Register and on the County website that the County has no further need for the property if it is to be sold or no need during the term of the lease or license.
- If a property is going to be used primarily for housing and there is a commitment that at least 30% of the dwelling units will be MPDUs or other affordable units exempt from impact tax, the Executive must provide the material terms to the Council for a 30 day comment period. The Council does not have to approve the Executive’s “declaration of no further need” or the disposition at less than full market value.

The following table shows the types of properties, leases, and licenses that are exempt from this property disposition process and any differences between the law and the proposed regulation.

<b>County Code</b>	<b>Proposed Regulation</b>
Surplus school facilities. (The reuse of surplus school facilities is governed by a separate disposition process that is established in regulation.)	Same

Property of nominal value identified in the regulation. Property with an appraised value of less than \$100,000 (with a CPI adjustment to the \$100,000 made every three years.)	Property with an appraised full market value lower than \$100,000 or 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 (adjusted every three years), as determined by the market study, or is lower than the figure adjusted every three years.
A lease or license to use any parkland or any facility located on parkland that the Parks Department operates or manages for the County.	Same
A license to use County property that is coterminous with a contract for services performed by the licensee.	Same
A license to use County property to provide child care or adult day care services.	Same
A sale or lease of property to the Housing Opportunities Commission for housing development.	Same
A sale of one or more housing units obtained by the County using its right of first refusal and resold for not less than the County paid.	Same
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.	Same
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 agreement where the material terms of the option period are set forth in the original document.  NOTE: Language in 11-13TAM is ***, including a tenant's exercise of a legally enforceable option to renew a lease of County property under the terms and conditions contained in original lease.

**Examples of Dispositions since Bill 11-12 was Enacted**

Since Bill 11-12 was enacted, the following dispositions have occurred or are in process with the Council:

1. Lease with State of Maryland for space in the Central Processing Unit (January 2013) – The County entered into a 5-year lease with the State of Maryland for space in the Central Processing Unit for use by District Court Commissioners. The Council received notice since the lease exceeds a 2 year term and was provided with the lease’s material terms (1,200 square feet for \$14,400 per year). The Director of DGS determined it was full market value as it is the highest rate being paid by the State and there are no other comparables. Because the total rent being paid over the term of the lease was less than \$100,000 (total payments \$72,000), Council analyst staff advised that the Council did not need to adopt the Executive’s resolution of no further need.<sup>1</sup>
2. Sale of County Property to Habitat for Humanity (January 2013)– The Council received notice of the intent to sell a 1.25 acre parcel to Habitat for Humanity for \$1.00. Four houses will be developed and sold to households with incomes below 60% AMI. The Council did not have to approve a declaration or the sale below market value because of the exemption for dispositions where 30% of the dwelling units will be MPDUs.
3. Housing next to new Silver Spring Library (May 2013) – The Council received notice of the County’s intent to enter into a long-term, below-market rate lease with Montgomery Housing Partnership to develop senior housing on a County-owned parcel next to the new Silver Spring Library. The Council did not have to approve a declaration or the below market lease as more than 30% of the dwelling units will be MPDUs.
4. Progress Place (June 2013 – ongoing) – The Council received notice of the intent to provide the current site of Progress Place and adjacent parking lot to a developer in exchange for construction of a new Progress Place on a County-owned parcel and a payment to the Parking Lot District. In addition, the Executive proposed adding PLQs to the new Progress Place. The HHS and PHED Committees held a joint session and provided comments to the Executive asking for additional study and revisions to the project and cost estimate. The Executive is providing additional information for a HHS and PHED session on September 26. The Council has not yet been asked to approve a “declaration of no further need” for the current Progress Place site; however, disposition will require approval of such a declaration.

## **Issues/Recommendations**

### **1. Exclusion of Surplus School Facilities**

The property disposition process previously described does not apply to a “surplus school” which is defined Code §11-B-45(g) as “any building used at any time as a public school and later conveyed to the County and all or part of the land which constitutes the school site.”

Disposition of a surplus school is governed by separate regulations that also require comment and action by the Council. Council staff wants to confirm with the Committee that this was the

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<sup>1</sup> This was correct under the temporary regulation, ER 11-13T-AM. However, Council staff believes the definition of nominal value in ER 11-13T-AM and in proposed ER 11-13 is in conflict with the law. See Issue 4 for a discussion of this point.

Council's intent not only for the initial reuse of a surplus school but any subsequent reuse. It should also be clarified that the definition requires a school building. If Montgomery County Public Schools were to convey vacant land that was not part of a school building site to the County, the disposition of the land would follow the process in this proposed regulation.

## **2. Option to Renew - Section 2.0(H) (©17)**

Council staff recommends that Proposed Executive Regulation 11-13 should be amended to repeat the language requested by the Council as a part of the Temporary Regulation 11-13T-AM. Section 2.0(H) should read:

“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 a tenant's exercise of a legally enforceable option to renew a lease of County property under the terms and conditions contained in original lease.”

## **3. Amend “County Agency” to “Outside Agency” – Section 3.1 (©17)**

The proposed regulation uses the term County Agency for WSSC, M-NCPPC, the Revenue Authority, HOC, MCPS, Montgomery College, and municipalities located in Montgomery County. The term is used for identifying entities that should receive notice or be asked to provide comments during the certain parts of the disposition process. Council staff recommends that the term be changed to “Outside Agency” as not all those listed are County Agencies.

## **4. Definition for “Nominal Value” – Section 3.10 (©18)**

The proposed regulation defines “Nominal Value” as, “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 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.”

How nominal value is defined is important because a property of nominal value can be disposed of without Council approval of a declaration of no further need. For disposition by sale, an appraisal is required to determine the fair market value of the property.

Including the total amount of rent paid over the term of a proposed lease or license is an improper method of placing a value on the property, or part of a property, to be leased. As the law is written, a property of nominal value would be a property whose value is so small that it is obvious that it is well below \$100,000. For example, an outlot that is too small to be built on would be a property of nominal value. The proposed regulation would significantly broaden the types of leases that would not require a declaration of no further need. The market rent received over 2 years for a \$500,000 house is likely to be less than \$100,000. However, the house is not a

property of “nominal value.” Information would still have to come to the Council about whether the rent proposed is a Fair Market or Below Market rent under the proposed regulation.

Council staff recommends that the Executive amend the regulation to delete the language that would value a property as nominal value based upon the rent received over the term of the lease to comply with the law. The rent that can be obtained for a property can be used to appraise the value of the property under the “income approach” in a real property appraisal, but simply adding up the value of the rent received over the term of the lease is an inappropriate method of appraising real property.<sup>2</sup>

If the Committee believes that leases and licenses where less than \$100,000 in rent would be paid over the term of the lease should be exempt from the declaration of no further need, then the law should be amended. Absent a change in the law, the regulation should be amended.

## **5. Abbreviated Process for Dispositions Assumed in the CIP – Section 4.0 (©18)**

The law on the disposition of real property that was in place prior to the enactment of Bill 11-12 required that regulations provide for coordination among public agencies, an opportunity to reserve property for alternative public use, a comparative analysis of reuse proposals, and public notice and hearing (unless waived) on possible dispositions before a final decision. In the proposed regulation this is addressed through the Preliminary Reuse Review and Reuse Analysis (Sections 5 and 6; ©19-20).

The regulation proposes that if the Director deems County-owned or controlled property to be suitable for disposition, it must be referred to OMB for a Preliminary Reuse Review, unless the reuse has been approved as part of the CIP. The Preliminary Reuse must assess whether the property has been designated for a specific use in a master plan, is suitable for an approved CIP project, or appropriate for future reuse by the County.

This exemption has been included in the proposed regulation for County property such as the new Silver Spring Library. In this project, the approved PDF in the current CIP says that project includes 20,000 square feet of art gallery, classroom space, and a coffee bar. In updates to the Council (such as the September 27, 2010 update to the HHS Committee) on the library project, Pyramid Atlantic was specified as the planned arts use. Pyramid Atlantic was selected through a 2009 RFP process, and the Program of Requirements and preliminary design assumed Pyramid Atlantic would use this space.

In such a circumstance, should the disposition still be required to go through the Preliminary Reuse Review, and a hearing by the Executive? What language should be included in either an Approved PDF or the CIP resolution to indicate that such a disposition is approved without these preliminary steps?

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<sup>2</sup> The 3 recognized methods of appraising real property are the market approach, the replacement cost less depreciation, and the income approach. None of these approaches use the value of the rent received over the life of a lease.

If these preliminary steps are not required, the Executive would still be required to seek Council approval of a Declaration of No Further Need, provide any market studies that were used in determining the rent for the lease or license, and seek Council approval if the proposed rent was below full market value.

If the Executive's intent is not to have to seek Council approval of a Declaration of No Further Need for a project that has been approved in the CIP, then the law would need to be amended to accomplish this. If the law is amended to exclude this requirement for a CIP project, Council staff recommends that the Council include a provision in the Capital Budget approval resolution indicating that there has been a finding that the space will not be needed for use by County Departments or Outside Agencies.

**6. Correction to language regarding automatic approval – Section 9.4 (©21)**

Council staff recommends that the language be clarified to say that if the Council does not hold a public hearing and [approve] act on 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.

**7. Correction to language about disposition at less than full market value – Section 10.0 (©21) and exemption for a lease or license of nominal value – Section 11.0 (©22)**

Depending on the outcome of the discussion of Nominal Value, these sections should be amended to delete the "lease or license" from properties that do not require Council action and that can be disposed of at less than Full Market Value."

**8. Add requirement that the Executive must forward a copy of the Executive Order disposing of property - Section 12.0 (©22)**

Council staff recommends that the regulation require the Executive to forward a copy of the Executive Order for the final disposition.

This packet contains:

	<u>Circle #</u>
Executive Memo, September 16, 2013	1
Proposed Executive Regulation 11-13	2
Fiscal Impact Statement	23
County Code Section 11B-45	26
Executive Memo, September 6, 2013	33
Temporary Executive Regulation 11-13T-AM	34

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

September 16, 2013

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive *Timothy L. Firustine, ACTING*

SUBJECT: Executive Regulation 11-13, Disposition of Real Property Method 2

The purpose of this memorandum is to submit Executive Regulation 11-13 for the Council's review and approval. This regulation implements Bill 11-12, County Property Disposition, enacted by the Council on March 13, 2012. The regulation amends the Montgomery County Contracts and Procurement Regulations to modify the procedures relevant to the disposition of certain County properties and to require County Council approval for the disposition of certain County properties.

Executive Regulation 11-13 was advertised in the July 2013 issue of the *Montgomery County Register*. No comments were received in response to this advertisement. The proposed regulation has been reviewed by the Office of Management and Budget, Department of Transportation, and the Office of the County Attorney. Any input those departments had were incorporated into the amendments to these regulations and advertised.

IL:rbp

Attachments

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# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
<b>Originating Department</b> Department of General Services	<b>Effective Date</b>

Montgomery County Regulation on

DISPOSITION OF REAL PROPERTY

DEPARTMENT OF GENERAL SERVICES

Issued by: County Executive  
Regulation No. 11-13  
COMCOR No. 11B 45-01

Authority: Montgomery County Code (2004) Chapter 11B  
Supersedes: Executive Regulation 31-97  
Council Review: Method (2) under Code Sections 2A-15(f) and 11B-45(a)  
Register Vol. 30 No. 7

Effective Date: \_\_\_\_\_  
Comment Deadline: July 30, 2013

**Summary:**

The current property disposition regulations establish the procedure through which the County is permitted to dispose of property. On May 1, 2012 the County Council passed Bill 11B-45-01 which authorizes Council to have review, comment, and approval under their appropriation authority of property disposition decisions. The proposed regulations established for the purpose of implementing Bill 11B 45-01 make some specific changes to the procedure but few substantive changes are made with the exception of the following points: 1) Current regulation: applied to leases 5+ years in length; 2) Proposed regulation: applies to leases and licenses 2+ years in length and agreements containing options to purchase 3) Current regulation: has no Council participation in the determination of no further need for public use; 4) Proposed regulation: Council must make finding that there is no longer a public use for the property and issue a Declaration of No Further Need before a property can be sold or put under a lease or license for a period of two or more years in length; 5) Current regulation: property sites sold to private purchasers must be sold at fair market value (FMV) as determined by the Director of DPWT based on one or more independent appraisals unless otherwise specified in the executive order or reuse and disposition analysis; 6) Proposed regulation: requires property to be sold at FMV based on an independent appraisal that has been performed within 12 months of the Declaration of No Further Need decision made by Council. If the property is worth less than \$100k (nominal value) or if 30% of the property is devoted to affordable housing, then no Council approval is needed. The housing must be priced at



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the Moderately Priced Dwelling Units (MPDU) level or lower. As to overall procedural changes, the newly proposed regulations more fully establish with particularity the interplay and responsibilities of the Office of Management and Budget and Department of General Services (formerly the responsibility of the Department of Public Works and Transportation "DPWT"). Those procedural changes do not amount to any substantial or substantive changes to the process. The overall substantive changes relate to the fact that the new disposition law has eliminated many of the "exceptions" to the disposition process such that most properties sold outright or leased or licensed for more than 2 years will now undergo the disposition process..

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

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

Background: The regulations will implement the new property disposition law effective as of May 1, 2012 and will supersede the current property disposition regulations.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
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11B.45.01.01 Purpose *Previous regulation is deleted*

1.0 To provide policies and procedures whereby disposition is made of certain County- owned real property.

11B.45.01.02 Applicability

2.0 These policies and procedures apply to the disposition of all County-owned real property except:

- A. parcels at the Montgomery County Life Sciences Center;
- B. former school sites containing school buildings no longer in public school use;
- C. sites acquired for specific purposes such as roads, housing projects, and public parking facilities and parking lot districts; sites disposed of for purposes related to roads, housing, matters of significant or strategic interest to the County's economic development; or public parking facilities in parking lot districts;
- D. sites, generally, which are leased for under five years, or splinter parcels which are leased for any length of time.

11B.45.01.03 Definitions

3.0 COUNTY AGENCY - Any department or Agency of the Montgomery County Government.

3.1 COUNTY-WIDE PUBLIC USE - Use of real property available to or benefiting all residents of Montgomery County.

3.2 DISPOSITION - The placement of a site in reservation, the leasing of a site, other than splinter parcels, for five years or more, the assignment of the site's reuse to a County or Outside Agency, or the declaration of the site as surplus.

3.3 EXECUTIVE ORDER ON REUSE AND DISPOSITION - Instrument by which the County Executive places a site in reservation, approves a lease, assigns a reuse, declares a site surplus.

3.4 LEASE - A contract for use of a site, other than a splinter parcel, for five years or more.

3.5 LOCAL MUNICIPAL USE - Use of real property by a limited number of County citizens. This would include use restricted to residents of a local municipality or the application of special fees or other restrictions on non-local residents for use of the property.

3.6 OUTSIDE AGENCY - Any agency, outside the Executive and Legislative branches of the Montgomery County Government. This would include but not be limited to WSSC, MNCPPC, Revenue Authority, Housing Opportunities Commission, MCPS, Montgomery College, and Local Municipalities.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
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- 3.7 SALE BY DIRECT NEGOTIATION - The sale of real property is confined to negotiations between the County and a single potential purchaser. The bid process and the public offering are waived.
- 3.8 SALE BY FIXED PRICE - An offering of real property for sale at a fixed price. This form of sale is usually part of a sale where other factors such as proposed uses and design are considered as important as the price.
- 3.9 SALE BY MINIMUM PRICE COMPETITION - An offering of real property for sale to the public wherein a minimum acceptable sales price is stated. Bids below the stated minimum price are not accepted.
- 3.10 SALE BY PUBLIC AUCTION - A public sale conducted by an auctioneer.
- 3.11 SALE BY REUSE COMPETITION - An offering for sale based on the proposed reuse. The prospective purchaser is chosen according to the reuse deemed most in the public interest. Price is of secondary importance.
- 3.12 SALE BY SEALED PROPOSALS - An offering of real property for sale to the public. The highest offer wins the rights to negotiate a contract for purchase. As implied, all proposals are secret until the official time of opening. If contract negotiations fail, the offering is withdrawn.
- 3.13 SITE RESERVATION - An action taken by the County Executive, via an Executive Order, to defer further disposition actions on the site in question:
- A. in order that the site may be used in accordance with an approved Master Plan,
  - B. pending determination of the site's suitability for a project contained in an adopted Capital Improvement program, or
  - C. in anticipation of greater reuse or disposal prospects in the future.
- Sites placed in reservation may be leased.
- 3.14 SPLINTER PARCELS - Parcels of such size, shape, topography or other characteristics as to have only nominal value.
- 3.15 SURPLUS SCHOOLS - Real property that is not needed to meet the present and anticipated future needs of County Agencies and Outside Agencies and that has been designated as surplus by Executive Order pursuant to a Reuse Analysis.
- 3.16 SURPLUS SCHOOL SITES - Unimproved school sites that have been declared surplus by the Board of Education, approved for transfer by the State of Maryland, and transferred to the County.
- 3.17 TAX SALE PROPERTY - Property acquired by the County as a result of non-payment of taxes.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
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## 11B.45.01.04 Policy

4.0 The County Executive may, pursuant to this Executive Regulation, dispose of County- owned real property not currently programmed, except those properties excluded under Section 2.0, Applicability.

4.1 Property disposition shall be done in a fair and equitable manner that is open to public scrutiny. Review and comment on disposition of real property shall be invited, as specified in this Executive Regulation, from County Agencies, Outside Agencies (including but not limited to MNCPPC, MCPS, and Local Municipalities, where applicable), the public at the public hearing (per Section 9.2.B.), and the County Council.

4.2 Proposals that respond to certain reuse preferences of the County (as supporting other, non-financial public policy objectives) may be given priority over proposals offering higher prices.

4.3 Sites designated for particular public uses in an approved Master Plan (including portions of sites which may be needed for road improvements) and sites which may be suitable for approved CIP projects shall be placed in reservation.

4.4 All other things being equal, County-wide public uses would be given first priority, municipal public uses would be given second priority, quasi-public uses third priority, and private uses would be given fourth priority.

4.5 Sites placed in reservation for Master Plan purposes, or designated by the County Executive for use by an Outside Agency, shall be transferred to the Outside Agency upon payment of the fair market value as determined pursuant to this Executive Regulation, or in accordance with other payment policies established by the County Executive. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

4.6 Sites sold to private purchasers must be sold at prices not less than their fair market value as determined by the Director, DPWT (based on one or more independent appraisals), unless otherwise specified in the Executive Order on Reuse and Disposition.

4.7 In disposing of property to private users, the County shall install site improvements only in exceptional cases.

4.8 The County Executive may dispose of County-owned real property through leases containing rights of first refusal to purchase, or options to purchase, provided that the material provisions of these Executive Regulations are complied with at the time of disposition.

## 11B.45.01.05 Responsibilities and Authority

5.0 Contract Review Committee (CRC) shall approve for compliance with law and Executive Regulations



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
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- A. the method of disposition,
- B. the Request for Proposals, and
- C. the contracts for sale of surplus real property.

5.1 County Attorney's Office shall

- A. approve all deeds, contracts, leases, and forms as to form and legality;
- B. approve the use of outside counsel, and
- C. assist in contract negotiation as needed.

5.2 Department of Public Works and Transportation (DPWT) shall

- A. develop and maintain an inventory of real property,
- B. administer the disposition of real property, and
- C. establish the necessary Departmental procedures and practices.

5.3 Department of Finance shall

- A. administer the disbursement and receipt of funds, and
- B. refer the annual inventory of tax sale properties to DPWT for disposition.

5.4 Office of Management and Budget (OMB) shall

- A. participate in the Preliminary Reuse Review, and
- B. review and comment on Reuse Analyses.

5.5 Chief Administrative Officer (CAO) or his designee shall

- A. approve and sign all options, contracts, and leases; and
- B. approve the Reuse Analysis for referral to the County Council, the Planning Board, and the general public.

5.6 County Executive



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Disposition of Real Property	<b>Number</b> 11-13
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A. shall execute all deeds of conveyance, covenants, and restrictions incidental to the transfer of property by the County.

B. shall approve the reservation of properties via Executive Order,

C. shall approve the reuse assigned to a site, via Executive Order, and

D. shall approve the declaration of a site as surplus, via Executive Order.

5.7 Planning Implementation Section shall

A. participate in the Preliminary Reuse Review, and

B. review and comment on Reuse Analyses.

5.8 Office of Procurement shall

A. be responsible for Bids and Requests for Proposals and review all contracts for sale for compliance with law and Executive Regulations.

5.9 The County Council shall

A. be provided with opportunity to review and comment on the Reuse Analysis (including recommendations) prepared by DPWT, and,

B. approve all proposals to sell properties acquired through tax sales, pursuant to Section 52-38 of the Montgomery County Code, 1994, as amended.

11B.45.01.06 Services

6.0 Subject to County law, Administrative Procedures and existing appropriations, DPWT may arrange or contract for services, work or facilities furnished by an individual or agency, public or private, in connection with the proposed or actual disposition of property. This shall include but not be limited to:

A. Appraisal services

B. Legal services

C. Engineering and/or architectural services

D. Newspaper and other media services

E. Installation of public facilities



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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F. General planning/consulting services

11B.45.01.07 Inventory of Real Property

7.0 DPWT shall develop and maintain an inventory of County-owned real property.

11B.45.01.08 Initiation of Disposition Process

8.0 If a site is in the DPWT inventory as provided for in 7.0 above and is deemed by DPWT preliminarily suitable for disposition, DPWT shall, as a first step, refer the site to Planning Implementation Section and to OMB for Preliminary Review under the procedure below for Determination of Reuse.

11B.45.01.09 Determination of Reuse

9.0 Step 1 - Preliminary Review (OMB and Planning Implementation Section)

A. Master Plan - Within fourteen days, Planning Implementation Section shall review the site in relation to approved Master Plans. Planning Implementation Section should consult informally with the MNCPPC if necessary to ascertain a clear understanding of the Master Plan regarding the site in question. A site specifically designated in an approved Master Plan for particular public uses, or that portion of such site which may be needed for right-of-way for road improvements in the Master Plan, shall be recommended for placement in reservation. If, after review, questions remain about the intention of the Master Plan, the site shall not be placed in reservation for Master Plan purposes.

B. Functional Use - Within fourteen days, OMB shall review the site as to its desirability for future public use as fire stations, police stations or other projects as contained in an adopted Capital Improvements Program (CIP). Current use of the site should be included in this analysis. A site identified as potentially suitable for use in an approved CIP project shall be recommended by OMB to DPWT to be held in reservation until its suitability is determined.

C. For each site recommended for reservation by either Planning Implementation Section or OMB, DPWT shall forward an Executive Order on Reuse and Disposition to the County Executive for decision together with its own recommendations, those of OMB, those of Planning Implementation Section, and other supporting documents as applicable.

D. Subsequent to County Executive approval, DPWT shall forward copies of the approved Executive Order to all appropriate County and Outside Agencies.

E. If a site is placed in reservation for use by an Outside Agency (pursuant to an approved Master Plan), DPWT shall prepare an agreement for transferring the site to that agency. Payment for the site shall be the appraised fair market value based on the highest and best use, unless otherwise provided for in the Executive



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Order on Reuse and Disposition, or in accordance with other payment policies established by the County Executive. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

F. If, as a result of the Preliminary Review, no reservation of the site is made by the County Executive, DPWT shall proceed to administer the Secondary Review as provided below.

## 9.1 Step 2 - Secondary Review (Agencies)

A. DPWT shall prepare and distribute to all appropriate County and Outside Agencies information pertaining to the site and shall invite them to propose reuses. Further, agencies shall be encouraged to identify any future needs that might require easements or covenants for attachment to the deed in the event the site is sold; any community use occurring on the site; and any municipal zoning or Master Plan provisions that should be considered.

B. Agencies shall notify DPWT in writing, within 30 days, of their interest in, or comments on, the site. The notification shall include the proposed reuse, if any, along with the pertinent supporting data sufficient to justify the Agency's proposed reuse.

## 9.2 Step 3 - Reuse Analysis

A. DPWT shall prepare and submit to the County Executive via the Chief Administrative Officer a Reuse Analysis on each site not reserved under the provisions of 9.0 above. This analysis shall include, but not be limited to, a discussion of the following:

1. Proposals made under the Secondary Review process.
2. Individual site characteristics including, but not limited to, zoning (including municipal zoning, where applicable), topography, improvements, utilities, access, and transportation.
3. Marketing conditions including, but not limited to, the cost of development, financing, the scheduled availability of public facilities for the site, and other conditions of the market.
4. All reuse options identified by DPWT or by others to this point, with the advantages and disadvantages of each.
5. Recommendations by DPWT.
6. If DPWT recommends that the site be transferred to any Outside Agency, the appraised fair market value shall be included in the Reuse Analysis.

B. The County Executive shall conduct a public hearing on the DPWT reuse recommendations pursuant to AP 1-9, Public Hearings. (Note: In addition to advertisement requirements provided for in AP 1-9, notice shall



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be sent to all County Council members, the heads of all Outside Agencies, and the heads of all civic associations whose areas encompass or abut the subject parcel.) The County Executive may waive the requirements of sections 9.2.B., 9.2.C., and 9.2.D.

1. for splinter parcels and
2. for recommended reuse of the site by a County Agency.

The County Executive shall notify the County Council of his waiver decision and his reasons therefor.

C. Simultaneously with the advertisement of the public hearing, DPWT

1. shall transmit the Reuse Analysis to the MNCPPC and to other appropriate County and Outside Agencies (including the BOE and applicable municipality) with an invitation to comment at or before the public hearing provided for above; and

2. shall transmit the Reuse Analysis to the County Council who shall provide comments, if any, on or before the date of the public hearing provided for above. The CAO or his designee shall offer to consult with the Council regarding the Reuse Analysis.

D. After the public hearing, DPWT shall coordinate with the Hearing Officer to submit to the County Executive

1. the Hearing Officer's Report;
2. the Reuse Analysis;
3. responses from MNCPPC and other agencies;
4. the results of consultation with the County Council;
5. an Executive Order on Reuse and Disposition, ready for signature; and,
6. other relevant materials.

E. The County Executive shall, by Executive Order,

1. specify a reuse of the site by a County or Outside Agency, along with any conditions on that reuse;
2. place the site in reservation for determination of reuse at a later date; or
3. declare the site surplus and available for sale in accordance with specified conditions, if any.



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F. If use by a County Agency is approved by the County Executive, DPWT shall administer the transfer of control to the receiving agency subject to the following stipulations:

1. The receiving agency shall make substantial progress towards the reuse of the property within two years from the date of the transfer.
2. Extension of control exceeding two years shall be granted only by Executive Order.
3. In the event an extension is not granted, DPWT shall reassume control over the property and reinitiate the reuse process.
4. If the property is being considered for transfer to a third party, the receiving agency shall replace DPWT in the administration of Sections 10.0, 10.1, 11.0, 11.1, 11.2, 12.0, 13.0 through 13.6, 14.0 through 14.2 where these Sections are applicable to the transfer. The price to be paid by the third party shall be the appraised fair market value of the site unless provided for otherwise in the Executive Order on Reuse and Disposition or in other payment policies established by the County Executive.
5. Receiving agencies shall file semi-annual progress reports with DPWT.

G. If use by an Outside Agency is approved by the County Executive, DPWT shall administer the transfer of ownership to the appropriate agency upon:

1. Execution of an agreement, and
2. Payment to the County of the appraised fair market value based on the Highest and Best Use, unless otherwise stipulated in the Executive Order on Reuse and Disposition or in other County Executive policy decisions. For sites transferred to the MNCPPC for parks, the MNCPPC shall pay remaining debt service.

H. If the site is declared surplus, DPWT shall proceed to sell it as provided for below.

## 11B.45.01.10 Selection of Sale Method

10.0 If not stipulated in the Executive Order on Reuse and Disposition, DPWT may dispose of the site by sale in accordance with any method permitted by State and local law, including but not limited to:

- A. Minimum price competition
- B. Sealed bids
- C. Fixed price
- D. Direct Negotiation



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- E. Reuse Competition
- F. Related variations and combinations of the preceding
- G. Public Auction

The criteria for the selection shall include, but not be limited to, general market conditions, potential reuse, characteristics peculiar to the individual site, and conditions of the financing market.

10.1 DPWT shall submit its recommendations for the method to be used to sell the surplus real property, together with supporting Justification, to the CRC for approval. CRC shall approve or disapprove the selected method on the basis of compliance with Law and Executive Regulations.

#### 11B.45.01.11 Requests for Proposals

11.0 If a disposition method involving public offering is selected, DPWT shall develop, and the Office of Procurement shall issue a Request for Proposals or Bids.

11.1 The Request for Proposals or Bids is the formal public notice of the offering of the land. It should be accomplished through publication in one or more newspapers of general circulation in the County and through mailed notices to all persons and firms that have signified to DPWT a bona fide interest in acquiring any of the land in the offering. The information contained in the invitation, at a minimum, should include:

- A. Identification of land to be offered.
- B. A general description of the types of development permitted and conditions of use, plus general notice to bidders of the need to comply with Zoning Ordinance requirements in the event rezoning is proposed.
- C. Identification of the kind of disposal and the disposal method, including criteria and procedures for making selection.
- D. The cutoff date of the receipt of proposals, if established. This is required in the case of minimum-priced competition, sealed bid, and public auction disposal methods.
- E. Instruction on how to obtain further information about the terms and conditions of the disposal and procedures for submitting proposals. The instructions shall state the amount of any fee charged by DPWT for the offering documents (Prospectus) if applicable.

11.2 The Prospectus shall contain all the terms and conditions of the offering. It must be readily available to all prospective purchasers promptly after publication or issuance of the first invitation for proposals. DPWT shall submit copies of the Prospectus to the Office of Procurement prior to publication. The Prospectus should normally contain:



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- A. The site Plan and Declaration of Covenants and Restrictions, if any. Also, a clear statement of any other restrictions imposed on the property. A description of the property for which proposals are invited, including:
1. Legal and other description sufficient to identify clearly the boundaries and area of the land involved, together with a map or plat showing the location of the land. Location of existing and proposed streets and utilities to serve the property, to the extent available.
  2. Information on general grades and evaluations, if available.
  3. Information on: test borings and their analysis to the extent available, location and type of existing basements, foundation walls, footings, abandoned utilities, and the extent and character of fill.
  4. The County shall not be liable for the accuracy of data and the Prospectus shall contain the appropriate disclosure statement.
- B. A statement as to kinds of proposals that may be submitted and a description of the method of selecting purchasers.
- C. Proposed form of contract of sale.
- D. Statement of requirements for the submission of proposals, including place, cutoff date and time, and documentation required as to the bidder proposal, including the good faith deposit or bid bond requirements.
- E. All forms specifically required from the bidder in submitting proposals, including the Warranty of Non-Collusion.
- F. Statement describing carrying charges, if any, that may be charcred against the selected bidder prior to transfer of title and payment of the purchase price and the proposed form of deed by which the County will convey title to the land.

#### 11B.45.01.12 Selection of Purchaser

12.0 Upon receipt of bids (or proposals, depending on the selection method employed), DPWT, in consultation with the Office of Procurement, shall select the prospective purchaser.

#### 11B.45.01.13 Contract Negotiation

13.0 Once the purchaser has been selected, DPWT shall negotiate the contract of sale.

13.1 A Declaration of Covenants and Restrictions may be used to provide a recordable document specifying the land use controls on the site. It may cover all or only a portion of the site. The declaration, if used, shall be



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recorded by DPWT in the County's land records, give constructive notice of its provisions, and be legally enforceable.

13.2 The time permitted for the performance of each obligation in the disposal agreement shall be specified. Such times should be tailored to meet the circumstances, avoiding unnecessary risks and encouraging timely compliance by the purchaser.

13.3 The obligations of DPWT and the purchaser for the installation of any site improvements which are to be provided after the agreement is executed shall be specified in the disposal agreement. The County shall install site improvements only in exceptional cases.

13.4 The land disposal agreement must be adequately secured by a good faith deposit in cash, certified check or other approved security. The amount of the deposit or other security shall be determined by the Director, DPWT. It is normally between 5% and 15% of the purchase price.

13.5 If various segments of a property are to be conveyed on separate dates, a schedule shall be annexed to and made part of the agreement, setting forth the legal description, date of conveyances and amount to be paid for each segment. The determination of the dates and payments for the various conveyances shall be coordinated with DPWT's appraisals and determination of market value. The amount to be paid for a segment may be its market value (as of the date of conveyance) or the prorata share of the total purchase price (although, cumulatively, the purchaser pays only the total contract price for the entire property). The good faith deposit shall be based upon the sales price of the entire property. A map outlining the segments shall be annexed to the agreement.

13.6 Before authorizing a disposal, DPWT shall determine that the purchaser possesses the qualifications and financial means and responsibility to acquire and develop (where applicable) the land in accordance with the proposed disposal agreement.

#### 11B.45.01.14 Approval of Contracts; Notice

14.0 DPWT shall submit all contracts along with supporting documents to the CRC for determination of compliance with the Request for Proposals or Bids and applicable law and Regulations. Once approved by the CRC, the contracts shall be submitted to the Chief Administrative Officer or his designee for execution.

14.1 All proposals to sell property acquired through tax sale shall be approved by the County Council, pursuant to Section 52-38 of the Montgomery County Code, 1994, as amended.

14.2 The proposed disposition shall be advertised by DPWT once a week for three successive weeks in at least one local newspaper of general circulation. In addition, DPWT shall send a notice regarding the



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disposition to the County Council and to appropriate County and Outside Agencies. The advertisement and Notice shall include the following:

- Terms of Sale
- Compensation
- Purchaser
- Proposed use
- Legal Description
- Opportunity shall be given for objections thereto. Severability

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.] *end of previous regulation*

### 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;



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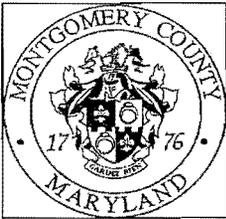
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- G. a transfer of County right-of-way that is needed to implement a road or transit project that is included in the applicable master or other land use plan; or
- H. any disposition of County real property for which a legally enforceable contract, 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 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



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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.
- 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



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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 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



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- 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;
  - 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



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- 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.
- 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:



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- 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.

### 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.

Timothy L. Finotone, ACTING  
Isiah Leggett  
County Executive

Approved as to form and legality:

Marc P. Hansen / M/g 6-19-13  
Marc P. Hansen, County Attorney      Date

**Fiscal Impact Statement**  
**Executive Regulation 11-13, Property Disposition**

**1. Executive Regulation Summary.**

Executive Regulation 11-13 establishes procedures for the disposition of real property owned or controlled by Montgomery County. It details applicable property characteristics; describes the initiation of the disposition process which includes a preliminary reuse review, a reuse analysis, Council comment and action; describes procedures for dispositions which do not require Council action; and states methods of property disposal.

The change to this regulation was precipitated by Bill 11-12. This Fiscal Impact Statement reflects the necessary changes to execute the new regulations.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Include source of information, assumptions, and methodologies used.**

This regulation does not affect County expenditures. Revenues that result from the disposition process depend on a variety of factors which are difficult to predict. Please see item 9 for more information.

Market studies and appraisals of land can provide important information, but do not necessarily determine the price of disposed property. Individual circumstances include the County's interest in disposing of property influence the price and revenues for disposed property.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Revenue estimates are difficult to predict due to the ad hoc nature of the property disposition process and the variety of variables which influence the revenues the County could collect.

**4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

This regulation does not affect retiree pension or group insurance costs.

**5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Not applicable. The regulation does not authorize future spending.

**6. An estimate of the staff time needed to implement the regulation.**

Assuming the average of the past three years, there would be approximately twelve (12) transactions affected by the bill. The bill would require assigned staff to:

- Prepare transmittal memos and information to Council.
- Attend Committee and Council sessions to track developments.
- Possibly re-negotiate terms based on Council's action.

Staff estimates an additional 40 hours per transaction, for an estimated total of 500 hours per year.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

New staff duties stemming from the additional changes to these regulations include the preliminary reuse review, cost benefit analysis, reuse analysis, and preparing a decision memo to the CAO.

The Office of Management and Budget conducts the preliminary reuse review, the cost benefit analysis, fiscal analysis, and public hearing support. This would involve approximately 14 hours of staff time, but will vary by case.

The Department of General Services produces the reuse analysis, informs other departments of the available property, prepares the decision memo for the CAO, and provides public hearing support. This involves approximately 26 hours of staff time, but will vary by case.

Staff would prioritize new duties as appropriate given current obligations; however this would mean a reduction in time available to meet current operating requirements.

**8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

**9. A description of any variable that could affect revenue and cost estimates.**

Key variables that influence potential revenues and cost estimates include the size and location of the site, and specific site characteristics, such as a need for land re-grading, a lack of utility connections, and proximity to other County facilities.

Also, since all departments are allowed to review a property before a "declaration of no further need" is issued, property disposition is dependent on departmental needs.

The number of transactions or dispositions would also affect revenue and cost estimates, but this is difficult to project because the site disposition process is an infrequent and ad-hoc process.

**10. Range of revenue or expenditures that is uncertain or difficult to project.**

See item 9.

**11. If a regulation is likely to have no fiscal impact, why that is the case.**

Not Applicable.

**12. Other fiscal impacts or comments.**

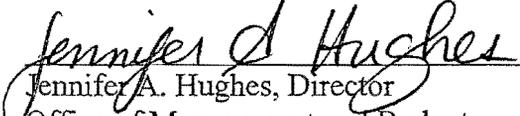
Not Applicable.

**13. The following contributed to and concurred with this analysis:**

Erika Lopez-Finn, Office of Management and Budget

Robert Klein, Department of General Services

Greg Ossont, Department of General Services

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

6/19/13  
Date

MONTGOMERY COUNTY CODE

**Sec. 11B-45. Disposition of real property. [Note](1)**

(a) The County Executive must adopt regulations to establish a process for the disposition of any real property owned or controlled by the County, other than surplus school facilities and property of nominal value identified in the regulation. The regulations must provide for:

(1) coordination among public agencies, including any municipality in which the real property is located;

(2) opportunity to reserve property for alternative public use;

(3) comparative analysis of reuse proposals before any disposition actions;  
and

(4) public notice and hearing on possible dispositions before final decision on disposition, except that the County Executive may waive the public hearing requirement for any real property that:

(A) has nominal value; or

(B) is recommended to be reused by the County government.

(b) As used in this Section, disposition means a sale, a lease or license for a term of 2 years or longer, or a lease or other document which includes an option to buy. If a license or lease for an initial term of less than 2 years is extended or renewed beyond 2 years, that extension or renewal is a disposition. Disposition does not include:

(1) 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;

(2) a license to use County property that is coterminous with a contract for services performed by the licensee;

(3) a license to use County property to provide child or adult day care services;

(4) a sale or lease of property to the Housing Opportunities Commission for housing development;

(5) a sale of one or more housing units obtained by the County using its right of first refusal under Section 11A-3 or 11A-4, Chapter 25A, or Chapter 53A, and resold for not less than the County paid; or

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(6) 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.

(c) Unless the County Council waives this requirement under subsection (e)(2)(B), the Executive must not dispose of any property owned or controlled by the County at less than full market value. In case of a sale of property, full market value must be determined by at least one professional appraisal of the property obtained by the Director within 12 months before a declaration is submitted to the Council.

(d) Before seeking Council approval of a declaration of no further need under subsection (e), the Executive must submit to the Council and allow the Council at least 30 days to comment on:

(1) all material terms of the disposition, including the price or rent to be paid and any associated economic incentives; and

(2) any appraisal that the Executive relied on or will rely on in setting the property's market value.

In addition, the Executive should when practicable submit for prior Council review the parameters and material terms of a disposition that has not begun to be negotiated. Any document submitted under this subsection to the extent the document need not be disclosed under state law, must be treated as confidential.

(e) In addition to the process required under subsection (a), before the disposition of any real property owned or controlled by the County (other than a property which has either nominal value or an appraised value lower than \$100,000) becomes final:

(1) the Executive must publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property or, if the disposition is a lease or license, has no further need for the property during the term of the lease or license; and

(2) the Council, by resolution adopted after the County holds a public hearing with a least 15 days advance notice, must approve;

(A) the Executive's declaration of no further need; and

(B) any disposition of the property at less than full market value.

The Director must adjust the \$100,000 floor in this subsection on July 1 every third year by the percentage increase or decrease in the applicable Consumer Price Index, or any successor index, during the previous 3 calendar years, rounded to the nearest \$1000. The Council may waive the public hearing required by this subsection if it concludes that a hearing on a particular proposed disposition is not necessary to properly assess the proposed action. If the Council does

## MONTGOMERY COUNTY CODE

not act under this subsection within 60 days after the Executive has submitted the proposed action, the proposed action is automatically approved. The Council may extend the 60-day deadline by resolution if the Council President has informed the Executive, within 30 days after the Executive submitted the proposed action, that the Council has not received all information necessary to review the proposed action. If the 60 day deadline would fall during August or from December 15 through December 31, the deadline is automatically extended until the next scheduled Council session. This subsection and subsection (c) do not apply to any disposition of property that will be used primarily for housing development if the recipient legally commits to the Director of the Department of Housing and Community Affairs that at least 30% of the housing units built on the property will be moderately priced dwelling units or other units that are exempt from the development impact tax under Section 52- 49(g)(1)-(4).

(f) (1) Notwithstanding any law to the contrary but subject to any applicable bond covenants, 25 percent of the proceeds from the sale of real property owned by the County must be transferred to the Montgomery Housing Initiative Fund to promote a broad range of housing opportunities in the County.

(2) This subsection does not apply to real property in an area designated under Chapter 56 as an urban renewal area.

(3) In this subsection:

(A) "Proceeds" means the sale price of the real property, minus expenses the County incurs from the sale.

(B) "Real property" includes the right to develop the space above real property ("air rights").

(4) The County Executive may waive this subsection for the portion of any proceeds from a sale that the County uses for a related purchase of real property. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 9, § 1.)

(g) The Executive must adopt regulations to establish a process for disposition of surplus schools. As used in this Section, "surplus school" means any building used at any time as a public school and later conveyed to the County and all or part of the land which constitutes the school site. The regulations must provide for:

(1) the ultimate decision by the County Council, as required by state law, whether to dispose of a surplus school and its site, including any fields and recreational areas;

(2) a statement from the Board of Education before a surplus school is disposed of that the school will not be needed for public educational uses in the foreseeable future, and in any case at least for 10 years after the proposed sale;

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(3) a statement from the Executive that the surplus school will not be needed for public recreational or human service uses in the foreseeable future;

(4) (A) timely referral to the Planning Board for its review under state law of any proposal to dispose of a surplus school, and

(B) a statement from the Board that the site will not be needed for park uses;

(5) an opportunity to offer alternative proposals before the Executive recommends a disposition to the Council;

(6) a public hearing by the Executive or the Executive's designee, after reasonable notice, before any proposal to dispose of a surplus school is forwarded to the Council for action;

(7) a preference for the disposition that best retains public access to the school and its athletic and recreational facilities; and

(8) inclusion in any sale or lease with an option to buy of a clause that retains the County's right to first refusal of any later sale of the property, subject to any mortgage or deed of trust then on the property, at fair market value.

If the Council does not receive any statement required under paragraphs (2)-(4), it may nevertheless dispose of a surplus school if it finds, considering all factors, that the public interest will be best served by disposing of the school.

(h) The Executive must adopt regulations to establish a process for leasing surplus schools. The regulations would apply in each case after the Council has adopted a reuse resolution which indicates what types of uses are acceptable. At a minimum, the regulations must require:

(1) a process that offers potential users a fair opportunity to present reuse proposals to the Executive's designee within the scope of uses approved by the Council reuse resolution;

(2) referral of each proposed lease to the Council, Planning Board, and Board of Education for comment;

(3) a reasonable opportunity for public comment before any lease is signed on behalf of the County;

(4) continued community use of facilities such as auditoriums, gymnasiums, and playgrounds and playing fields except to the extent community access would unduly interfere with the lessee's use of the property; and

## MONTGOMERY COUNTY CODE

(5) preservation of the County's right to retrieve the property on reasonable notice for public school use when requested by the Board of Education. (1994 L.M.C., ch. 30, § 1; 1997 L.M.C., ch. 9, § 1; 1999 L.M.C., ch. 20, § 2; 2012 L.M.C., ch. 12, § 1.)

**Editor's note**—See County Attorney Opinion dated 1/31/00 indicating that the County may consent to the recording of a notice in the land records reflecting the State's right of recovery under the Community Facilities Capital Grant statute.

2012 L.M.C., ch. 12, § 2 (in part) and § 3, state:

Sec. 2. Applicability. This Act takes effect on the date when it becomes law [May 15, 2012]. 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.

Sec. 3. Applicability - White Flint Sector Plan area. Section 11B-45(b)-(e), as amended by Section 1 of this Act, does not apply to any sale by the County of real property located in the boundaries of the White Flint Sector Plan if: (a) the property was acquired by the County from the State Highway Administration; (b) the property was originally acquired by the State Highway Administration to construct Montrose Parkway; and (c) the sale by the County is completed on or before December 31, 2012.

2003 L.M.C., ch. 4, states: The Laws of Montgomery County 2003 are amended as follows:

(a) Notwithstanding those provisions of County Code Section 11B-45 or Regulation 4-99AM referred to in subsection (b) to the contrary, the County Executive may contract with the Yeshiva High School of Greater Washington, Inc. to:

(1) modify an existing lease-purchase agreement for the former Belt Junior High School to allow the County to reacquire that school and transfer it to Montgomery County Public Schools for public educational uses; and

(2) at the same time enter into a lease agreement for the former Montgomery Hills Junior High School that would allow Yeshiva High School of Greater Washington, Inc. to lease and occupy that school after the County has made certain improvements to it.

(b) Any agreement authorized by subsection (a) may:

(1) be adopted without following the reuse process in sections 4.1 through 4.7 of Regulation 4-99AM;

(2) have a longer term and greater notice of termination than required by section 6 of Regulation 4-99AM;

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(3) limit community use of interior spaces as necessary to provide the lessee adequate security;

(4) allow the lessee to make certain minor capital improvements without County approval, and conform the rent credit provisions accordingly; and

(5) modify the capital improvement reimbursement provisions of section 6.9 of Regulation 4-99AM.

(c) Any agreement authorized by subsection (a) must:

(1) be subject to the approval of the County Council; and

(2) be referred to the Planning Board under state law in a timely manner for its review.

1999 L.M.C., ch. 20, § 3, reads: "Applicability. Section 11B-45, as amended by this Act, applies to any lease or other disposition of a closed school, as defined in that Section, that takes effect after this Act takes effect [January 6, 2000], including any renewal of a lease previously in force, but not to any extension of a lease previously in force without any material change in the terms of the lease. Any lease or other disposition of a closed school after the effective date of this Act [January 6, 2000] must conform to Section 11B-45 and the regulations required by Section 11B-45." 1999 L.M.C., ch. 20, § 4, reads: "Regulations. The County Executive must submit to the Council for its approval the regulations required by Section 11B-45, as amended by Section 2 of this Act, not later than 30 days after this Act takes effect [January 6, 2000]."

## MONTGOMERY COUNTY CODE

### Endnotes

#### 1 (Popup - Popup)

**Editor's note**—1999 L.M.C., ch. 20, § 3, reads: "Applicability. Section 11B-45, as amended by this Act, applies to any lease or other disposition of a closed school, as defined in that Section, that takes effect after this Act takes effect [January 6, 2000], including any renewal of a lease previously in force, but not to any extension of a lease previously in force without any material change in the terms of the lease. Any lease or other disposition of a closed school after the effective date of this Act [January 6, 2000] must conform to Section 11B-45 and the regulations required by Section 11B-45." 1999 L.M.C., ch. 20, § 4, reads: "Regulations. The County Executive must submit to the Council for its approval the regulations required by Section 11B-45, as amended by Section 2 of this Act, not later than 30 days after this Act takes effect [January 6, 2000]."



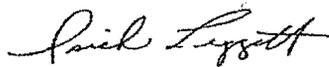
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

September 6, 2013

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Isiah Leggett   
County Executive

SUBJECT: Request for 90 day extension of Temporary Executive Regulation  
11-13T-AM for Property Disposition

The Department of General Services, under the provision found in the Montgomery County Code Section 2A-15(j)(4)(A), is requesting a 90 day extension of the Temporary Executive Regulation 11-13T-AM which is set to expire on September 23, 2013.

An extension of the temporary regulation is needed to avoid any disruption in service to the public while the permanent regulation is processed. The permanent regulation will be submitted to Council shortly as the public comment period recently closed.

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

GO:rbp

Attachment



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

June 25, 2013

TO: Nancy Navarro, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive *Isiah Leggett*

SUBJECT: Executive Regulation 11-13T-AM

With this memorandum, I am transmitting Executive Regulation 11-13T-AM, Property Disposition for the purpose of implementing the County's property disposition law, 11B 45-01. The regulations will implement the new property disposition law enacted on May 1, 2012 and will supersede the current property disposition regulations.

An amendment to the temporary regulation that was submitted on June 17, 2013 is needed to correct an inconsistency that existed between the law and this regulation. This amendment now addresses the reuse analysis procedures to eliminate any conflict with the County's Capital Improvement Program procedures as well as provides clarification to the extent of exemption intended for the legally enforceable agreements that were in existence before this law was enacted. 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 and those agreements that have legally enforceable provisions that are set forth in contracts that predate the enactment of this law.

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013

Temporary Regulation

PROPERTY DISPOSITION

DEPARTMENT OF GENERAL SERVICES

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

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

Effective Date: June 25, 2013

Supersedes 11-13T

**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, 9<sup>th</sup> Floor, Rockville, MD 20850



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 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]] a tenant's exercise of a legally enforceable option to renew a lease of County property under the terms and conditions contained in the original lease.

## 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.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013
<p>3.2 COUNTY DEPARTMENT - Any department or agency within the executive branch of the Montgomery County Government.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>3.8 LEASE – An agreement which establishes a landlord and tenant relationship for the use of real property for two years or more.</p> <p>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.</p> <p>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.</p>	



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013

- 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



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013

recommend to the Director that the real property is no longer needed for public use by the County and 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:



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013

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



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

<b>Subject</b> Property Disposition	<b>Number</b> 11-13T-AM
<b>Originating Department</b> Department of General Services	<b>Effective Date</b> June 25, 2013

- 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.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

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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.

A handwritten signature in cursive script that reads "Isiah Leggett".

Isiah Leggett  
County Executive

Approved as to form and legality:

Marc P. Hansen 6/25/13  
Marc P. Hansen, County Attorney Date