



# Albemarle County

## Legislation Text

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**File #:** 19-432, **Version:** 1

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**AGENDA DATE:** 8/7/2019

**TITLE:**

Rules for the Public's Use of the County Office Buildings and Their Grounds

**SUBJECT/PROPOSAL/REQUEST:** Consider replacing the "Community Use of County Facilities Policy" with the proposed "Rules for the Public's Use of the County Office Buildings and Their Grounds"

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Richardson, Walker, Henry, Kamptner, Farley, Lantz, Stewart, Freitas, Carr

**PRESENTER (S):** Greg Kamptner

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

**BACKGROUND:** The Board's Community Use of County Facilities Policy (the "Policy"), first adopted on February 10, 1982, governs the public's use of the County's Office Buildings located at 401 McIntire Road (COB-McIntire) and 1600 5<sup>th</sup> Street (COB-5<sup>th</sup>) (Attachment A). The Policy has been amended numerous times over the years in a piecemeal manner, most recently on October 3, 2018 when the Board amended the policy pertaining to the public's use of the parking lots at COB-McIntire.

A team composed of representatives from the County Attorney's Office, the County Executive's Office, the Police Department, and the Department of Facilities and Environmental Services has met several times to discuss amendments to the Policy for the Board's consideration. The proposed draft Rules for the Public's Use of the County Office Buildings and Their Grounds (the "Rules") (Attachment B) are the result of that team's work.

**STRATEGIC PLAN:** Quality Government Operations: Ensure County government's capacity to provide high quality service that achieves community priorities.

**DISCUSSION:** The draft Rules address several issues regarding the public's use of COB-McIntire and COB-5<sup>th</sup> with the objectives to: (1) ensure that the County (including the School Division) and the public are able to conduct County business with minimal or no disruption; (2) enable the public to use the COB-McIntire and COB-5<sup>th</sup> in a reasonable manner; (3) recognize the public's interest in exercising First Amendment rights; (4) clarify the County's interests, as a property owner, in making certain areas of COB-McIntire and COB-5<sup>th</sup> are available for public use while other areas are not open for public access; and (5) clarify the role of the County Executive and his designees as persons in charge of COB-McIntire and COB-5<sup>th</sup>.

**Important Changes**

The Rules would make two important changes from the current Policy:

Front lawn: A portion of the front lawn of COB-McIntire would be available for the public to exercise First Amendment rights.

Use of rooms: The days and times that rooms in COB-McIntire and COB-5<sup>th</sup> would be available for public use would be limited to Tuesday through Thursday, 5:00 p.m. to 9:00 p.m.

### **Guiding Legal Principles**

Like an owner of private property, the County retains the power to preserve the property under its control for the use to which it is lawfully dedicated. COB-McIntire and COB-5<sup>th</sup> are dedicated to conducting County and School Division business.

Nonetheless, COB-McIntire is the legislative and administrative seat of County government, and the courts have recognized that the grounds of these types of buildings are places where the public may exercise First Amendment rights, subject to content-neutral and reasonable time, place, and manner restrictions. First Amendment rights may be exercised in many ways. The speech and conduct that falls under the First Amendment is far reaching, ranging from protests and demonstrations, to handing out leaflets, to engaging in petition campaigns, and to flag burning. Because COB-5<sup>th</sup> is not the legislative or administrative seat of County government, its exterior grounds would not be open to the public in the same way that COB-McIntire would be.

The legal principles that apply to the interior of COB-McIntire and COB-5<sup>th</sup> are different because, with some exceptions discussed below, the interiors of public buildings have not traditionally been forums where the public exercises First Amendment rights. One of the exceptions where First Amendment rights may be exercised is during meetings of public bodies such as the Board of Supervisors, provided that the person does not actually disrupt the meeting. Another exception is the right of the public to photograph and videograph public officials in public places within the building.

### **Making a Portion of the Front Lawn of COB-McIntire Available for Exercising First Amendment Rights**

The current Policy does not open the grounds of COB-McIntire to First Amendment activity.

The Rules would designate Area 1, identified as such on Attachment C, as the place on the COB-McIntire grounds where the public could exercise First Amendment rights. Area 1 is the portion of the front lawn running along the frontage of both McIntire Road and Preston Avenue near the intersection of those two streets. This area is the most publicly visible part of the COB-McIntire site. The Rules would provide that Area 1 would be open to the public from 7:00 a.m. to 9:00 p.m. without the need for a permit or reservation. The Rules would also provide that sound amplification equipment between 8:00 a.m. and 5:00 p.m. and during County or School Division night meetings would be restricted, any displays, monuments, and signs would have to be attended at all times, and several specific acts would be prohibited, including obstructing sidewalks, open flames, alcoholic beverages, commercial activity, and camping.

### **Making Rooms Available for Public Use**

The current Policy allows organizations to use rooms within COB-McIntire and COB-5<sup>th</sup>, Monday through Friday, until as late as 10:00 p.m., including during the day, provided that a room is available.

The Rules propose making Lane Auditorium and Rooms 235, 241, and 246 in COB-McIntire and Room A in COB-5<sup>th</sup> available for use by organizations each Tuesday through Thursday when the County is open for business, from 5:00 p.m. to 9:00 p.m. The reasons for reducing the days and hours during which these rooms are available to the public include the need to ensure that the rooms in these buildings are available for the County and the School Division, building security, and the additional costs of heating and cooling the buildings, and keeping the buildings open.

### **Other Important Rules Pertaining to the Grounds**

Parking lots: The Rules would continue to reserve the upper and middle parking lots at COB-McIntire, and all of the parking lots at COB-5<sup>th</sup>, primarily for the public to conduct County and School Division business. The lower parking lot at COB-McIntire would be available for public parking during the times specified in the Rules (including when persons are exercising First Amendment rights in Area 1) when it does not conflict with County

or School Division uses or is not otherwise closed by the County Executive for reasons provided in the Rules. **Sidewalks and travelways:** Sidewalks and travelways that are within the COB-McIntire and COB-5<sup>th</sup> grounds may be used by persons lawfully on the sites for ingress and egress.

### **Other Rules Pertaining to the Interiors**

**Lane Auditorium lobby:** The lobby would be open primarily to persons in COB-McIntire to conduct County or School Division business. It would not be available for use by organizations.

**Hallways:** The public hallways, such as those extending from the Lane Auditorium in COB-McIntire, and the entrance lobby at COB-5<sup>th</sup>, would be primarily limited to persons in the buildings to conduct County or School Division business.

**Department offices:** Department offices, including their interior lobbies, hallways, and work spaces, would be open only to persons to conduct County or School Division business and invitees of persons in the department.

### **The Role of the County Executive**

The Rules would expressly authorize the County Executive to administer the Rules, and would allow him to delegate this task to his deputy and assistant and to others. In trespass situations, the County Executive would also be authorized to designate the Police Department as the “person lawfully in charge of the property.”

Amendments to County Code §§ 10-103 (disorderly conduct) and 10-120 (trespass) are also proposed to expressly state that the County Executive or his designee is the “person in charge” in disorderly conduct situations and the “person lawfully in charge of the property” in trespass situations (Attachment D).

**BUDGET IMPACT:** Improvements to secure the parking lots have already been budgeted and appropriated. The cost to provide the gate at the Preston Avenue entrance is approximately \$40,000. Staff will recommend that the front lawn of COB-McIntire be improved to clearly delineate the location of the front lawn that will be available for the exercise of First Amendment rights. Several options for physical improvements continue to be developed by staff and will be presented to the Board for consideration when ready.

### **RECOMMENDATION:**

Staff requests that the Board provide feedback regarding the Rules, direct staff to return with the Rules to consider for adoption at an upcoming meeting, and authorize staff to schedule for public hearing an ordinance to amend County Code §§ 10-103 and 10-120.

### **ATTACHMENTS:**

- A - Community Use of County Facilities Policy (Existing)
- B - Rules for the Public’s Use of the County Office Buildings and Their Grounds
- C - Map of a Portion of COB-McIntire
- D - Draft Ordinance