

DRAFT TRIAL COURT VENDOR POLICY - OUTLINE OF MAIN POINTS

Scope

With the exceptions indicated below, this policy applies to food service businesses and operators (vendors), typically including restaurants, cafeterias, snack shops, coffee carts or kiosks, vending machines, within the boundaries of trial court property owned or managed by the Judicial Council of California.

Exclusions from Policy

Not applicable to vendors operating under the Business Enterprise Program (BEP) established by state Department of Rehabilitation (DOR) who have a right to use space occupied, managed or controlled by state, for operation of food services and vending machines. Under terms of the Memorandum of Understanding (MOU) between the Judicial Council of California and DOR, the latter may exercise its right to use court facilities when a notice of “determination of feasibility” is issued to Judicial Council of California.¹

Limitations on Policy Application

Individual terms in Joint Occupancy Agreements or Transfer Agreements may place varying conditions on vendor selection, facility location, revenues, and other aspects of leasing or licensing space to non-BEP vendors.

Purpose

1. To set forth a reasonable, consistent methodology for accommodating food-service vendors to use court facilities as an amenity for use by the court and public, without causing more than a nominal impact to Judicial Council of California-managed resources used to support all court facilities in the state.
2. To establish criteria for determining whether a fee will be charged or if vendor will occupy space on a no-fee basis.
3. To define, respectively, roles of the Court and Judicial Council of California with respect to the selection and approval of a vendor to operate in a court facility.

Role of Court

- Court to determine what type of vendor it would like to have as a court amenity.
- Prospective vendors may be qualified by court.
- Court is responsible for selecting and proposing vendor to Judicial Council of California for qualification and licensing.

¹ Amendment to MOU (in drafting) will memorialize practice of DOR electing to waive right, on a case-by-case basis, to place an eligible BEP vendor when one cannot be identified within agreed-upon timeframe.

- Court's written approval is required prior to execution of license agreement between Judicial Council of California and vendor.
- Court determines whether the food service provided by vendor is unsatisfactory and the Judicial Council of California will terminate vendor license on this basis.
- Court is not authorized to enter into any lease or license agreement for use of space in a court facility.

Role of Judicial Council Staff

- Staff are responsible for facilities used exclusively by court in buildings managed by host county and, additionally, in common areas (lobby, corridors, etc) of buildings managed by the Judicial Council of California.
- Per statute and rule of court, staff is allocated obligations, liabilities and administrative duties of a property owner and manager and is responsible for approval and execution of all agreements pertaining to court facilities.²
- Judicial Council of California reserves right to terminate license with vendor, for cause or convenience, at anytime.
- Judicial Council of California has fiduciary responsibility for management and administration of the financial and other resources required to provide safe, legally compliant space for vendors' operations.
- Vendor operations will only be permitted by Judicial Council of California following full execution of license agreement.
- Transfer/Joint Occupancy Agreements (between Judicial Council of California and host counties) and bond documents may restrict use of facilities

Criteria to Determine Assessment of Fee

Trial Court Facility Modification Advisory Committee in consultation with the Judicial Council and the trial courts will determine whether payment of fee is required based on cost to provide and service space for vendor.

Determination of Fee, Fee Type

- **Fee** based on fair-market value, i.e., amount for which real property would be licensed in a voluntary transaction between a licensee and licensor, neither of whom is under any obligation to enter into a license. With input from real estate professionals and/or data on

²GC 70391 mandates that the Judicial Council shall "exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state." GC 70392 provides that the Judicial Council of California shall "carry out the Judicial Council's policies with regard to trial court facilities and, upon transfer to the Council, the Judicial Council of California will provide the "ongoing oversight, management, operation, and maintenance of facilities used by the trial courts."

transactions, listings and local market reports, Judicial Council of California will make sole determination of fair-market value-based fee and structure.

- **Fee Type** refers to method of calculating, services and tenant improvements included in fee (based on fair-market value in any case).
 - Fees may be calculated as fixed or escalating rate per square foot, a percentage of sale/receipts generated by business operations, a combination or variations of these.
 - Fees are also classified according to services included in their payment; “gross” or “full service” fee pays for all services provided by the lessor; “modified” or “partial” fee will pay for some services but not others, such as utilities and/or cleaning.
 - Terms for tenant improvements for vendor are subject to negotiations, except that, vendor payments to the Judicial Council of California for tenant improvements shall be paid in cash.

Fee Supplement

Upon approval by the Trial Court Facilities Modification Advisory Committee, the court *may* elect to fund difference between amount qualified vendor is willing to pay, in event that amount is less than fair market value, and fee determined by the Judicial Council of California to be based on fair-market value. In this event, Judicial Council of California and court will enter into a suitable Intra-Branch Agreement for administration to offset Trial Court Trust Fund payments to the court.

Alternatives Considered

- Fees applied to all licenses
 - Some reduction in number of vendors willing to operate in court facilities.
- No fees charged to vendors
 - Will require Judicial Council of California to expend funds with no revenue as offset. Could be deemed “gift of public funds.”
- Judicial Council of California responsibility for vendor selection
 - Links Judicial Council of California with unsatisfactory or defaulting vendor.
- No policy (status quo)
 - Increased likelihood of growing inconsistency in licensing approach; fails to address need for clarification of court and Judicial Council of California roles; greater potential for disputes

Cost and Staff Time to Implement

No additional direct costs anticipated. Real Estate and Facilities Management has been performing fee negotiation, court coordination, license administration and vendor management for several years. Depending on number of new vendors, minimal to minor increase in staff time to determine fair-market value fee; small increase in time to estimate,

verify and reconcile utility costs associated with new equipment. Licensing new vendors subject to this policy likely to occur on an infrequent basis.

Exhibits

- A. Current Vendor Report
- B. Sample License
- C. AOC – DOR MOU