



# Judicial Council of California

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## INVITATION TO COMMENT

### SP23-07

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**Title**

Court Facilities: Policy for Third-Party  
Uses of Court Facilities

**Action Requested**

Review and submit comments by  
October 16, 2023

**Proposed Rules, Forms, Standards, or Statutes**

Adopt *Policy for Third-Party Uses of  
Court Facilities*

**Proposed Effective Date**

March 15, 2024

**Proposed by**

Executive and Planning Committee  
Hon. Marsha G. Slough, Chair

**Contact**

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### Executive Summary and Origin

The Executive and Planning Committee seeks public comment on the proposed *Policy for Third-Party Uses of Court Facilities* (Third-Party Use Policy) developed by the Real Estate Policies Subcommittee. The purpose of the Third-Party Use 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. Third-party uses of court facilities previously have been subject to interim policies, and the Executive and Planning Committee established the Real Estate Policies Subcommittee in part to develop a proposal for a current policy governing third-party uses.

### Background

**Authority over court facilities and third-party uses**

The council has statutory authority and responsibility over court facilities including the oversight of a third party's use of space at the buildings and grounds of court facilities. The council has the "full range of policy making authority," as well as the responsibility and authority to "[e]xercise

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

full responsibility, jurisdiction, control, and authority as an owner would have,” over trial and appellate court facilities.<sup>1</sup>

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.<sup>2</sup> Under applicable law, a court on its own lacks authority to enter into or manage agreements for any third-party use of court facilities.

Under rule 10.11(c) of the California Rules of Court, the Executive and Planning Committee oversees the council’s policies and procedures regarding court facilities. The Executive and Planning Committee formed the Real Estate Policies Subcommittee in May 2021 to consider and make recommendations regarding the third-party use, disposition, and leasing of court facilities as well as other real estate policies, procedures, and guidelines.

### **Interim policies**

Following the transfer of the approximately 500 court facilities to the judicial branch under the Trial Court Facilities Act of 2002, the Judicial Council faced a myriad of requests from courts for short-term uses of court facilities by third parties and related issues regarding matters such as insurance liability, licensing, fees, and approvals. The Court Facilities Use Working Group (CFUWG) was formed in May 2009 to address these concerns. With input from pertinent stakeholders, the CFUWG ultimately drafted and issued in August 2010 both an *Interim Policy for Third Party Use of Court Facilities* and a *Court of Appeal Interim Policy for Third Party Use of Court Facilities*. The CFUWG intended that a permanent, council-approved policy would replace these interim policies in 2011; however, that did not occur.

### **Third-party uses**

The Judicial Council has now gained over 10 years of experience managing the judicial branch’s portfolio of nearly 450 trial and appellate court facilities including, in consultation with courts, the review and processing of third-party requests to use court facilities. Currently there are approximately 250 agreements for third-party users of court facilities (not counting unlicensed users) and more than 100 event licenses are typically issued each year. Based on this experience and third parties’ extensive use of court facilities, the finalization and adoption of a policy governing third-party uses of court facilities with guidelines reflecting current practices is appropriate.

For reference, examples of third-party occupancies of court facilities (which are generally a long-term type of third-party use) include office space for public entities and nonprofits, self-help and volunteer centers, court cafes, law libraries, news media workstations, and children’s waiting areas. Examples of third-party events (which are generally a short-term or

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<sup>1</sup> Gov. Code, §§ 69204(a) & (b), 70391(a) & (b).

<sup>2</sup> Gov. Code, §§ 69206(a), 70392(a) & (b); see Cal. Rules of Court, rules 10.182, 10.184.

special type of third-party use) at court facilities include ceremonial functions, student mock trial competitions, tours, field trips, educational workshops, trainings, symposiums, and commercial filming.

### **Third-party use policy development**

Throughout 2022, the Real Estate Policies Subcommittee held several informational sessions to review and discuss the development of the Third-Party Use Policy. On May 10, 2023, the Real Estate Policies Subcommittee unanimously approved a recommendation to the Executive and Planning Committee to review the proposal for the Third-Party Use Policy (Attachment A) and for it to be circulated for public comment.

### **The Proposal**

The Third-Party Use Policy addresses third-party uses of court facilities under the Judicial Council's control on behalf of the courts. Such uses include continuous or regularly occurring long-term occupancies, short-term events and activities, and commercial and vendor services. The policy would establish guidelines for the roles of the Judicial Council and courts, the application process, the evaluation of requests, the required agreement, and the assessment of fees for third-party uses of court facilities.

### **Applicable third-party uses and policy exclusions**

The Third-Party Use Policy generally applies to any use of court facilities by a third party. Third parties subject to the policy include any person, private organization or business, public entity, and nonprofit entity.

Specific exclusions from the Third-Party Use Policy include media requests specifically to film courtroom proceedings that are instead governed by rule 1.150 of the California Rules of Court; uses of court facilities by third parties who operate under the Department of Rehabilitation's Business Enterprise Program or Vending Machine Unit and are subject to specific statutory requirements; and other unique circumstances delineated in the policy requiring special treatment.

The Third-Party Use Policy also does not apply to or govern 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 the administration of justice and/or the conducting of court operations. A court's use of its own court facilities for events jointly hosted, sponsored, or put on by the court and a third party (i.e., when the court is not exclusively responsible for the event and a third party is involved) would be treated as a standard third-party use of court facilities subject to the same policy requirements as other third-party events.

### **Court facilities**

The Third-Party Use Policy is intended to capture all components of court facilities that the Judicial Council controls or manages. This includes the court facilities' surrounding curtilage, rooftops, and parking areas as well as vacant and unimproved parcels.

Unlike other public facilities such as city halls and schools, court facilities are considered nonpublic forums by the United States Supreme Court. Thus, court facilities 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.<sup>3</sup> Accordingly, it is important that third-party uses of court facilities preserve the neutrality of courts as a forum free of actual or perceived partiality and free of any appearance of bias, prejudice, or favoritism.

Under the Third-Party Use Policy, the third-party use of court facilities for the placement of telecommunications and other equipment (e.g., antennas, cabling, batteries) would be permitted only in those cases that are absolutely necessary or critical for public welfare or that support court operations. The Third-Party Use Policy also describes the circumstances under which a third party can utilize court facilities for commercial filming purposes.

### **Policy administration**

The Administrative Director, or their designee, would be responsible for overseeing and implementing the Third-Party Use Policy. Judicial Council staff accordingly would be responsible for collaborating with the court’s designated representative when coordinating and contracting with third-party users; determining, implementing, and enforcing all terms and conditions of the third party’s agreement; and assessing and collecting all corresponding fees.

The court is responsible for overseeing third parties’ day-to-day use of court facilities with Judicial Council staff’s support. The court’s designated representative will be the primary point of contact for the Judicial Council’s review and approval of all third-party requests, and will contact Judicial Council staff for assistance with requests, applications, agreement enforcement, and any other aspects of a third party’s use of court facilities.

All third-party requests for the use of court facilities must be submitted to Judicial Council staff via the application prepared by the Judicial Council, which will be revised to be a more user-friendly, all-encompassing form for the ease of all involved. The Third-Party Use Policy delineates the application process and considerations used in evaluating requested uses.

### **Fee structure and assessment**

The Third-Party Use Policy provides for Judicial Council staff’s establishment of a fee structure for third-party uses with consideration of the use, user, and market location along with the court’s needs. The fee structure is to 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.

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<sup>3</sup> *United States v. Grace* (1983) 461 U.S. 171, 178; see *Comfort v. MacLaughlin* (C.D. Cal. 2006) 473 F.Supp.2d 1026, 1028.

## **Alternatives Considered**

The alternative to adopting the Third-Party Use Policy is for the judicial branch to continue operating under the Interim Policies. Doing so, however, would not reflect current, best practices whereas the Third-Party Use Policy would better serve the needs of the courts, judicial branch, and public; would provide for the efficient expenditure of the Judicial Council's and court's resources, funding, and staff time; and would help avoid or reduce the potential for risk, damage, and loss to the judicial branch from third-party uses of court facilities.

## **Fiscal and Operational Impacts**

The Third-Party Use Policy is not expected to result in the Judicial Council or courts incurring additional one-time or ongoing costs. The policy would memorialize and bring consistency to Judicial Council and court operations with respect to third-party uses of court facilities.

### **Request for Specific Comments**

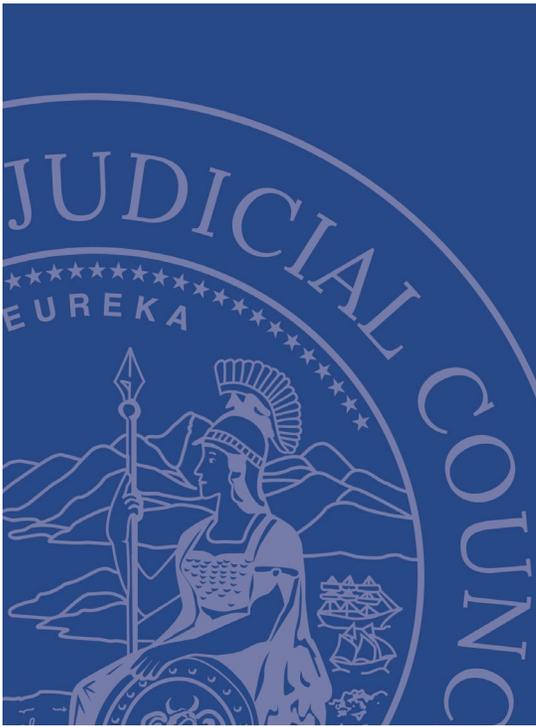
In addition to comments on the proposal as a whole, the committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

## **Attachments and Links**

1. Attachment A: Draft *Policy for Third-Party Uses of Court Facilities*

July 19, 2023



# Policy for Third-Party Uses of Court Facilities

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MONTH 2023

DRAFT



Judicial Council of California

**Policy for Third-Party Uses of Court Facilities**

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**Revision Management**

<b>Revision</b>	<b>Chapter</b>	<b>Revision Description</b>	<b>Revision Date</b>
<b>1.0</b>			

DRAFT

# 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 the *Application for the Use of Court Facilities* developed by Judicial Council staff.
- 2.2 “**Court**” means either the trial or appellate court that occupies and uses the subject court facilities, as applicable.
- 2.3 “**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.
- 2.4 “**Court representative**” means the court’s administrative presiding justice, presiding judge, clerk/executive officer, court executive officer, or their authorized designee.
- 2.5 “**Event**” means a 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 but are not limited to ceremonial functions, mock trials, tours, field trips, educational workshops, trainings, and symposiums.
- 2.6 “**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.
- 2.7 “**Third party**” means any persons, private entity, agency, public entity, nonprofit entity, law enforcement agency, or group. Third parties do not

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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. (*U.S. v. Grace* (1983) 461 U.S. 171, 178; see also *Comfort v. MacLaughlin* (C.D. Cal. 2006) 473 F.Supp.2d 1026, 1028.)

## **Policy for Third-Party Uses of Court Facilities**

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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 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.” (Cal. Rules of Court, rules 10.182, 10.184.)
- 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, § 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.

### **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 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,

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clerk/executive officer, court executive officer, or their authorized designee, as applicable, and to the Chief Administrative Officer of the Judicial Council.

### 4. Application Process

- 4.1 All third-party requests for the use of court facilities must be submitted to Judicial Council staff via the application.
- 4.2 Judicial Council staff will review and process the third party's application in compliance with this policy.
- 4.3 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 handling.
- 4.4 The court representative must review third-party requests for the use of court facilities as part of Judicial Council staff's application process.
- 4.5 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.
- 4.6 Third-party requests for the use of court facilities should be submitted via application with as much advance notice as possible.
- 4.7 Judicial Council staff will not be expected to approve 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.

### 5. Considerations

- 5.1 Judicial Council staff will review and evaluate all applications based on, without limitation, the following considerations:
  - 5.1.1 Whether the space is available for the requested use.

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- 5.1.2** Whether the court consents to the requested use.
- 5.1.3** Consistency with the integrity of the judicial process and the overall constitutional and statutory mission of the judicial branch.
- 5.1.4** Consistency with this policy.
- 5.1.5** Consistency with the judicial branch use of the court facilities.
- 5.1.6** Preservation of a neutral forum that is free of both actual or perceived partiality and any appearance of bias, prejudice, or favoritism.
- 5.1.7** Potential to benefit a sizeable number of persons with an interest in the judicial system.
- 5.1.8** Potential for disruption to or the impairment of proper judicial decorum, court operations, or Judicial Council business including disruptions to regular use or access of the court facilities by court personnel, judicial officers, jurors, litigants, other court users, and members of the public.
- 5.1.9** Risks to the health, safety, or security of the people and property within the court facilities and surrounding areas.
- 5.1.10** Potential 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.
- 5.1.11** Whether the Judicial Council or court are able to sufficiently provide any resources required to permit the requested use (e.g., security, staff escort, or custodial services).
- 5.1.12** Whether the state of repair and condition of the court facilities being requested is suitable for use in general and for the specifically requested use.
- 5.1.13** Whether alterations or other improvements to the court facilities are required to effectuate the requested use.
- 5.1.14** Whether the use is conducted for profit or associated with a private entity or activity other than uses directly relating to court operations or supporting the administration of justice.

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**5.1.15** Activities or uses potentially inconsistent with any constitutional, statutory, other legal requirements or prohibitions, or Judicial Council/court policies and practices.

### **5.2 Requests for Court-Sponsored Events**

**5.2.1** Events involving a third party hosting, sponsoring, or putting on the activity jointly with or cosponsored by a court at the court's facilities (regardless of whether the event relates to the administration of justice) will be treated as third-party requests for the use of court facilities. The third party involved in court-cosponsored events will be subject to the same requirements as other third-party events (i.e., application, agreement, fees, insurance, etc.) as if the court were not involved.

**5.2.2** Events sponsored by a court that entail a court's use of its own court facilities for activities specifically relating to (i) court operations or (ii) the administration of justice without the involvement of a third party (regardless of a third party's incidental/ancillary attendance, participation, or presentation at such events) are outside the scope of and not subject to this policy; unlike court-cosponsored events, no application or agreement is necessary for such court-sponsored events.

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

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

**5.3.2** 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.

**5.3.3** 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, 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.).

### 5.4 Requests for Commercial Filming

**5.4.1** 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 or not-for-profit entity's use of court facilities for filming purposes may be classified as commercial filming; news media requests specifically to film court proceedings governed by rule 1.150 of the California Rules of Court are not considered commercial filming.

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

**5.4.2.1** 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.

**5.4.2.2** 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

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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.

**5.4.2.3** 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).

**5.4.3** 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.

### **6. Required Agreement for Use**

**6.1** 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.

**6.2** A third party may not commence its use of court facilities unless and until the third party has entered into and executed the agreement with the Judicial Council (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.

**6.3** 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.

### **7. Fees**

**7.1** 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.

**7.2** 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.

**7.2.1** 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

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best interests of the Judicial Council, and in light of the unique characteristics of the judicial branch's real estate portfolio.

- 7.2.2** 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.
- 7.2.3** 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.
- 7.3** 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.
- 7.4** 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.
- 7.5** 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

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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.

- 7.6** 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 said request and proceed accordingly.

### **8. Policy Exclusions and Limitations**

- 8.1** This policy does not apply to the following uses:

- 8.1.1** 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 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.
- 8.1.2** Media requests to film courtroom proceedings, which are governed by rule 1.150 of the California Rules of Court.
- 8.1.3** 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.

- 8.2** 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.

- 8.3** 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

## **Policy for Third-Party Uses of Court Facilities**

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third-party use of those court facilities. Such bond documents will take precedence over this policy.

- 8.4** 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:
- 8.4.1** 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);
  - 8.4.2** 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);
  - 8.4.3** Vacant or closed court facilities that are unoccupied;
  - 8.4.4** Third-party use of court facilities incidental to the terms of a services-operations agreement with the Judicial Council or court; and
  - 8.4.5** The temporary use of court facilities associated with the Judicial Council's performance of a capital construction or other project.

**[End of Policy]**