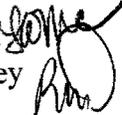


GO COMMITTEE #2
January 29, 2014

MEMORANDUM

January 28, 2014

TO: Government Operations and Fiscal Policy Committee

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

SUBJECT: **Worksession: Executive Regulation 11-13AM, *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 has extended the time for consideration of this proposed regulation to June 30, 2014. 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.

The GO Committee held a worksession on the proposed regulation on September 23, 2013 and requested several amendments. The Executive has amended the proposed regulation in response to the Committee's request and forwarded Executive Regulation 11-13AM for approval. The memo from the County Executive is attached at © 1 and the underlined version of the proposed regulation is attached at © 2-9.

The amendments include:

- Changing the term "County Agency" to "Outside Agency" as this term refers to WSSC, M-NCPPC, the Revenue Authority, the Housing Opportunities Commission, MCPS, Montgomery College, and municipalities in the County. Circle page 3 shows the deletion of "County Agency" and © 5 the inclusion of "Outside Agency." The regulation has also been amended in other sections where the term "County Agency" was used.

- Amending “Nominal Value” to the portion of the real property that is being disposed of rather than the total of the rent received. (© 4).
- Amending the language in Section 9.4 (© 8) to say that the Declaration of No Further Need is automatically approved if the County does not “act on,” rather than “approve” the Executive’s proposed Declaration within 60 days.
- Clarifying that in addition to the exceptions in law that allow the Executive to dispose of a property at less than Fair Market Value, the County Council can approve a less than Fair Market Value disposition (© 8).
- Adding the requirement that the Executive forward a copy of the Executive Order for final disposition of the real property to the Council. (© 9).

Council staff recommends approval of Executive Regulation 11-13AM, Disposition of Real Property, as proposed.

Background - Bill 11-12, Property Disposition (County Code Section 11B-45, Disposition of Real Property, is attached at © 10-16)

- 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.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 24, 2014

TO: Craig Rice, President

FROM: Isiah Leggett, County Executive 

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

The purpose of this memorandum is to submit an amendment to Executive Regulation 11-13 which was submitted last year for Council review and approval. The attached Executive Regulation 11-13AM implements Bill 11-12, County Property Disposition that was enacted by the Council on March 13, 2012. Executive Regulation 11-13AM 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 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 that advertisement. That proposed regulation was reviewed by the Office of Management and Budget, Department of Transportation, and the Office of the County Attorney. Any input received was incorporated into the amendments before the regulation was advertised. Subsequent to that on September 20, 2013 the Government and Operations Committee reviewed the Regulations and made recommendations that resulted in my Staff making further amendments to the regulation in compliance with the suggestions made by the Committee. There have been no substantive changes made to the regulation through these amendments that would require additional advertisement in the *Montgomery County Register*.

- The resulting 11-13AM is now being submitted for Council review and approval.

IL:rbp

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject

Property Disposition

Number

11-13AM

Originating Department

Department of General Services

Effective Date

Montgomery County Regulation on

DISPOSITION OF REAL PROPERTY

DEPARTMENT OF GENERAL SERVICES

Issued by: County Executive

Regulation No. 11-13AM

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)

Effective Date: _____

Supersedes 11-13

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

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

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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Property Disposition	Number 11-13AM
Originating Department Department of General Services	Effective Date

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.]]

3.1 COUNTY DEPARTMENT - Any department or agency within the executive branch of the Montgomery



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Department of General Services

Effective Date

County Government.

- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 FULL MARKET VALUE – For the purposes of any Disposition, “Full Market Value” means “Fair Market Value” as that term is defined in the Uniform Standards of Professional Appraisal Practice, and in the case of a sale must be determined by at least one professional appraisal of the County owned or controlled real property obtained by the Director no more than 12 months before a Declaration of No Further Need is submitted to the Council.
- 3.7 LEASE – An agreement which establishes a landlord and tenant relationship for the use of real property for two years or more.
- 3.8 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.
- 3.9 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.]] The portion of County owned or controlled real property being disposed of that has Nominal Value or a Full Market Value of less than \$100,000, as adjusted under

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MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Property Disposition	Number 11-13AM
Originating Department Department of General Services	Effective Date

11B-45(e). A lease or license of County owned or controlled property in which the value of the property to be leased is less than \$100,000, as adjusted by 11B-45(e). To determine the value of leased property where less than all of the property is being leased, the value is the Full Market Value of the portion of the property to be leased.

3.10 [[COUNTY]] OUTSIDE 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.

3.11 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, after consulting 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.



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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 Outside 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 Outside 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 an Outside 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 Outside 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.



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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

- 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.



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- 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]]~~ 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.
 - 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:
- 11.0 The Executive must not dispose of any real property owned or controlled by the County at less than Full Market Value, without approval of County Council, 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).

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Subject

Property Disposition

Number

11-13AM

Originating Department

Department of General Services

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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. Once issued, the Executive shall forward a copy of the Executive Order for final disposition of the real property to Council.

11B.45.01.13 Severability

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



Isiah Leggett
County Executive

Approved as to form and legality:

 1/23/14

Marc P. Hansen, County Attorney Date

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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 Council 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

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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

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(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]."

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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]."