

COMCOR 11B.45.02 Reuse, Leasing, and Sale of Closed Schools

11B.45.02.01 Purpose

1.0 To establish a reuse, leasing, and disposition procedure for closed schools that recognizes the important role that closed schools play in a community and describes the roles of County agencies and private parties in determining reuse priorities for closed schools.

11B.45.02.02 Definitions

As used in this regulation, the following terms have the following meanings:

2.0 *As is condition* - The condition of a closed school on the date a lease takes effect.

2.1 *Capital improvement* - A substantial improvement or addition to a building which extends beyond ordinary repair or maintenance.

2.2 *Closed school* - A building used at any time as a public school, which the Board of Education has (a) declared surplus to the educational requirements of the County under Section 4-115(c) of the Education Article of the Maryland Code, and (b) conveyed to the County after any required approval by the Board of Public Works; and all or part of the land adjoining that building.

2.3 *Department* - The County Department of Public Works and Transportation.

2.4 *Disposition*- a sale or a lease with an option to buy.

2.5 *Division* - The Division of Facilities and Services in the County Department of Public Works and Transportation.

2.6 *Elective capital improvement* - A capital improvement which:

- (a) increases the value of the closed school to the County;
- (b) is not required to protect or preserve a building structure or system; and
- (c) is not mandated by any County, State, or Federal law or regulation.

2.7 *Government* - Any department or agency of the County, any political subdivision located in the County, or any bicounty agency serving the County.

2.8 *Lease* - A written agreement that establishes a landlord-tenant relationship between the County (as lessor) and one or more occupants (as lessee) of a closed school, and creates a leasehold interest in exchange for consideration. Unless otherwise indicated, a *lease* includes a sublease.

2.9 *Non-elective capital improvement* - A capital improvement that increases the value of a closed school to the County, and is either (a) required to protect and preserve a building structure or system, or (b) mandated by County, State, or Federal law or regulation.

Non-elective capital improvement includes replacement of a roof, boiler, HVAC system, electrical system, exterior structural wall, or window (but not windowpane replacement).

2.10 *Qualified capital improvement* - An elective or non-elective capital improvement approved in writing by the County and expressly identified as a qualified capital improvement.

2.11 *Private lessee*- Any lessee of a closed school which is not a government agency.

2.12 *Regional District Act* - Article 28 of the Maryland Code, as amended from time to time.

2.13 *School year* - The period between and including September 1st and July 1st.

2.14 *Sublease* - Any assignment or transfer by a lessee of an interest in a closed school.

11B.45.02.03 School Reuse Policy

3.0 Reuse of closed schools is in the public interest because it facilitates availability of worthwhile programs to citizens through use of existing public facilities. The reuse of each closed school should be planned through an expedited, structured decision process because of the strong public interest in finding productive, compatible uses for closed schools. In that process, the County should consider the full range of public or private land uses allowed by right or special exception where the school is located. County government uses, including open space, must be given first priority. Every effort should be made to assure continued community access to auditoriums, all-purpose rooms, gymnasiums, and school grounds.

3.1 After the Board of Education conveys a closed school to the County, the County Executive must activate the reuse process in this regulation. That process is outlined in the attached flow chart. The process must allow a full opportunity for review and comment on proposed reuses of a closed school by residents and civic associations near the school site, the general public, affected municipalities and special taxing districts, other government agencies, and private organizations. In administering this process, the County must encourage a timely flow of information among all interested parties.

3.2 The Board of Education should adequately maintain each closed school until title to the school is transferred to the County. After title to a closed school is transferred to the County, the Executive must see that the building is adequately maintained and secured. The Executive must annually inform the Council of the condition of each building and the identity of each lessee.

3.3 The Board of Education should annually inform the Executive and Council, preferably in its facilities plan, on the condition of and need for each building still held by the Board that is not being used as a school.

11B.45.02.04 School Reuse Decision Process

4.1 The Executive must send the Council and Planning Board an analysis of the building, site, and neighborhood, including the building's condition and size, any necessary improvements or major repairs, and any other relevant information, not later than 90 days after title to a school is transferred to the County.

4.2 The Planning Board may send the Executive and Council any comments on the reuse of the school within 60 days after receiving the Executive's analysis. If no comments are received from the Planning Board within 60 days, the Executive and Council may assume that the Planning Board has no comment. The Council may send comments on the reuse of the facility to the Executive within 60 days after receiving the Executive's analysis, and during that time may by resolution limit the acceptable uses of the building or site.

4.3 Not later than 90 days after sending the building analysis to the Council and Planning Board, the Executive must notify all government agencies of the availability of the closed school and any restrictions the Executive or Council have imposed on its use, and set a 45-day deadline to receive expressions of interest from government agencies in using all or part of the school. This notice must be published in the County Register and sent directly to the governing body of any municipality or special taxing district where the closed school is located.

4.4 If one or more government agencies submit a reuse proposal, the Executive must forward a reuse analysis and recommendation to the Council and Planning Board for comment within 45 days. The Planning Board's comments must be requested under the mandatory referral process in the Regional District Act. The Executive must also solicit comments from immediate neighbors, any civic association active in the area, and any person or organization that has expressed written interest in the status of the school. The Executive must allow a reasonable time for those solicited to offer their comments, and must hold at least one informal public meeting to discuss reuse of the property in a location convenient to nearby residents. After receiving comments from the Planning Board and Council, but not later than 90 days after sending the reuse analysis, the Executive must issue a decision memorandum and may select one proposal from a government agency and negotiate a lease.

4.5 If, after following the procedure in paragraph 4.4, the Executive finds that there is no appropriate public use of the closed school, or if no reuse proposal is received from any government agency, the Executive must promptly advertise for expressions of interest by private individuals and organizations. The advertisement must be placed in at least one newspaper of general circulation in the County, must describe any restriction by the Executive or Council on the reuse of the school, and must allow at least 45 days to submit reuse proposals.

4.6 After a reasonable opportunity to analyze each reuse proposal timely submitted by a private individual or organization, the Executive must send an analysis of all private reuse proposals to the Council and Planning Board. The analysis must describe any proposed restriction on the intended use, the advantages and disadvantages of each proposal, and any recommendation by the Executive.

4.7 The Executive must hold a public hearing on the proposed reuse options after the reuse analysis is presented to the Council, and must advertise the hearing in at least one newspaper of general circulation in the County at least 15 days before it is held. Within a reasonable time after the public hearing is closed, the Council by resolution should indicate its priorities for reuse of the closed school. After the Council acts the Executive may select a specific user consistent with the Council's priorities and restrictions, and negotiate a lease which reflects any conditions imposed by the Council.

4.8 This Section does not apply to:

- (a) the reuse of a closed school by the Montgomery County Public Schools;
- (b) a temporary reuse of a closed school by a government agency for a single period of 12 months or less; or
- (c) any use of a closed school expressly approved before this regulation took effect by the Council by resolution or other process in effect at the time of approval.

11B.45.02.05 Leasing Policy

5.1 Each lease of a closed school must conform to this regulation and any reuse resolution adopted by the Council, and must be subject to mandatory referral to the Planning Board when the Regional District Act (MD Code, Art. 28, §7-112) so requires. Each lessee must comply with all applicable zoning and subdivision laws and regulations.

5.2 Each lease of a closed school must preserve the availability of the school for future public use, including public education.

5.3 Each lease must specify how its terms may be enforced and establish a hierarchy of enforcement actions, short of termination, that a party may take if another party does not comply with specific material terms of the lease.

5.4 Each lease, and the process of negotiating it, must treat all private lessees or potential lessees in a fair and equitable manner that is open to public analysis.

11B.45.02.06 Lease Requirements and Procedures

6.0 The Division of Facilities and Services in the Department of Public Works and Transportation must administer this regulation and may contract for services in connection with the leasing of closed schools. The services for which the Division is responsible include appraisals; legal services; newspaper and other media services; engineering and architectural services; inspection, cost estimating, security, and maintenance and repair; construction, general planning and consulting services; and any other duties assigned by the Executive. The Division must enforce the terms of any lease and take action, including an inspection at least annually, to assure that each lessee complies with its obligations under the lease.

6.1 Each lease with a private party must have a minimum term of 5 years. A term longer than 5 years may be allowed if the lessee commits to make substantial qualified capital improvements to the school, which are specified in the lease as a condition of the County's agreement. The lease must allow reasonable amortization of the cost of the capital improvements during its term.

6.2 Each lease must allow the County to terminate the tenancy for any reason, at no cost to the County other than costs specified in this regulation. The lease must allow the Chief Administrative Officer to terminate a lease by giving written notice to the lessee not less than: (a) 18 months before the proposed termination, or (b) the remaining term of the lease if that period is less than 18 months. Before the Chief Administrative Officer can terminate a lease (or refuse to consider extending a lease under paragraph 6.18) to reconvey a school to MCPS, the Superintendent must notify the lessee and the Chief Administrative Officer by September 1 of the second year before the proposed termination date that MCPS will need the school for public educational purposes. The Chief Administrative Officer may, after consulting MCPS if the school is intended to be reconveyed for public educational use, withdraw a termination notice if the Council does not appropriate sufficient funds for any necessary improvements. If a lessee is a private school which is using the building for educational purposes during a school year, the lessee must not be required to vacate the building during that school year.

6.3 The lessee must maintain a closed school as provided in this paragraph:

(a) The lessee must accept the school in as is condition unless the lease expressly provides otherwise. During the term of the lease, the lessee must complete, at the lessee's risk and expense, any replacement or repair required to protect the building and equipment from damage or deterioration, or to comply with any County, State, or Federal law or regulation affecting the use and occupancy of the school, unless the lease expressly provides otherwise.

(b) The lessee must pay all operating expenses, including utilities, janitorial services, trash removal, pest control, grounds maintenance, preventive maintenance, day to day minor and major maintenance, tree removal, fence repair or replacement, repair or replacement of playground equipment, and any other repair, replacement, or maintenance required to keep the school in clean and safe operating condition.

(c) If the lease so provides, the lessee must, at the lessee's risk and expense, maintain, repair, or replace the fixtures, roof, windows, floors, walls, electrical systems, heating and air conditioning systems, and plumbing systems.

6.4 The lessee must obtain the Division's prior written approval for any capital improvement, as provided in this paragraph. The Division may refuse to approve any capital improvement proposed by a lessee. The lessee is responsible for the cost of any improvement it proposes.

(a) The lessee must submit complete plans, drawings, and specifications for review and approval by the Division at least 45 days before beginning work on any capital improvement. The lessee's submittal must include sufficient detail and content to allow the Division to fully evaluate the proposed improvement. The Division must consult with Montgomery County Public Schools before approving any improvement that may affect future educational use of a school, and with Planning Department staff to consider whether the Regional District Act (MD Code, Art. 28, §7-112) requires mandatory referral of the improvement to the Planning Board.

(b) The lessee must obtain all necessary permits and licenses and comply with all applicable zoning, land use, health, and safety regulations. Specifically, the lessee must comply with Section 59-G-2.19 of the County Code, which requires site plan review for any addition that would exceed the lesser of 7,500 square feet, or a 15% increase over the size of the building on February 1, 2000, and for the installation of any portable classroom for longer than one year.

(c) The Division must inspect all work and materials used in any capital improvement during and after construction. If any improvement does not comply with the plans and specifications previously approved by the Division, the lessee must undertake any necessary corrections at the lessee's sole risk and expense immediately after receiving written notice from the Division. The County may treat the lessee's failure to take all specified corrective actions as a default under the lease, and may take any necessary corrective action. If the County takes any corrective action because the lessee has not done so, the lessee must reimburse the County the cost of the corrective action as additional rent.

6.5 The rent the County charges for closed schools generally must recognize:

- (a) the value of services provided by the lessee as caretaker of the school; and
- (b) the investment of State and County taxpayers in the construction and potential future use of the school.

6.6 The parties must negotiate a rent rate for each closed school. The negotiated rent must reflect the value of that school, or the portion leased, considering:

- (a) its size, location, and condition;
- (b) the lessee's proposed use;
- (c) the extent to which occupancy by the lessee is in the public interest, including maintenance, upkeep, and improvement of the property; property management services provided by the lessee; and public services directly provided by any non profit lessee; and
- (d) any other factor relevant to a fair negotiated rent.

6.7 The negotiated rent must be subject to an annual adjustment on each anniversary date of the lease, based on 100% of any increase in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, or if the Index is not continued a comparable successor designated by the Division. However, the annual rent must not be less than 103%, nor more than 105%, of the previous year's rent.

6.8 The Division may credit the lessee's rent for a negotiated amount that is not more than 50% of the annual amortized cost of any qualified capital improvement made by the lessee. This credit must be subject to the following conditions:

- (a) The Division may allow a rent credit for an elective capital improvement only if the Division in its discretion finds, after consulting MCPS, that the improvement will be of substantial value to the County or MCPS.
- (b) Any capital improvement made without the Division's prior written approval is not eligible for a rent credit.
- (c) All rent credits together must not exceed 50% of the lessee's annual base rent.
- (d) The lessee must not receive any credit for any interest or finance charge, administrative cost, operating, maintenance, or repair expense, or any other cost except the actual cost of design, construction, and installation of a capital improvement and costs directly related to that capital improvement, as approved by the Division. The Division must validate any cost for which a lessee requests a rent credit.
- (e) Any corrective action required by the Division is not eligible for a rent credit. If a lessee does not take any required corrective action, the lessee must not receive a rent credit for that improvement.
- (f) A rent credit must not be allowed for any improvement to the extent that the improvement was paid for by a grant, loan or other financial assistance from the County or any other government agency.
- (g) All future rent credits may be forfeited, at the County's option, if the lessee defaults on any material term or condition of the lease.
- (h) A capital improvement completed before this regulation took effect is not eligible for a rent credit unless the Division allowed the rent credit before this regulation took effect.

6.9 If the Chief Administrative Officer terminates a lease under Paragraph 6.2, the County must reimburse the lessee 100% of the remaining unamortized portion of the cost of each non-elective capital improvement, and 50% of the remaining unamortized portion of the cost of any other qualified capital improvement, after the termination date of the lease, after subtracting any rent credit already allowed for that improvement. This reimbursement must be subject to appropriation of sufficient funds by the Council, and to the following conditions:

- (a) Reimbursement must be paid in a lump sum. If the County or Montgomery County Public Schools cannot secure the funds necessary to reimburse the lessee, the lease term must be extended until sufficient funds are available.
- (b) The lessee must not be reimbursed by both the County and Montgomery County Public Schools for the same capital improvement.
- (c) The County must not reimburse the lessee for a qualified capital improvement if the lessee vacates the premises before the end of the lease term, voluntarily or because of legal action. This provision does not apply if lessee vacates the premises after receiving a notice of termination under Paragraph 6.2.

6.10 A lessee must not sublease any part of a closed school without the Division's prior express written consent. This written consent must be obtained in the following manner:

- (a) The lessee must submit to the Division a copy of each proposed sublease; a description of the activities and uses proposed by the sublessee; proof of the sublessee's ability to pay rent, adequately maintain the property, and otherwise comply with all terms of the lease during the sublease term; and any other information relevant to the sublessee's use and occupancy that the Division requests.
- (b) The Division must notify the Council, Planning Board, and Montgomery County Public Schools of each proposed sublease within 10 days after receiving notice from the lessee. The Division must not approve any sublease until at least 10 days after this notice is sent, and must consider any comments received during that period from a recipient of this notice.
- (c) The Division must respond to the lessee in writing not later than 45 days after receiving all required information.

(d) The Division must not approve a sublease if the Division finds that either the proposed use or the sublessee's performance is likely to result in a greater negative impact on the surrounding neighborhood than the current use and lessee.

6.11 Each sublease must comply with the following conditions:

(a) Each sublessee must comply with all applicable zoning and land use requirements, all reuse restrictions approved in any Council resolution, and all provisions of the lease.

(b) The lessee must agree that any rent charged to a sublessee must be limited to the sublessee's prorated share of operating, maintenance, and administrative expenses actually incurred by the lessee, including the cost of any capital improvement made or contracted by the lessee, plus an amount equal to the same square foot rate of rent the lessee pays to the County.

(c) If the Division finds that the lessee received more rent from a sublessee than permitted by the lease or this regulation, the lessee must pay to the County as additional base rent, with the next rent payment due, all excess rents received.

(d) The lessee's obligations to pay all funds due to the County and perform all duties required under the lease survive any sublease until fully performed by the lessee.

6.12 A closed school must be used only in accordance with all applicable laws and regulations, including any amendment to a law or regulation that takes effect during the term of the lease. The lease must specify the maximum number of persons (such as employees and students) that may occupy the building, the lessee's plan for managing traffic to the site, and any other operating condition that will significantly affect nearby residents.

6.13 Parking for the lessee and any other occupant of the building, and any employee, client, or guest, must be confined to those surface parking areas adjoining the closed school at the beginning of the lease term that are designated in the lease, and any additional parking area approved as a capital improvement by the Division.

6.14 Each multi-purpose room, gymnasium, auditorium, or similar facility in a closed school must remain available for community use during hours outside of the lessee's regular use, under the process provided in County Code §§44-1 through 44-5.

6.15 All outdoor recreation and athletic fields attached to a closed school must remain available on a continuing basis, for community use after 5 P.M., Monday through Friday, and all day Saturday and Sunday, unless the lessee needs the field for a regularly scheduled program or event or an exception is approved by the Office of Community Use of Public Facilities (CUPF). Each lessee must work jointly with the Parks Department, the Recreation Department, and CUPF to resolve the use and scheduling of outdoor recreation areas. If a lessee maintains any outdoor recreation area, it must be maintained to at least the same standards as outdoor recreation areas maintained by the Parks or Recreation Departments.

6.16 Each lessee of a closed school must commit in the lease to either:

(a) select a community liaison body, composed of residents of the surrounding neighborhood and other affected citizens who are not otherwise involved with the school, and meet regularly with that body to discuss impacts of the school's operation and resolve conflicts; or

(b) establish another process that will effectively respond to concerns of residents of the surrounding neighborhood that result from operation of the school.

6.17 The Division must advertise each proposed lease as required by applicable County or State law, including Maryland Code Article 25A, Section 5(B), and allow a reasonable time for public comments before the County signs it. The Executive also must send the proposed lease, including any renewal or extension of an existing lease, to the Council, Planning Board, and Board of Education, and allow them at least 30 days to comment before the County signs the lease.

6.18 At least 18 months before a lease is due to expire, the Division must advertise in at least one newspaper of general circulation in the County for expressions of interest in using the school after the lease term, and send the lessee a copy of the advertisement. The Division must also seek comments from the public, including nearby residents. If any expression of interest from another source is received within 90 days, the Division must invite the current lessee to submit within 60 days a request to renew the lease or negotiate a successor lease. If more than one expression of interest is received, the Executive must select the prospective lessee that the Executive finds will best use the property in the public interest and attempt to negotiate a lease with that prospective lessee.

11B.45.02.07 Process for Disposition by Sale or Lease with Option to Buy

7.0 Under state law, the Council makes the ultimate decision to dispose of a closed school and its site, including any fields and recreational areas. Before the County may sell a closed school or execute a lease with an option to buy, all requirements of this section must be met.

7.1 The Executive must request the Board of Education to submit to the Council within 60 days a statement that the school will not be needed for public educational uses in the foreseeable future, and in any case, for at least 10 years after the proposed sale.

7.2 The Executive must submit a statement to the Council that the school will not be needed for public recreational or human service uses in the foreseeable future.

7.3 The Executive must request the Planning Board to review the proposed disposition under the mandatory referral process in the Regional District Act, and to submit a statement to the Council within 60 days that the site will not be needed for park uses.

7.4 Before recommending a disposition to the Council, the Executive must give the public a reasonable opportunity to offer alternative proposals. The Executive must advertise the proposed disposition of the school, and the opportunity to propose other dispositions or uses for the school, once each week for not less than 2 weeks in at least one newspaper of general circulation in the County. The advertisement must list the price to be paid for the school, its location, the proposed buyer and use, and how the public may comment or offer alternative proposals. This advertisement may be combined with any other advertisement required by County or State law. The Executive must also send a copy of the advertisement to each civic association listed with the Planning Board and each parent-teacher organization in the high school cluster where the closed school is located.

7.5 The Executive must give any person a copy of the sale or lease agreement and any other document prepared in connection with the transaction, except a document that the County may deny inspection of under the state Public Information Act.

7.6 The Executive or a designee must hold a public hearing before forwarding any proposal to dispose of a closed school to the Council for action. The Executive must advertise the public hearing in at least one newspaper of general circulation in the County at least 15 days before it is held. This advertisement may be combined with any other advertisement required by County or State law, including the advertisement required under paragraph 7.4. The public hearing must be held at least 15 days after the deadline for receipt of alternative proposals under paragraph 7.4.

7.7 The Executive and Council must consider, and should give preference to, the disposition that best retains public access to the school and its athletic and recreational facilities.

7.8 Each sale contract, deed, or lease with option to purchase must give the County the right of first refusal of any later sale of the property, at full market value at the time of sale, subject to any mortgage or deed of trust then on the property.

7.9 If the Council does not receive any statement required under paragraphs 7.1-7.3, the Council may nevertheless dispose of a closed school if it finds, considering all factors, that the public interest will be best served by disposing of the school.

11B.45.02.08 Responsibilities and Authority

8.0 Office of the County Attorney

- A. Approve the form and legality of each lease.
- B. Assist in negotiating leases.
- C. Render opinions on matters of law regarding the drafting and administration of leases.

8.1 County Council

- A. Provide comments and restrictions on the reuse of a closed school.

- B. Adopt a reuse resolution stating priorities for reuse of a closed school.
- C. Approve any disposition of a closed school or its site by sale or lease with option to buy.
- D. Review and comment on each proposed lease of a closed school.

8.2 Division of Facilities and Services, Department of Public Works and Transportation

- A. Negotiate and prepare all leases.
- B. Administer all leases, including the review and approval of elective and non-elective capital improvements and determination of qualified capital improvements.
- C. Inspect closed schools for compliance with lease terms, and respond to public questions and concerns regarding leasing, subleasing, and compliance with lease terms.
- D. Implement reuse decisions made by the County Council.
- E. Recommend approval of leases and similar documents.
- F. Coordinate lease renewals with Montgomery County Public Schools.
- G. Coordinate leasing or sale of closed schools with the State Board of Public Works as required by law.

8.3 Department of Finance

- A. Receive rent paid by lessees.
- B. Authorize payments to the State, consistent with written agreements regarding outstanding bond debt or pro-rata shares of rental income.

8.4 Montgomery County Planning Board

- A. Provide comments to the Council and Executive during the reuse process.
- B. Provide a statement during the disposition process that a closed school site will not be needed for park use.
- C. Review and provide comments on any decision to reuse or dispose of a closed school, as required by this regulation or any applicable State or County law, including the mandatory referral process under the Regional District Act.

8.5 Montgomery County Public Schools (MCPS)

- A. Review and comment on plans and specifications for capital improvements to be performed by lessees which affect MCPS' potential future use of a closed school.
- B. Establish the value, if any, that proposed improvements may have to MCPS.
- C. Assist the County in obtaining funding to reimburse a lessee for qualified capital improvements that have value to MCPS or the County, upon termination of a lease, if termination was requested by MCPS.
- D. Provide a statement during the disposition process that a closed school will not be needed for public education purposes for at least ten years after the proposed sale.
- E. Adequately maintain closed school buildings before conveyance to the County.

8.6 Chief Administrative Officer

A. Review and approve recommendations by the Division of Facilities and Services to implement reuses approved by the County Council.

B. Execute all leases and lease amendments.

C. Resolve disputes between the County and the lessee with respect to the terms and conditions of a lease, to the extent that the lease provides for administrative resolution.

8.7 County Executive

A. Authorize the Division of Facilities and Services to negotiate leases, pursuant to reuses approved by the County Council and in accordance with this regulation.

B. Provide a statement during a disposition process that a closed school will not be needed for public recreation or human services.

11B.45.02.09 Applicability and Transition

9.1 This regulation applies to any lease or other disposition of a closed school that takes effect after (date of Council approval), but not to any extension of a lease in force before (date of Council approval) without any material change in the terms of the lease.

9.2 If any provision in this regulation requires a change in a lease in force on (date of Council approval), that provision applies to the lease as of January 1, 2002. The provisions of this regulation which govern business terms of a lease, such as rent levels and rent credits, do not require a change in any lease in force on (date of Council approval).

9.3 The lease renewal process in Section 6.18 must not result in terminating the tenancy of any private school before June 30, 2003.

9.4 The reuse provisions of this regulation apply to any new use of a closed school that begins after (date of Council approval) unless that use was previously approved by a Council resolution that remains in force.

(Administrative History: Reg. No. 4-99AM; Dept.: Public Works and Transportation)

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Code of Montgomery County Regulations

