

Implementing Order



Implementing Order No.: 8-4

Title: GUIDELINES AND PROCEDURES FOR THE SALE, LEASE, AND CONVEYANCE OF COUNTY REAL PROPERTY

Ordered: 2/1/2022

Effective: 2/11/2022

AUTHORITY:

Sections 125.35, 125.37, 125.379, 125.045 and 125.38, Florida Statutes, Sections 2-8.6.5 and 2-10.4.2 of the Code of Miami-Dade County, Florida, Resolution Nos. R-377-09, R-974-09, R-256-13, R-461-13, R-761-13, R-791-14, R-1000-14, R-333-15, R-64-16, R-380-17, R-407-19, R-365-21 and R-1121-21.

SUPERSEDES:

This Implementing Order supersedes and replaces Implementing Order No. 8-4 dated May 5, 2020 and effective May 15, 2020.

POLICY:

The authority to sell, lease or otherwise dispose of County-owned real property lies solely with the Board of County Commissioners ("Board"). Such sale, lease, or disposition shall be accomplished in a transparent manner, with adequate protections in place to ensure that the intended purpose of the sale, lease, or disposition, as approved by the Board, is met. Dispositions include the granting of easements.

It is further the policy of this County that it desires to contract to sell, lease or dispose of County-owned real property to responsible entities, and to know the ownership composition of all entities to whom it contracts to sell, lease or dispose of County-owned real property. The term "responsible entity" relates to the entity's financial condition, capability, experience, and past performance, and includes honesty and integrity, skill and business judgment, experience and capacity for performing under the contract, and previous conduct, including but not limited to, meeting its financial obligations. Analysis of previous conduct shall include but not be limited to consideration as to whether the requestor, or other entity in which the requestor has a controlling financial interest, was previously conveyed or leased County-owned property which was later the subject of an involuntary reverter or lease termination by the County. Determinations on responsibility are ultimately made by the Board of County Commissioners and, where the delegated authority exists to contract, by the County Mayor, and are fundamentally issues of business judgment and policy. The term "ownership composition" as used in this Implementing Order means the identification of all persons with an ownership interest in such entity in excess of five percent; provided, however, that the ownership composition of governmental entities or publicly traded companies does not need to be identified or determined. The County Mayor or the County Mayor's designee shall include this policy in any notice or solicitation issued for the sale or lease of County-owned real property.

Nothing in this Implementing Order shall be construed as limiting the authority of County Commissioners from sponsoring items for consideration by the Board of County Commissioners for the sale or lease of County-owned property.

This Implementing Order shall be applied in a manner that is consistent with applicable federal and state laws and regulations, including, but not limited to those laws, regulations and directives related to the United States Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration program and HUD's requirements for the demolition and disposition of public housing developments as set forth in Section 18 of the United States Housing Act of 1937, as amended, and applicable regulations promulgated by HUD.

This Implementing Order shall supplement and also apply to conveyances or leases pursuant to the Miami-Dade County Infill Housing Initiative Program, as codified in section 17-171 et seq. of the Miami-Dade County Code and Implementing Order 3-44, which set forth procedures and guidelines for property disposition. To the extent that there is a conflict between the provisions set forth in this Implementing Order and Implementing Order 3-44, the provisions of this Implementing Order shall govern unless otherwise prescribed by Code or Statute.

PROCEDURE INITIATING ACTION; APPLICATION, PROPERTY CIRCULATION, AND REVIEW OF RESTRICTIONS:

Any government official, Department Director, or any private party, governmental entity, or corporation proposing the sale, lease or other disposition of County-owned real property shall abide by the procedures as set forth herein

The Department Director, other official, private party, governmental entity, or corporation is required to submit a memorandum or letter application to the County Mayor or to the County Commissioner of the district in which the property lies detailing all pertinent information regarding the proposal or request. The pertinent information for non-competitive conveyances shall include, but not be limited to, a disclosure under oath of the ownership composition of the requesting entity, and information sufficient to support a finding that the requestor is a responsible entity.

In the case of (1) any not-for-profit entity seeking the sale or lease of County-owned real property for community interest and welfare purposes pursuant to section 125.38, Florida Statutes, or (2) any entity requesting the sale or lease of County-owned real property for the construction of affordable housing pursuant to section 125.379, Florida Statutes, or (3) any entity requesting the sale or lease of County-owned real property for economic development under section 125.045, Florida Statutes, the requesting entity shall include in its letter application to the County, to the extent applicable: (i) an identification of the property requested by address and/or folio number; (ii) a detailed description of the proposed use of the County-owned real property and any development thereon, including how it meets the requirements of community interest and welfare or affordable housing purposes; (iii) an identification and a summary of the past experience of the requestor, the requestor's key personnel, developer, and first-tier consultants and contractors; (iv) an estimate of the costs of construction and operation and the manner in which the requester intends to finance the development, operations and maintenance of the requested property, including proposed sources of funds and revenues; (v) the length of time the entity has been active and the number of employees; (vi) a proposed

schedule for the commencement and completion of any construction or renovation of the requested property, including development milestones, which may be used as a basis for lease termination or reverter provisions; and (vii) the proposed rental rate or purchase price, which, if nominal, shall include the asserted basis for the reduced payment rather than the payment of market value, market rent, or rent in lieu of taxes. In the event that the not-for-profit entity is requesting a conveyance, rather than a lease, it shall include in its application the specific basis for any compelling circumstances justifying a conveyance rather than a lease.

If the request and application is submitted to a County Commissioner, the Commissioner, after reviewing same, may determine whether they wish to move forward with the processing of the request. If the Commissioner seeks to proceed, the Commissioner shall forward, or cause to be forwarded, the request and application to the County Mayor who shall proceed with the process for disposition of County-owned real property as set forth in this Implementing Order.

If the request and application is not Commissioner-generated, the County Mayor, or the County Mayor's designee will review the request to determine if there is a need to refer the request to the Internal Services Department for further processing. If it is determined that there is such a need, the County Mayor or the County Mayor's designee will refer the request to the Internal Services Department or other successor department with the responsibility over property conveyances within ten days of receipt, and shall forward a copy of the request and application to the Commissioner of the district in which the property lies prior to forwarding the item to the Internal Services Department. The Internal Services Department, within five days of the referral of the request, will forward to appropriate departments and public agencies a questionnaire, with a response time of no more than ten days, to determine if there is planned use or anticipated need for the subject property, or if it could be declared surplus, and within 30 days of the referral of the request, will determine whether there are any restrictions or limitations contained in the deed, restrictive covenants, or other contracts that would preclude the conveyance of the County-owned real property or that would result in a significant financial impact to the County as the result of such conveyance (e.g. result in the repayment of grant funds) and, if so, whether the requesting entity can be made responsible for said financial impact to the County. The County Mayor or the County Mayor's designee shall prioritize any request made by the Miami-Dade Water and Sewer Department (WASD) or its successor department, for use or anticipated future use as WASD infrastructure (Resolution No. R-1121-21). The Internal Services Department will also determine whether the subject property is connected to or has access to a sanitary sewer system.

INTERNAL SERVICES DEPARTMENT AND REGULATORY AND ECONOMIC RESOURCES DEPARTMENT:

Based on the findings of the questionnaire concerning possible use of the property and its review of the contracts and restrictions pertaining to the property, the Internal Services Department will submit its findings and recommendations to the County Mayor or the County Mayor's designee within 15 days of the completion of the circulation and review of restrictions. Where there is no proposed use by a commenting County agency or department, the Internal Services Department shall immediately upon its receipt of the results of the questionnaire, forward the request or proposal to the Regulatory and Economic Resources Department ("RER"), or any successor department that oversees the County's planning functions, for its review and determination as to whether the

property is zoned consistent with the proper land use planning for the area or whether there should be a change in zoning on the subject property. The recommendation of RER shall be sent to the Internal Services Department within fifteen days of RER's receipt of the request or proposal to be sent to the Mayor's Office to be considered as part of the recommendation of the Internal Services Department. Nothing herein shall require a questionnaire or circulation for property that is to be leased pursuant to the authority set forth in section 125.35(b)(1) and (2), Florida Statutes.

COUNTY MAYOR'S OFFICE AND REQUIREMENTS FOR MAYOR'S MEMORANDUM, NOTIFICATIONS, AND PROVISIONS IN LEASES AND CONVEYANCE DOCUMENTS:

Whenever there is a valid proposed use by the commenting County agencies, the County Mayor or the County Mayor's designee will inform, in writing, the requesting party that the proposal has been reviewed and that the County Mayor has determined that the property cannot be declared surplus and conveyed or leased. In the case of a request or application that was referred to the County Mayor by a County Commissioner, a copy of such written notice to the requesting party shall be provided to the referring County Commissioner, along with a memorandum including the specific basis for the County Mayor's determination, along with written documentation from the requesting department setting forth its request for the property and specifying the intended need and proposed use of the requesting department. If a determination is made that the property can be declared surplus, and that there are no restrictions precluding the proposed lease or conveyance, then following the receipt of bids or proposals under a solicitation, or within 30 days of such determination for non-competitive conveyances and before the Board's consideration of a proposed sale or lease of County-owned real property, the County Mayor or the County Mayor's designee (i) shall perform due diligence necessary to determine whether or not the contracting entity is a responsible entity, and (ii) shall confirm the ownership composition provided by the requestor. Whenever there is a request or application that was referred to the County Mayor by a County Commissioner, the County Mayor shall, if the property can be declared surplus, prepare a memorandum within five days of such determination, addressed to the referring County Commissioner, attaching the request and application by the requesting entity, and setting forth: (i) whether the terms and conditions set forth in the application for sale or lease of County-owned property meet the requirements of community interest and welfare or affordable housing purposes; (ii) whether there are obstacles to the proposed conveyance or lease, or adverse findings discovered during the responsibility review of the proposed purchaser or tenant; (iii) the ownership composition of the proposed purchaser or tenant; (iv) the market value or market rental of the real property, including the appraised value or, if no appraisal has been conducted for land estimated to have a fair market value less than \$5,000,000.00, the value set forth in the property appraiser's website (Resolution No. R-333-15); (v) with respect to not-for-profit entities seeking to lease County-owned real property, the estimated rent that would be payable in lieu of paying ad valorem taxes on the real property sought to be leased; and (vi) the identification of the department and the person who will be monitoring compliance with the terms of the lease or deed.

The Commission Auditor shall independently and simultaneously review and comment on the proposed leasing and conveyance of County property prior to the submission of an agenda item or agenda items to the Board. No agenda item shall be placed on an

agenda of the Board without the foregoing reviews by the County Mayor or Mayor's designee, subject to the exception set forth herein, and the Commission Auditor.

If a County Commissioner requests to sponsor an item for sale or lease of County-owned real property as a Commissioner-sponsored item rather than a Mayoral-sponsored item, the County Mayor or the County Mayor's designee shall nevertheless be responsible for negotiating the final proposed contract on behalf of the County and the aforementioned memorandum to the referring County Commissioner shall be attached to any Commissioner-sponsored resolution presented to the Board for consideration and approval. In all other instances which do not involve Commissioner requests, upon receipt by the County Mayor of the recommendations from the Internal Services Department, the County Mayor shall determine whether to forward a recommendation to the Board for its approval of said conveyance without competitive process where otherwise legally allowed or, following a competitive process for the sale or lease of the property in question, a recommendation for its approval of said conveyance, or take any other action or make any other recommendation. If the agenda item for said conveyance is not sponsored by the district commissioner of the district in which the real property proposed to be sold or leased is located or, in the case of multiple properties across multiple districts, when the item is not sponsored by a commissioner of any of the districts in which the properties are located, then a two-thirds vote of Board members present shall be required to approve said item for the sale or lease of County-owned real property or properties. The two-thirds vote requirement shall not apply to property located at Miami International Airport, PortMiami, and to property designated as a terminal or facility of countywide significance, nor shall it apply in the event that there is a recusal of such district commissioner from participating prior to or at the Board meeting when the item is considered.

If at the conclusion of the verification period set forth herein, the aforementioned timelines have not been met, a commissioner can thereafter bring an item forward for consideration by the Board to approve the conveyance or lease of real property as a Commissioner sponsored item without the necessity of seeking a waiver of this Implementing Order.

When applicable, the County Mayor or the County Mayor's designee shall comply with the following procedures:

- (i) Prior to placing any item on an agenda of this Board or any committee of this Board for the sale, lease or surplus of County-owned property, or the issuance of any request for proposal or expression of interest regarding same, the County Mayor or the County Mayor's designee shall provide no less than four weeks' written notification to the District Commissioner in which such property lies (Resolution No. R-380-17);
- (ii) Prior to placing any item on a Board agenda for a lease with a proposed tenant that provides programs or services to children and/or developmentally disabled individuals, the County Mayor or the County Mayor's designee shall perform a national criminal background check of the tenant, its principals, and their spouses, parents and children that will be working at the property, and report any adverse findings to the Board along with any recommendation to approve the lease (Section 2-8.6.5 of the Miami-Dade County Code);

- (iii) In the event that the value of the property being sold is reasonably estimated to exceed \$5,000,000.00, the County shall have the property appraised by two real estate appraisers holding an M.A.I designation prior to placing an item on an agenda, unless waived upon written recommendation of the County Mayor upon a finding that it is in the best interest of the County to do so. (Section 2-10.4.2 of the Miami-Dade County Code);
- (iv) Prior to consideration by the Board or any committee of the Board of any proposed conveyance or lease without competitive bidding, pursuant to sections 125.045, 125.379 or 125.38, Florida Statutes, written notification shall be provided to the public by either (i) publication in a newspaper of general circulation or in a newspaper distributed in the locality where the subject property lies; (ii) mailed written notice to all property owners of record, as reflected on the Miami-Dade County Property Appraiser's tax roll as updated, within a one-half mile radius of the subject property; or (iii) posting such notice on the subject property in a manner conspicuous to the public, by a sign or signs containing the required written notice information. The required written notice to the public required herein shall, at a minimum, contain the following information: (i) an identification of the subject property by address, folio number, and size; (ii) the date, time and location of any scheduled meeting of the Board or any committee of the Board regarding the sale or lease of the subject property; and (iii) a description of the proposed sale or lease including the recipient, intended use, and nature of the project or proposed construction. The cost of such notice shall be borne by the entity requesting the sale or lease, of County-owned real property, except in the case of substantial hardship which shall be determined in the discretion of the County Mayor or the County Mayor's designee (Resolution No. R-407-19); and
- (v) All contracts, leases, and agreements, except those with other governmental entities, must be executed by the other party before submission to the Board.

LEASE AND DEED REQUIREMENTS AND RESTRICTIONS, REVERTER AND TERMINATION:

All leases, deeds and other disposition documents of County-owned real property, as applicable, shall:

- (i) Include deadlines, milestones or other firm time periods by which the purpose of the sale, lease or disposition must be effectuated;
- (ii) In the event that property is conveyed or leased for less than appraised value or fair market rental, include an automatic reverter clause or an automatic lease termination clause if the purpose of the sale or lease is not effectuated within the period specified in the lease or deed (Section 2-8.6.5 of the Miami-Dade County Code), relevant milestones are not met, which may include but not be limited to obtaining permits, commencement of construction and completion of construction, public use is not maintained, or a payment and performance bond or alternative security, as required by the lease or deed, are not provided prior to commencing construction (Resolution No. R-461-13). The lease or deed shall further provide that such automatic reverter or termination shall be at no additional cost to the County, and the County shall not be required to pay any

compensation to the entity in connection with the reverter or lease termination (Resolution No. R-1000-14). In the event that an automatic reverter or automatic lease termination is not included, a specific basis for not including same shall be set forth in the item presented to the Board, and at a minimum, language in generally the following form shall be included in the deed restrictions (as modified for lease termination):

If in the sole discretion of the County, any term of this Deed is not complied with, ENTITY shall correct or cure the default/violation within thirty (30) days of notification of the default by the County as determined in the sole discretion of the County. If ENTITY fails to remedy such default within thirty (30) days, title to the subject property shall revert to the County, at the option of the County, upon written notice of such failure to remedy the default. In the event of such reverter, ENTITY shall immediately deed such property back to the County, and the County shall have the right to immediate possession of the property, with any and all improvements thereon, at no cost to the County. The effectiveness of such reverter shall take place immediately upon notice being provided by the County, regardless of the deed back to the County by ENTITY. The County retains such reversionary interest in the property, which right may be exercised by the County, at the option of the County, in accordance with this Deed. Upon such reversion, the County may file a Notice of Reversion evidencing same in the public records of Miami-Dade County. Failure to exercise such right of reverter shall not be deemed to be a waiver of such right, and by accepting the conveyance of the property, ENTITY agrees that any defenses based upon the County's delay or failure to exercise the right of reverter are hereby waived.

Nothing in this section shall prohibit the County Mayor or the County Mayor's designee from including reverter language in leases or deeds for market rent or market value, provided, however, that it is not mandatory to do so;

- (iii) Include a provision requiring Board approval of any transfer or assignment of the property to an unaffiliated entity in any deed or lease for less than fair market value or rental to a not-for-profit entity pursuant to section 125.38, Florida Statutes (Resolution No. R-1000-14);
- (iv) Include a minimum rental payment in lieu of taxes in the event that tax exempt status is achieved by a not-for-profit entity, unless a hardship or other substantial reason exists for foregoing such payment (Resolution No. R-256-13);
- (v) Include a termination or suspension provision in the event that an emergency situation arises wherein the property is needed by the County for an emergency public purpose (Resolution No. R-64-16);

- (vi) With respect to all leases or deeds which require development of the property, include deadlines, timeframes and milestones, including, at a minimum, a date upon which permits must be obtained, a date upon which construction must commence, and a date upon which construction must be completed. Further, such leases and deeds shall include appropriate protection for County-owned property, or property in which the County retains a reversionary interest, including but not limited to a payment and performance bond or other form of alternative security, adequate insurance as determined by the Risk Management Division, and a letter of credit or other adequate security to ensure completion of the development, and if necessary, to clear any liens improperly placed upon the property, to pay delinquent taxes, or to address any costs or expenses in the event of reversion or lease termination, and including a provision that all liens shall remain the responsibility of the entity from whom the property was reverted;
- (vii) Include appropriate insurance requirements after providing relevant provisions of the proposed lease or deed to the Risk Management Division for review of form and content to provide recommended insurance protection;
- (viii) Include a provision requiring the entity to provide proof to the County on an annual basis that the property taxes have been satisfied;
- (ix) Include a provision requiring the entity to provide quarterly notarized status reports to the County Mayor or the County Mayor's designee with a copy to the District Commissioner in which the property lies at appropriate intervals regarding compliance with each milestone in the lease or deed;
- (x) Include a provision that any third-party mortgages allowed under the terms of the lease or the deed shall be subordinate to the interest of the County, and that all proceeds received from the mortgage loan shall be reinvested into the property; and
- (xi) If the subject property is within the Urban Development Boundary, include a provision requiring that the property owner must connect to the sanitary sewer system by a certain deadline if the property is not currently connected unless the property is non-buildable, or the conveyance is to a governmental or not-for-profit entity for public uses that do not require sanitary sewer system, and including a provision prohibiting development without providing such access (Resolution No. R-365-21).

MONITORING:

All items for the sale or lease of County property submitted to this Board shall include the appointment of a department monitor and shall include the name of the individual appointed to monitor compliance with the provisions of the deed or lease. The County Mayor or the County Mayor's designee shall monitor the payment of real estate taxes on all properties conveyed by deed or lease and shall request the Miami-Dade County Tax Collector to provide them with duplicate annual tax notices (Resolution No. R-377-09). In the event of a tenant's noncompliance with the lease the County Mayor or the County Mayor's designee shall send a written notice of termination of the lease no later than five days after the event giving rise to such termination. In the event of grantee's

noncompliance with the deed restrictions, the County Mayor or the County Mayor's designee shall record a notice of reverter or similar instrument in the public record within five days of the event giving rise to the exercise of the County's reversionary interest. The failure of the County Mayor or the County Mayor's designee to send such notice of termination or record such notice of reverter will not be construed as a waiver of the County's rights under the lease or deed to avail itself of its remedies against the tenant or grantee, unless otherwise set forth in the lease or deed.

The County Mayor or the County Mayor's designee shall, on a quarterly basis, provide a report to this Board identifying any properties which are in non-compliance or default status, the nature of the non-compliance and the amount of time such property has been in non-compliance, any steps which have been taken to enforce compliance, available remedies, and recommendations. Such report shall also identify any properties which are 30 days away from approaching a milestone or potential event of default, and any properties that have reverted, or that the lease has been terminated, due to non-compliance. The County Mayor or the County Mayor's designee shall place the completed report on an agenda of the Board or a committee of the Board in accordance with Ordinance No. 14-65, and shall attach any recorded notice of termination, or notice of lease termination.

FINAL ACTION:

If the lease or conveyance of County-owned real property is approved by the Board, the Internal Services Department or successor department will take the necessary steps to conclude the transaction and to undertake any necessary responsibility review for subsequently identified purchasers or tenants.

Thereafter the fully executed documents will be returned to the Clerk of the Board for custody. The County Mayor or County Mayor's designee will notify the Risk Management Division of all contracts accepting liability on behalf of the County or requiring either the County or the other party to provide insurance coverage. The County Mayor or the County Mayor's designee shall record all instruments of conveyance in which the County retains an interest in the Public Records of Miami-Dade County and provide a copy of the instrument to the Clerk of the Board within 30 days of execution so that the Clerk may attach and permanently store a recorded copy of the instrument together with the authorizing resolution (Resolution No. R-974-09). All leases and operating agreements shall be provided by the County Mayor or the County Mayor's designee to the Property Appraiser's office within 30 days of execution of same (Resolution No. R-791-14).

OTHER PUBLIC AGENCIES:

If property owned by the County is desired by another governmental agency for a governmental public purpose, and it is determined by the Board that the property is not needed by the County for such use, it may be conveyed at a nominal cost. It is not required for such governmental agency to execute the lease, contract, or other agreement prior to placing an item on a Board agenda. Any conveyance of a road or portions thereof to a governmental entity shall include a specific provision that such road cannot be closed without approval by the Board (Resolution No. R-461-13).

COMPETITIVE SOLICITATIONS:

To insure the County against unnecessary processing expense, an earnest money deposit is to be deposited the Internal Service Department or successor department, in each case only as and if required by the applicable solicitation documents, by all private parties or corporations submitting a bid or proposal in response to a solicitation for the sale or lease of County property.