



# Policy for Third-Party Uses of Court Facilities

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Judicial Council of California

## Policy for Third-Party Uses of Court Facilities

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# Policy for Third-Party Uses of Court Facilities

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## 1. Purpose

- 1.1 The purpose of this policy is to establish guidelines for the use of court facilities by third parties including continuous or regularly occurring long-term occupancies, short-term events and activities, and commercial and vendor services.<sup>1</sup> The guidelines established in this policy are intended to serve the needs of the courts, the judicial branch, and the public while providing for the best use of the court facilities and judicial branch resources.

## 2. Definitions

- 2.1 **“Application”** means *Application for Third-Party Uses of Court Facilities* developed by Judicial Council staff.
- 2.2 **“Civics education initiative”** is one of the following specific types of events having an educational or community outreach purpose:
- 2.2.1 Mock trial, moot court, and other law-based competitions;
  - 2.2.2 Courthouse field trips and tours;
  - 2.2.3 Legal/judicial ceremonial functions; and
  - 2.2.4 Trainings or educational workshops and symposiums regarding the administration of justice and issues of branchwide concern.

Civics education initiatives promote a basic understanding of and public confidence in the administration of justice, the courts, the judicial branch, and issues of branchwide concern. Events in this category are intended to broaden and facilitate access to, understanding of, and trust in court-connected programs and services for all persons and entities served by the judicial branch. Civics education initiatives—which may or may not be sponsored/cosponsored by a court—typically involve collaborating with justice system partners; other branches of local, state, and federal government; primary and secondary schools; universities, colleges, and law schools; local, state, and specialty bar associations; and local civic, educational, business, and charitable groups that have an interest in understanding the court system without espousing a particular political agenda.

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<sup>1</sup> The United States Supreme Court has held that court facilities are considered nonpublic forums that are not “traditionally held open for the use of the public for expressive activities,” such as free speech demonstrations, and courts may regulate such activities in court facilities or on their curtilage. (*United States v. Grace* (1983) 461 U.S. 171, 178; see also *Comfort v. MacLaughlin* (C.D.Cal. 2006) 473 F.Supp.2d 1026, 1028.)

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- 2.3** “**Court**” means either the trial or appellate court that occupies and uses the subject court facilities, as applicable.
- 2.4** “**Court facilities**” means all trial and appellate court buildings managed by the Judicial Council or under its control. Court facilities include vacant and unimproved parcels as well as any of the court facilities’ surrounding curtilage, rooftops, and parking areas under the Judicial Council’s control.
- 2.5** “**Court representative**” means the court’s administrative presiding justice, presiding judge, clerk/executive officer, court executive officer, or their authorized designee.
- 2.6** “**Event**” means a special, short-term use of court facilities requested by a third party. A third-party event is of limited duration and may be on a single day or a reoccurring series of days but is typically not more than a total of 14 days. Third-party events include:
- 2.6.1** Civics education initiatives, as defined above; and
  - 2.6.2** Non-civics education initiatives including but not limited to community festivals and fairs, private events, professional trainings and workshops unrelated to the administration of justice or issues of branchwide concern, commercial filming, and support/staging areas for other activities such as overflow parking. Non-civics education initiatives may also include private events otherwise related to a court function (e.g., marriage and adoption activities at court facilities).
- 2.7** “**Occupancy**” means a long-term or ongoing use of court facilities requested by a third party. A third-party occupancy is typically a continuous, regularly occurring, or long-term use of court facilities. Third-party occupancies include but are not limited to public entity or nonprofit entity office space, self-help and volunteer centers, law libraries, and children’s waiting areas.
- 2.8** “**Third party**” means any persons, private entity, agency, public entity, nonprofit entity, law enforcement agency, or group. Third parties do not include the Judicial Council, courts, and their respective judicial officers, employees, and staff acting in their official capacities.

### 3. Roles and Responsibilities

#### 3.1 Judicial Council

- 3.1.1** The Judicial Council has statutory authority and responsibility over court facilities. As the policymaking body for the judicial branch, the Judicial Council adopts policies governing court facilities including the

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oversight of a third party's use of space at, within, or on the buildings and grounds of court facilities.

- 3.1.2** The Judicial Council has the responsibility and authority to “[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have” over trial and appellate court facilities. (Gov. Code, §§ 69204(a) & (b), 70391(a) & (b).)
- 3.1.3** The Judicial Council has the responsibility and authority to “[m]anage court facilities in consultation with the trial courts.” (Gov. Code, § 70391(g).)
- 3.1.4** Judicial Council staff have the responsibility and authority to “provide the ongoing oversight, management, operation, and maintenance” of trial court facilities that have been transferred to the Judicial Council, and to “[c]arry out the Judicial Council’s policies with regard to” trial court and appellate court facilities. (Gov. Code, §§ 69206(a), 70392(a) & (b).)
- 3.1.5** Judicial Council staff are responsible for “[t]aking action on the operation of court facilities, including the day-to-day operation of a building . . . . Judicial Council staff must, in cooperation with the court, perform its responsibilities concerning operation of the court facility to effectively and efficiently support the day-to-day operation of the court system and services of the court.” Judicial Council staff may, when appropriate, delegate said responsibilities to the court so long as, among other things, the court facilities’ management is “consistent with the statewide goals and policies of the judicial branch” and facility-related decisions are “made with consideration of operational costs and enhance economical, efficient, and effective court operations.” (Cal. Rules of Court, rules 10.182, 10.184; Gov. Code, § 70392(e).)
- 3.1.6** The Administrative Director “has sole authority to assign, supervise, and direct staff” of the Judicial Council. (Cal. Rules of Court, Appx. D, Judicial Council Governance Policies § 6.)
- 3.1.7** The Administrative Director, or their designee, is responsible for overseeing and implementing this policy.
- 3.1.8** Judicial Council staff are responsible for determining, implementing, and enforcing all terms and conditions of the agreement for a third party’s use of court facilities including, without limitation, the assessment and collection of all corresponding fees.

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**3.1.9** Judicial Council staff is to work in collaboration with the court representative when coordinating and contracting with any third-party user of court facilities.

**3.1.10** The Judicial Council may reserve the right to terminate a third-party use, with or without cause, at any time and include such terms in the third party's agreement for the use of court facilities. All agreements for the use of court facilities subject to bond indebtedness must include a Judicial Council right of termination upon no more than 50 days' prior notice or as otherwise required by the court facilities' applicable bond documents. Any determination to exercise the Judicial Council's termination rights shall be made in coordination with the court.

### **3.2 Courts**

**3.2.1** In accordance with applicable law and Judicial Council policy, a court on its own lacks authority to enter into or manage agreements for any third-party use of court facilities including those uses governed by this policy.

**3.2.2** The court representative will be the primary point of contact on behalf of the court with respect to the Judicial Council's review and approval of third parties' requests for the use of court facilities.

**3.2.3** The court representative must contact Judicial Council staff for assistance with requests, applications, enforcement of the agreement's terms, and any other aspects of a third party's use of court facilities.

**3.2.4** The court is responsible for overseeing third parties' day-to-day usage of court facilities with Judicial Council staff's support. In the event that a third party may not be in compliance with the terms of its agreement, or a third party may be misusing the court facilities, the court representative must immediately notify Judicial Council staff. The court representative must also promptly direct all third parties using court facilities to Judicial Council staff with respect to all inquiries concerning the use of the court facilities, terms of or requested changes to the agreement, alterations and improvements to the court facilities, or other similar matters.

**3.2.5** The court representative must work in collaboration with Judicial Council staff to determine if a third-party use should be terminated in accordance with the terms of the third party's agreement.

**3.3** If a disagreement arises between the Judicial Council and a court with respect to the requirements, application, interpretation, or enforcement of this policy, the Judicial Council and court will attempt first to resolve the

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disagreement at the operating level (i.e., among the Judicial Council's Facilities Services Director and/or Real Estate Manager and the court representative). If the disagreement remains unresolved, the matter will be referred to the court's administrative presiding justice, presiding judge, clerk/executive officer, court executive officer, or their authorized designee, as applicable, and to the Chief Administrative Officer of the Judicial Council.

### 4. Civics Education Initiatives

- 4.1** It is acknowledged that “[j]udicial participation in community outreach activities are considered an official judicial function to promote public understanding of and confidence in the administration of justice.” Encouraged outreach activities of the judiciary include developing “local education programs for the public designed to increase public understanding of the court system” and taking “an active part in the life of the community where the participation of the judiciary will serve to increase public understanding and promote public confidence in the integrity of the court system.” (Cal. Stds. Jud. Admin., std. 10.5.)
- 4.2** Civics education initiatives are meant to maintain a branchwide culture that fosters excellence in public service by building strong working relationships with communities, law and justice system partners, and other state and local leaders. It is accordingly appropriate for courts to conduct civics education initiatives at court facilities.
- 4.3** To support and further these principles, this policy hereby delegates to each court the ability to oversee, manage, and administer the use of court facilities specifically for civics education initiatives. A court may request Judicial Council staff to assist with any aspect of a third party's request to use court facilities for a civics education initiative. Alternatively, a court may instead elect to utilize for civics education initiatives the Judicial Council's standard process otherwise described in this policy.
- 4.4** For courts exercising the delegation to oversee, manage, and administer the use of court facilities for civics education initiatives under this policy:
- 4.4.1** *Court Process.* The court may implement at its discretion the court's own application and/or review process consistent with the standards described in this policy.
- 4.4.2** *No Judicial Council Review.* The court and third party are not required to submit to Judicial Council staff the application, or obtain the Judicial Council staff approval, that would otherwise be required.
- 4.4.3** *Agreement; Insurance.* Judicial Council staff will provide the courts with a form of agreement for civics education initiatives. The court must



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enter into this form of agreement with the third party prior to the civics education initiative's commencement. To ensure the judicial branch is properly protected against risk and loss, the third party must provide the court with the insurance coverage required in the agreement for civics education initiatives via an additional insured endorsement. A court may not use a third party's form of agreement for civics education initiatives, except in special circumstances after obtaining Judicial Council staff's express approval in advance.

- 4.4.4** *No Fee; Costs of Services.* No fee will be assessed on a third party for the use of court facilities for a civics education initiative. The third party must otherwise pay or reimburse the court for any costs and expenses (e.g., custodial and security services) incurred for the civics education initiative, as determined by the court and provided for in this policy.
- 4.4.5** *Single Agreement for Multiple Events.* For multiple or reoccurring requests by a single third party for a civics education initiative (e.g., a school district's monthly field trips at the court facilities), the court may utilize a single agreement along with the third party's corresponding insurance coverage for each occurrence of that civics education initiative.
- 4.4.6** *No Commercial Filming.* A court may not allow commercial filming (as described in this policy) as part of any civics education initiative and must direct all third-party requests for the use of court facilities involving commercial filming to Judicial Council staff in accordance with this policy.
- 4.4.7** *Reporting.* The courts will report annually to Judicial Council staff on all civics education initiatives involving a third party during the prior year. Upon request, the court will provide copies of the fully executed agreement entered into with the third party and the third party's certificates of insurance for the civics education initiative.
- 4.4.8** *Noncompliance.* A court's lack of compliance with this policy's requirements for civics education initiatives may result in the withdrawal of the court's delegation for civics education initiatives.

## 5. Application Process

- 5.1** All third-party requests for the use of court facilities must be submitted to Judicial Council staff via the application. The application process described in this section does not apply to civics education initiatives if the court is exercising the delegation for those events.

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- 5.2 Judicial Council staff will review and process the third party's application in compliance with this policy.
- 5.3 If the court receives a third-party request for use of court facilities, the court will promptly provide the third party with the application and/or direct them to Judicial Council staff for further assistance.
- 5.4 The court representative must review third-party requests for the use of court facilities as part of Judicial Council staff's application process.
- 5.5 Prior to Judicial Council staff's approval of any application, the court representative will provide Judicial Council staff with the court's written consent to the third party's requested use of the court facilities if it consents to the use. The court representative must complete all portions of the application applicable to the court. Judicial Council staff will not approve the third party's application without the court's consent.
- 5.6 Third-party requests for the use of court facilities should be submitted via application with as much advance notice as possible.
- 5.7 Judicial Council staff will not be expected to take action on any application unless the application is submitted in full at least **45 days before** the commencement of the third party's requested use. Judicial Council staff will endeavor to process applications as expeditiously as practicable including entering into the corresponding agreement if approved. Failure of a third party to properly submit an application for the use of court facilities at least 45 days before the use's commencement may be sufficient grounds to deny the request or application. However, any extenuating circumstances of a late submission may be considered and accommodated whenever and to the extent reasonably feasible in Judicial Council staff's discretion.

### 6. Approval Requirements

- 6.1 Judicial Council staff will review and evaluate all applications (or, as applicable, the court will review requested uses of court facilities for civics education initiatives) based on, without limitation, the following:
  - 6.1.1 The space must be available for the requested use.
  - 6.1.2 The use must be consistent with the integrity of the judicial process and the overall constitutional and statutory mission of the judicial branch.
  - 6.1.3 The use must be consistent with this policy.

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- 6.1.4** The use must be consistent with the judicial branch use of the court facilities.
- 6.1.5** The use must preserve a neutral forum that is free of both actual or perceived partiality and any appearance of bias, prejudice, or favoritism.
- 6.1.6** The use must not have the potential for disruption to or the impairment of proper judicial decorum, court operations, or Judicial Council business including disruptions to regular use or access to the court facilities by court personnel, judicial officers, jurors, litigants, other court users, and members of the public.
- 6.1.7** The use must not pose unreasonable risks to the health, safety, or security of the people and property within the court facilities and surrounding areas.
- 6.1.8** The use must not lead to unreasonable costs, risk, damage, or liability to the court or the Judicial Council that may be or could become associated with or the result of the requested use.
- 6.1.9** The Judicial Council and court must be able to sufficiently provide any resources reasonably required to permit the requested use (e.g., security, staff escort, or custodial services).
- 6.1.10** The court facilities being requested must be in a suitable state of repair and condition for use in general and for the specifically requested use.
- 6.1.11** The requested use must not require significant or unreasonable alterations or other improvements to the court facilities to effectuate the requested use.
- 6.1.12** The use must not be for the purpose of espousing a particular political agenda or conducting campaign activities/fundraising that presents the appearance of bias, prejudice, or favoritism by the court.
- 6.1.13** The use must not be inconsistent with any constitutional, statutory, other legal requirements or prohibitions, or Judicial Council/court policies and practices.

### **6.2 Requests for Telecommunications Equipment and Rooftop Uses**

- 6.2.1** The third-party use of court facilities for the placement, installation, maintenance, or modification of telecommunications and other

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equipment (including, without limitation, antennas, cabling, batteries, and support structures) will only be permitted in those cases that are absolutely necessary or critical for public welfare or that support court operations in the discretion of Judicial Council staff.

**6.2.2** The third-party use of court facilities for telecommunications equipment may be permitted in instances in which (i) the use specifically and directly supports court operations for the administration of justice (such as the installation of distributed antenna systems (DAS) to strengthen signals used by court personnel, law enforcement agencies, and other court users); (ii) the use is critical to and solely for public welfare purposes such as a county's public safety radio communications system; or (iii) the use is required by law.

**6.2.3** The third-party use of court facilities is not permitted in instances in which the use involves the placement, installation, maintenance, and ongoing modification of telecommunications or other equipment for private, commercial, or other purposes that do not, in the discretion of Judicial Council staff, directly support court operations. Examples of prohibited third-party uses include, without limitation, private entities' wireless communications facilities (e.g., cell towers and antennas for long-term evolution (LTE), land mobile radio, 5G, or related future/substitute technologies) and telecommunications equipment that generally operates in a commercial capacity regardless of whether it may be used in limited circumstances for public or emergency purposes (e.g., enhanced 911 or E-911 services, FirstNet, etc.).

### **6.3 Requests for Commercial Filming**

**6.3.1** Commercial filming requests consist of the use of court facilities for commercial filming by any means including but not limited to the film, electronic, magnetic, digital, or other recording of an image by a third party for a market audience or with the intent of generating income. Examples of commercial filming requests include feature film, videography, television broadcast, documentary, or any other similar project, production, or shoot. Commercial filming activities may include the use of actors, models, sets, or props or the advertisement of a product or service. For clarification, an individual, public entity, or not-for-profit entity's use of court facilities for filming purposes may be classified as commercial filming.

**6.3.2** Commercial filming requests must comply with the application and all other requirements applicable to other third-party uses. Commercial

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filming requests will be subject to the following limitations intended to maintain court facilities' non-public forum status, prioritize the intended use of court facilities, and ensure the efficient expenditure of judicial branch resources:

**6.3.2.1** No commercial filming is permitted at operating (open) court facilities at any time of day, as follows: (i) no interior commercial filming; (ii) no exterior commercial filming (including parking areas and curtilage); and (iii) public sidewalks/streets are not considered part of court facilities, but any commercial filming thereon should not interrupt or interfere with court operations.

**6.3.2.2** Commercial filming may be permitted at nonoperating (closed) court facilities, as follows: (i) interior commercial filming in court-approved areas and (ii) exterior commercial filming. However, commercial filming is ***never permitted*** of the seal of the court, court/building name, judicial officers/staff, jurors, litigants, court users, other certain court images, and other limitations as may be specified by the Judicial Council or court.

**6.3.2.3** Judicial Council staff is responsible for determining, in consultation with the court representative, whether and which court facilities are deemed operating (open) or nonoperating (closed).

**6.3.3** Any ancillary, incidental, or noncommercial filming during a third party's otherwise permissible use of court facilities is not considered to be a commercial filming request.

## 7. Required Agreement for Use

**7.1** All third-party users of court facilities are required to enter into an agreement with the Judicial Council for the third party's use of court facilities (or, as applicable, with the court for civics education initiatives).

**7.2** A third party may not commence its use of court facilities unless and until the third party has entered into and executed the agreement (on the Judicial Council's form), provided any required certificates of insurance, paid any corresponding fees, and satisfied all other applicable requirements for the third party's use.

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- 7.3** Based on the type of request and use, Judicial Council staff will determine the form of and terms and conditions of the agreement, in Judicial Council staff's discretion.

### **8. Fees**

- 8.1** Judicial Council staff will establish a fee structure for third-party uses of court facilities with consideration of the use, user, and market location along with the courts' needs. The fee structure will be developed in a manner that supports the operations of the judiciary, courts, and Judicial Council through the equitable, effective, and efficient assessment of fees on third-party uses as well as the prudent expenditure of judicial branch resources.
- 8.2** The fee schedules for third-party uses may, as applicable, be broken into those categories then pertinent for the various third-party users and their uses, as determined to be in the best interests of the Judicial Council, which categories Judicial Council staff may update and revise as needed in its discretion.
- 8.2.1** Judicial Council staff will determine the rates and markets of the fee structure using the data, resources, and other information reasonably available to the best of their knowledge (e.g., consulting with real estate brokers and other appropriate subject matter experts when needed), in the best interests of the Judicial Council, and in light of the unique characteristics of the judicial branch's real estate portfolio.
- 8.2.2** When applicable to the assessment of a fee, Judicial Council staff will base fair market value on the amount that would be charged for similar uses of similar real properties in a voluntary, arm's-length transaction in which neither party is obligated to enter into or agree to the transaction. In determining fair market value, Judicial Council staff may utilize data on comparable transactions, listings, and market reports to the extent available as well as the recommendation and opinion of subject matter experts such as real estate brokers. The unique characteristics of court facilities and third parties' requested uses may impact or entirely prevent the ability to determine or assess the fair market value for particular, or entire categories of, uses of court facilities.
- 8.2.3** As part of the fee structure, Judicial Council staff may develop, maintain, and implement in its reasonable discretion a schedule of administrative charges to be assessed in addition to any required fees.
- 8.2.4** A third party's use of court facilities for a civics education initiative will not be assessed a fee.

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- 8.3** Notwithstanding any fees assessed on a third party, all costs and expenses of a third party's use of court facilities must be the responsibility of the third party. Any costs and expenses incurred by the Judicial Council or court because of the third party's use must be paid or reimbursed by the third party, except to the extent otherwise agreed under the terms of the third party's agreement in the reasonable discretion and best interests of the Judicial Council. Such expenses may include but are not limited to those for security and custodial services; improvements or alterations; additional or overtime staffing; increased utilities usage; all equipment, trade fixtures, and other personal property required for the third party's use; and any damage or repairs due to the third party's use.
- 8.4** If the third-party use is part of, connected to, or arises from arrangements involving special circumstances as set forth in this policy (e.g., dispositions, per a Joint Occupancy Agreement, etc.) or is an atypical or other use of court facilities that falls outside of the enumerated types/categories of uses in any fee schedules developed by Judicial Council staff, Judicial Council staff will determine the applicability of the fee structure and will proceed on a case-by-case basis in their reasonable discretion consistent with the intent of this policy.
- 8.5** Requests to waive or be relieved from the assessment of fees for a third party's use will be considered by the Administrative Director or their designee. The Administrative Director or their designee may, but is not obligated to, grant the third party a waiver of fees in an amount up to \$75,000 per fiscal year in their reasonable discretion and upon the third party's satisfactory showing of a justifiable basis or hardship. The Judicial Council's Executive and Planning Committee may also, but is not obligated to, grant a third party's request to waive fees that exceed \$75,000 up to \$150,000 per fiscal year in its reasonable discretion and upon the third party's satisfactory showing of a justifiable basis or hardship. In reviewing any fee waivers, all pertinent circumstances will be taken into consideration including but not limited to the third party's amount/number of prior waiver requests and the use.
- 8.6** For requests to waive or be relieved from the assessment of any amounts payable/reimbursable to the court (e.g., custodial or security services), Judicial Council staff will consult with the court representative on whether the court consents to the request and proceed accordingly.

## **9. Policy Exclusions and Limitations**

- 9.1** This policy does not apply to the following uses:
- 9.1.1** Uses of court facilities by the Judicial Council, courts, and their respective judicial officers, employees, and staff acting in their official capacities for purposes related to or concerning the administration of

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justice or court operations (e.g., a court staff meeting or educational workshop hosted solely by a court). Court operations include a judicial officer acting in their official capacity in their courtroom (e.g., solemnizing a marriage) when not otherwise conducted as part of a third party's special event.

- 9.1.2** Media requests governed by rule 1.150 of the California Rules of Court.
- 9.1.3** Uses of court facilities by third parties who operate under the Department of Rehabilitation's (DOR) Business Enterprises Program or Vending Machine Unit established by state or federal law (see, e.g., Welf. & Inst. Code, § 19625; 20 U.S.C. § 107) that are administered solely by the DOR and governed by separate agreement between the Judicial Council and the DOR.
- 9.2** This policy may not apply to, or may be limited by, any court facilities subject to agreements entered into with the applicable county for the shared use of the court facilities under Government Code section 70343 (i.e., Joint Occupancy Agreements) to the extent such agreements place varying conditions on usage, user selection, facility location, revenues, or any other aspects of third-party uses. Space within any such shared-use facilities designated as county exclusive-use areas is not under the control of the Judicial Council or subject to this policy.
- 9.3** The terms of any bond (lease revenue) documents used in the financing of courthouse construction may limit the applicability of this policy to the subject court facilities or may restrict or dictate certain terms and conditions of the third-party use of those court facilities. Such bond documents will take precedence over this policy.
- 9.4** Judicial Council staff may determine that this policy, in whole or part, is not applicable to the following special circumstances, which will be handled on a case-by-case basis:
  - 9.4.1** A third-party buyer's use of court facilities as part of a disposition/sale of the court facilities being used (e.g., under a lease-to-purchase agreement);
  - 9.4.2** A county being granted additional use of court facilities under an agreement entered into in accordance with the Trial Court Facilities Act of 2002 (Gov. Code, § 70301 et seq.) (e.g., Transfer Agreement or Joint Occupancy Agreement);
  - 9.4.3** Vacant or closed court facilities that are unoccupied;



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- 9.4.4** Third-party use of court facilities incidental to the terms of a services-operations agreement with the Judicial Council or court; and
- 9.4.5** The temporary use of court facilities associated with the Judicial Council's performance of a capital construction or other project.

**[End of Policy]**