


August 4, 2009

**ADMINISTRATIVE ADVISORY MEMORANDUM**

To: College Presidents  
From: Vice Chancellor Frederick P. Schaffer   
Re: Use of College Facilities

This memorandum replaces our advisory memorandum of June 8, 2005, issued to respond to inquiries concerning the use of college facilities by outside groups.

**I. Board Policy on Facility Use**

On February 28, 2005, the CUNY Board of Trustees adopted a policy on the use of college facilities, a copy of which is attached to this memo. Colleges should comply with the Board policy when making their facilities available to affiliated and outside users, and may adopt supplementary policies dealing with issues not addressed in, but consistent with, the Board policy and this memorandum.

**A. Model Facility Use Agreement**

Attached is a model "Facility Use Agreement" for use with outside groups that wish to use CUNY facilities for short-term events such as job fairs, lectures, conferences, meetings and social events.<sup>1</sup> A college president, or his or her designee, may sign a contract using this model so long as the model has not been modified, except for filling in the blanks. Colleges must contact the Office of General Counsel for advice if they need to modify the model, or wish to enter into a long-term arrangement.

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<sup>1</sup> The Office of General Counsel also provides advice and model agreements relating to other types of facility use including film location agreements, theatre rentals, and antenna and satellite dish placement.

Auxiliary enterprise corporations and other related entities should not enter into facility use agreements unless they are the owners of the facility being provided or have entered into a memorandum of understanding or other agreement with a college authorizing them to administer short-term facility use arrangements on behalf of the college.<sup>2</sup> Colleges may only authorize auxiliary enterprise corporations to enter into short-term facility use arrangements; all long-term arrangements must be entered into by University. If a college signs a facility use agreement that designates a related entity to receive the use fees and other payments, both the college and the related entity should ensure that this assignment of funds is properly recorded in their accounts.

## **B. Rates**

Pursuant to the facility use policy, colleges must have established rates for use of facilities, which shall be available upon request. These may vary depending on the category of user and the space used. For example, there may be separate rates for CUNY users, other non-profit users, and all others.

## **II. Constitutional Restrictions**

### **A. Public Forum**

When applying the facility use policy, colleges need to be mindful of the constitutional restrictions which apply whenever a college leases or otherwise provides for use of its facilities to outside groups. The University is not constitutionally required to allow any outside groups to use college facilities; it is free to close its facilities to all but students, employees and other individuals involved in the University's educational process. However, like most educational institutions, the University has chosen to make certain areas within college campuses available for outside uses. The Board's facility use policy states:

[I]n recognition of its role as an urban public university, the University takes upon itself a special responsibility to permit responsible individuals and groups not affiliated with the University the use of its facilities, at such times as they are not in use for the University's primary educational and research mission, within the parameters of this policy.

Under the First Amendment, the public's right of access to public property, such as CUNY's facilities, depends upon whether the property is considered a "public forum" or a "limited public forum" as those terms have been defined in First Amendment decisions, or

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<sup>2</sup> Pursuant to the Financial Management Guidelines for Auxiliary Enterprise Corporations and Boards, issued by CUNY's Office of Budget and Finance, each separately-incorporated auxiliary is required to enter into a written agreement or memorandum of understanding with its affiliated college that defines their respective roles, including a list of services the auxiliary will provide to the college. If you would like assistance with this document, please contact Jane Davis at the Office of General Counsel (see contact information at the end of this memo.)

property not open to the general public. Where property is considered a public forum, the government may prohibit speech in that forum only where the restriction is narrowly drawn to serve a compelling state interest--a standard which is rarely found to be satisfied by the courts. There are two types of public forums: "traditional" public forums, such as streets and parks, which have historically been used for expressive activity; and "designated" or "limited" public forums, which are created when the government designates a place or channel of communication for use by the public. Although the government is not required to maintain a "designated" public forum indefinitely, once it has been created, it cannot limit access to the forum except to serve a compelling state interest. Accordingly, to the extent that college facilities are public forums or limited public forums, colleges cannot refuse to allow access to that forum, or to any particular group based on the group's identity or the content of the group's speech.

#### **B. Use by Religious Organizations and Religious Use**

A number of questions have been raised regarding religious organizations and religious use. Religious discussion and worship are forms of speech and association protected by the First Amendment. The United States Supreme Court has therefore held that, when an educational institution creates a public forum or limited public forum that is widely open for use by outside community groups, it violates the First Amendment to exclude religious groups or uses.<sup>3</sup> In light of this, colleges should allow facilities to be used by religious organizations and/or for religious uses on the same basis as they do for other organizations and uses.

#### **C. Use by Political Organizations**

We often receive inquiries regarding the use of college facilities by political organizations. The facility use policy does not restrict political organizations from using campus facilities and therefore the facilities should be made available to political organizations on the same basis as they are made available to other groups. Where college facilities are made available to political organizations, it is essential that the organizations pay the standard user fee, which we assume is the "fair market value" of the premises, because any lesser charge may be deemed to be an unlawful contribution by the college to the particular organization or candidate. For additional information on this topic, see our advisory memorandum of October 14, 2004 regarding Use of College Facilities by Candidates for Public Office (copy attached).

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<sup>3</sup> Good News Club v. Milford Central School, 533 U.S. 98 (2001); Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993).

#### **D. Permitted Restrictions**

Note that the facility use policy does not give all organizations equal access to college facilities. Rather, priority is given to groups most closely related to CUNY's educational mission (i.e. academic or professional organizations and other CUNY colleges), followed by non-profit organizations, followed by all other organizations. It is permissible, in the case of a conflict, to give priority to organizations on the basis set forth in Section II.B. of the facility use policy. Aside from such distinctions, however, decisions to make facilities available to certain groups cannot be made on the basis of the group's identity or ideology.

I emphasize that the First Amendment rights of outside groups do not prevent the University and the colleges from adopting reasonable time, place and manner restrictions; the facility use policy contains many such restrictions. For example, the colleges may require the user organization to provide certain basic information regarding the organization and the event. They may limit the particular facilities available for outside uses and the hours those facilities are used. They may require a certain level of security to be provided. They may charge fees and require insurance. These restrictions are constitutional so long as they are applied neutrally to all organizations who seek to use the property.

The following lawyers in my office can assist you with questions regarding the facility use policy and agreements:

CUNY/College facility use agreements – Linda Myles, [linda.myles@mail.cuny.edu](mailto:linda.myles@mail.cuny.edu)

Related entity facility use agreements – Jane Davis, [jane.davis@mail.cuny.edu](mailto:jane.davis@mail.cuny.edu)

Constitutional restrictions – Kathy Raymond, [katherine.raymond@mail.cuny.edu](mailto:katherine.raymond@mail.cuny.edu), or Hilary Klein, [hilary.klein@mail.cuny.edu](mailto:hilary.klein@mail.cuny.edu).

#### Attachments

- c: Chancellor's Cabinet
- Presidents
- Chief Academic Officers
- Chief Administrative Officers
- Chief Student Affairs Officers
- Business Managers
- Directors of Student Activities
- Legal Affairs Designees
- Labor Designees
- Chief Security Officers

## **THE CITY UNIVERSITY OF NEW YORK POLICY REGARDING USE OF COLLEGE FACILITIES**

### **I. INTRODUCTION**

The principal function of the facilities of The City University of New York is to provide a setting to enable the University to carry out its primary mission of education and research. These facilities should not be put to any use that may conflict with, or impede, this mission. However, in recognition of its role as an urban public university, the University takes upon itself a special responsibility to permit responsible individuals and groups not affiliated with the University the use of its facilities, at such times as they are not in use for the University's primary education and research mission, within the parameters of this policy. In making available its space to non-affiliated users, the University in no way takes responsibility for the contents of any program or any controversy engendered by any program presented at its facilities by such users.

### **II. RESPONSIBILITIES AND PRIORITIES**

- A. The use and scheduling of college facilities shall be under the control and supervision of the chief administrative officer, or his or her designee(s), of each college, including the University's central office, law school, and graduate school and university center, as well as its senior and community colleges.
- B. First priority of use of a college's facilities shall be given to college departments, divisions, programs and offices for curricular, administrative and other college purposes. Thereafter, priority shall be in the order set forth below. Colleges are not required to make their facilities available under all five categories, but shall permit use under categories 1 through 4, subject to the provisions of this policy.
  - 1. Users affiliated with the college, including:
    - a. recognized student organizations;
    - b. academic or professional organizations made up of persons on the college staff, provided each such organization is open to all members of the staff of such rank or ranks as are admitted to membership;
    - c. other recognized organizations drawing membership without restriction from the membership of the college staff; and
    - d. auxiliary enterprise corporations, college associations, child care centers, arts centers, foundations and alumni associations.
  - 2. Sister colleges at the University.

3. Other academic or professional organizations.
4. Government agencies and non-profit organizations of an educational, scientific, cultural, social, civic, religious, or similar nature.
5. All commercial, partisan political and other users.

Users in each category shall be treated on a uniform basis. Use by union organizations shall be governed by the applicable collective bargaining agreement with the University.

C. The University shall deny use of college facilities to:

1. Users that refuse to employ at their event the security personnel required by the host college. Users of college facilities must abide by the University's Private Security Policy (adopted by the Board of Trustees on March 21, 1994, Cal. No. 4), as it may be amended, which is incorporated into this policy.
2. Users that previously submitted a false application or that have previously violated the terms of a use agreement.
3. Users that plan to use college facilities in a manner that obstructs or disrupts college operations, interferes with freedom of movement on campus, exposes persons or property to safety hazards or risk of injury, or is unlawful.

D. Fees for the use of college facilities shall be determined as follows:

1. Each college shall establish and make available a fee schedule, approved by the chief administrative officer of the college, for those facilities on its premises that it makes available for use by others.
2. Colleges may vary the fee for a particular facility based on the category of user, e.g., affiliated users, non-affiliated non-profit users, commercial users, partisan political users.
3. Additional services, such as extra housekeeping, special security, catering, technicians, and equipment shall be charged to the user at cost.
4. The amount charged to affiliated users and sister colleges should not exceed the host college's direct costs for use of the facility. If the affiliated user or sister college is co-sponsoring an event with one or more

outside organizations, the amount charged should be limited to that which may be apportioned to the outside organizations and which the host college would charge if it were the co-sponsoring college.

5. Fair market value must be charged for partisan political use.
- E. Use of college facilities may be subject to reasonable time, place and manner restrictions.

### III. PROCEDURES

- A. Applicants for use of a college's facilities shall provide the college with the following information: the name, address and telephone number of the individual or group making the request; whether it is a non-profit or commercial entity; the facilities (and any attendant college services) requested; a detailed description of the proposed use; the number of persons expected to use the facility; the time(s) and date(s) for the requested use; and the amount of any admission fee to be charged and its intended use.
- B. Individuals and groups that have received approval to use a college facility are required to:
1. Comply with all applicable University and college rules and policies, and applicable local, state and federal laws, including but not limited to the Fiscal Handbook for Control and Accountability of Student Activity Fees, the July 14, 2003 regulations issued by the Office of the Senior Vice Chancellor regarding outside groups holding graduation ceremonies at college facilities, the October 14, 2004 Administrative Advisory Memorandum issued by the Office of the General Counsel regarding use of college facilities by candidates for public office, and fire, health and safety regulations.
  2. Assume full responsibility for any loss, damage or claims arising out of their use of the facility.
  3. Pay the appropriate use fee and other charges for the use of the facility and related services.
  4. Indemnify, defend and hold harmless the University, the college, the Dormitory Authority of the State of New York, State of New York, the City of New York and the appropriate University related entity (where applicable), as well as their officers and employees, from any liability arising out of the actions of the user, its agents, employees and invitees, incidental to the use of the facility by the user.

5. Provide evidence of appropriate and adequate insurance protection covering property damage, personal injury, or death arising out of the use of the facility. The chief administrative officer of the college may waive this requirement for government agencies and not-for-profit users upon a determination that there is minimal risk exposure to the college from the event.
  6. Execute a written agreement with the University setting forth these requirements as well as any additional requirements pertaining to the use of the facility.
- C. In all cases, the University and the colleges reserve the right to require and provide, at the user's expense, such security personnel and technical experts as may be needed to insure order and safety on its premises.

Adopted by the CUNY Board of Trustees on February 28, 2005.



**LICENSE AGREEMENT**

**AGREEMENT** made as of this \_\_\_\_\_ day of \_\_\_\_\_, between The City University of New York on behalf of \_\_\_\_\_ College (hereinafter referred to as "College"), located at \_\_\_\_\_ (hereinafter referred to as "Licensor"), and \_\_\_\_\_ with an address at \_\_\_\_\_, for itself, its successors, and/or its legal representatives (hereinafter referred to as "Licensee").

**WITNESSETH**

WHEREAS, Licensee desires to conduct the Event (as hereinafter defined) which requires certain facilities (hereinafter defined as the "Premises"); and

WHEREAS, Licensor has the Premises available on its campus; and

WHEREAS, the parties desire to enter into an agreement whereby Licensor will make the Premises available to Licensee for the Event.

Now, Therefore, Licensor hereby grants Licensee a revocable license, subject to the terms and conditions hereinafter provided, to use the Premises as specified herein.

**I. FACILITIES**

The Licensor hereby grants to the Licensee permission to use the following space at the College (hereinafter referred to as the "Premises"), on the date(s) and at the time(s) specified:

- A. Description of Space: \_\_\_\_\_  
\_\_\_\_\_
- B. Date(s): \_\_\_\_\_
- C. Time(s): \_\_\_\_\_

**II. USE**

The Premises are to be used by the Licensee for the sole purpose of:

\_\_\_\_\_

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(hereinafter referred to as the "Event") and for no other purpose.

### III. FEES/PAYMENT

A. The Licensee agrees to pay Licensor as a fee for such use, the sum of \$ \_\_\_\_\_, as follows:

\$ \_\_\_\_\_ non-refundable deposit, on signing of this Agreement.

\$ \_\_\_\_\_ on or before \_\_\_\_\_.

\$ \_\_\_\_\_ balance on or before \_\_\_\_\_.

B. Time shall be of the essence with respect to such payments. Charges for additional time, space, equipment, or services, not contemplated or ascertainable at the time of execution of this Agreement shall be billed at Licensor's standard rates and shall be payable immediately upon notification by Licensor that such charges are due.

C. All fees and sums due Licensor under the terms of this Agreement shall be payable by money order or certified or bank check drawn on a New York bank. Fees are not refundable. In case all charges and fees due Licensor are not paid prior to dates specified, the Licensor may, at its sole option, either terminate this Agreement and retain all sums previously paid to Licensor, or, without recourse by Licensee, elect to continue this Agreement and deduct such fees and charges due hereunder, or any part thereof, out of the receipts, if any, from the sale of tickets or subscriptions to the Event. Said receipts are hereby assigned by the Licensee to the Licensor to the extent of the amount of any charges due by Licensee under this Agreement, and which may at any time remain unpaid to Licensor.

D. Nothing above shall constitute a waiver of any right that Licensor has to terminate this Agreement hereafter for Licensee's failure to pay what is due or for any other reason, or require the Licensor to furnish possession or the use of the Premises until all payments have been made as described above. If each and every one of the above payments have not been made by Licensee to Licensor, the Licensor may, without further notice, terminate the Event or any further performance by Licensee, or refuse admission to the Premises until such payments have been made. When Licensor elects to continue the Event although all payments may not have been completed, this shall not constitute a waiver of any sums due, or of the date such are due, and upon any further default in payment by the Licensee, the Licensor shall retain any money already paid without liability on its part, and the Licensee shall be and remain liable to the Licensor for any balance remaining to be paid as specified herein.

#### IV. EXISTING CAPACITY NOT TO BE EXCEEDED

The Licensee agrees not to permit entrance of any number of persons greater than the existing capacity of the Premises; that is, \_\_\_\_\_, and no persons shall be permitted to use or occupy any space as standing room.

#### V. COMPLIANCE WITH LAWS/RESTRICTIONS ON USE

A. The Licensee agrees that one of the express conditions of this Agreement is that Licensee will not use nor attempt to use any part of the Premises for any purpose other than that above specified, nor for any use or proposed use which will be contrary to law or be opposed to decency or good morals, or be otherwise improper or detrimental to the reputation of the Licensor or the College, nor in any other respect fail to fulfill its agreements hereunder. Licensee further agrees as an express condition of this Agreement, Licensor in its sole and absolute discretion, if it deems any proposed or existing use to be contrary to law or opposed to decency or good morals or detrimental to the reputation of the Licensor or the College, may forthwith terminate this Agreement, and/or interrupt such use or the Event, and dismiss or cause the audience or participants to be dismissed, and on the exercise by Licensor of any such discretion, all rights of the Licensee hereunder shall immediately terminate. In any such event, the Licensor shall be entitled to any money paid or agreed to be paid to it hereunder; and Licensee agrees that any claim by Licensee for damages arising out of any act of Licensor, its agents, or employees, in the exercise of Licensor's discretion under this clause shall be and hereby is waived by Licensee and there shall be no other liability of any kind on the part of Licensor, and Licensor is totally released by Licensee hereby.

B. The Licensee covenants and agrees to abide by, conform to, and comply with all of the applicable laws, rules, and regulations of the United States and the City and State of New York, and the rules, regulations and policies of the Licensor, and will not do nor suffer to be done anything on the Premises during the term of this Agreement in violation of any such laws, rules, regulations or policies.

C. The Licensee covenants and agrees that it will not sell or serve, nor allow to be sold, brought into, or served on the Premises, any alcoholic beverages or liquors.

D. The Licensee covenants and agrees that no refreshments shall be served, articles sold, or smoking permitted, unless space is designated for such purposes by the Licensor.

E. The Licensee shall not make or allow to be made any alterations of any kind to the Premises or to any appurtenance thereof, and in case any damage of any kind shall be done to the Premises or the appurtenances thereof, the Licensee agrees to pay, in addition to the sums above mentioned, the amount of such damage or such amount as shall be necessary to put the said Premises in as good order and condition as the same were at the commencement of this Agreement. The Licensee shall not do, or permit to be done, upon the Premises anything that

will tend to injure, mar or in any manner deface the Premises and further agrees that no nails, tacks, or screws shall be driven or placed in or on the Premises. All decorations shall be put up without defacing the building in which the Premises are located under the supervision and with the approval of the Licensor.

F. The Licensee agrees to secure in advance of the Event, any and all licenses, certificates and/or permits that may be requisite for any permitted use and to do all other acts necessary to comply with all laws and requirements of the State of New York, the City of New York, or any department, board or authority thereof governing the Event and the use permitted herein, or otherwise applicable to the Premises.

#### VI. SECURITY

All security for the Event shall be under the control and supervision of the College. Unarmed security guards shall be assigned by the Licensor to patrol The Event. In its sole discretion, and at any time before or during The Event, The Licensor may increase the number of security guards assigned to cover The Event, at the cost and expense of Licensee, to be paid immediately upon notification by The Licensor of the charges therefor.

#### VII. INSURANCE

A. At least \_\_\_\_\_ days prior to the Event and throughout the period of this Agreement, Licensee shall procure and maintain public liability and property damage insurance (hereinafter collectively "insurance") through an approved and licensed New York State carrier, as well as any other applicable insurance and provide the Licensor with a policy of insurance and a copy of the receipt for the paid premiums. Insurance shall be in at least the following amounts:

Combined Single Limit \$ \_\_\_\_\_

Aggregate \$ \_\_\_\_\_

B. All policies shall insure the Licensor and/or name it and the College, the State of New York and the City of New York as additional insureds thereunder.

C. To the extent not covered by insurance, Licensee shall be solely responsible for the following:

1. All taxes and remittances to proper authorities;
2. All user fees;

3. Compensation, workers' compensation, and disability insurance of all persons performing services in connection with the Event, except for the Licensor's personnel;

4. Refunds for advance ticket sales;

5. Licenses and permits of every kind, and shall indemnify and hold harmless the parties listed in subparagraph B above against all claims and demands from (a) the unauthorized use or performance of any idea, creation, literary, musical or artistic material or intellectual property works of the performing arts in connection with this Agreement and (b) any art done or words spoken by Licensee, its performers, agents or employees during any such performance.

D. The obligations contained in this Article shall survive the expiration or earlier termination of the Agreement.

E. Licensee agrees that failure to comply with the requirements of this Article shall render this Agreement null and void and any payments made hereunder shall not be refunded.

#### VIII. INDEMNIFICATION

Licensee agrees to indemnify and hold harmless Licensor, the College, the State of New York and the City of New York against all expenses, claims, damages, liabilities, penalties, losses, fines, attorneys fees and judgments arising out of or relating to the use and occupancy of the Premises or relating to this Agreement or the Event.

#### IX. UTILITIES

The Licensor agrees to provide all ordinary electricity, water and heat to the Premises. Licensor does not guarantee the air conditioning equipment.

#### X. DAMAGE TO PREMISES

A. Licensee shall take good care of the Premises, fixtures and appurtenances to preserve the Premises in good order and condition.

B. The Licensor shall not be liable for any damage to any property in the Premises or building (of which the Premises forms a part) at any time caused by any water, rain, snow, steam, gas, or electricity; which may leak into, issue or flow from the pipes or plumbing work or wires, or from any part of the building to which the Premises are a part, or from any other place or quarter; nor shall the Licensor be liable to anyone for any loss of property from or on the

Premises or building, however occurring, or for any damage done to furniture, fixtures, or other effects of the Licensee, by any employee of the Licensor, or any other person.

C. Should the Premises be destroyed either wholly or in part, or damaged by fire or the elements, mob or riot, or use of any part of the Premises, or performance of any part of this Agreement be prevented or interfered with, by strikes or any other cause prior to or during the time for which use of the Premises is licensed, the Licensor may, at its discretion, terminate this Agreement, returning to the Licensee any payments that may have been made to it for the proportionate period of use prevented or interrupted, and the Licensee hereby expressly waives any claims for damages or compensation should the Agreement be so terminated. The Licensor shall not be liable for any loss or damage to personal property or other damage, delay, inconvenience, or annoyance to the Licensee arising from or because of strikes, lock-outs, or other labor difficulties, or for any other reason whatsoever.

#### XI. ENTRY BY LICENSOR

The Licensor, its employees, officers, agents, and representatives, shall have the right at all times to enter any part of the Premises.

#### XII. OBSTRUCTION

The Licensee agrees that no portion of the sidewalks, entries, vestibules, halls, elevators, or ways of access to public utilities of said building shall be obstructed by Licensee or used for any purpose other than for ingress and egress to and from the Premises.

#### XIII. AS IS

The Licensee agrees to accept the Premises "as is" after having inspected the Premises, or waived such inspection, and finds the Premises suitable for the use for which permission is granted herein.

#### XIV. LABOR DISPUTES

The Licensee agrees that it shall be the distinct obligation of the Licensee and of all persons connected with the Licensee under this license, not to involve the Licensor in any labor disputes. In the event that such a labor dispute arises, the Licensor has the absolute privilege and right to cancel this license and Licensee shall remain liable for all payments hereunder.

#### XV. ASSIGNMENT PROHIBITED

Neither this Agreement, nor any of the rights of Licensee hereunder may not be assigned or transferred without the prior written consent of Licensor.

#### XVI. ADVERTISEMENTS

A. Licensee shall not use the name of The Licensor or the College in any advertisement or in any other written or oral communication, except that Licensee may provide the name and address of the College as the location for the Event.

B. Licensee shall not post or exhibit or allow to be posted or exhibited any signs, advertisements, show bills, lithographs, posters, cards or flyers of any description on any part of the Premises without prior written approval of Licensor.

#### XVII. RELATIONSHIP OF PARTIES

Nothing contained herein, nor any act of the parties shall be construed as creating a partnership, joint venture or association of any kind, nor a relationship of landlord and tenant between the Licensor and the Licensee. The only relationship intended to be created by this Agreement is that of independent contractor. Licensee shall in no way represent to others, either orally, in writing, or in advertisements or promotional material of any kind that there is any relationship between Licensee on the one hand and the Licensor and/or the College on the other. The use of the name of the Licensor and/or the College, is permitted only for the purpose of stating where the performance or attraction will take place. The Licensor will accept no deliveries on behalf of the Licensee without prior arrangement.

#### XVIII. FIRE INSURANCE

The Licensee agrees not to do or permit anything to be done or placed in the Premises which will in any way increase the rate of fire insurance on the building or on property kept therein or conflict with the laws and the regulations of the New York City Fire Department, or with any insurance policy upon the building or any part thereof, or conflict with any of the rules or ordinances of the New York City Board of Health.

#### XIX. USE OF EQUIPMENT

The Licensee agrees that if any equipment is used in connection with the Event the type of any such equipment shall be approved in advance in writing by the Licensor, and further agrees that the method of installation and operation of any such equipment shall be subject to the

supervision of the Licensor or its duly authorized representative. The Licensee agrees to supply a qualified operator or operators at its own expense for the operation of such equipment, or at Licensor's option, Licensee may require such equipment to be operated by employees of Licensor at the sole expense of Licensee.

#### XX. RECORDING/BROADCASTING

It is mutually agreed that no audio or video broadcasting and/or recording of the Event will be permitted without the prior written consent of Licensor and it is further agreed that the method of installation and operation of any such machinery shall be subject to the supervision of the Licensor or its duly authorized representative. The Licensee agrees to assume responsibility for, and to defend, indemnify save the Licensor harmless from, any liability upon any claim or cause of action arising out of the broadcasting of any program from the Premises or in any recording or publication of the same, or in any other manner.

#### XXI. NOTICES

All notices hereunder shall be in writing and shall be given personally or by certified mail, return receipt requested, addressed to the party or designated agent as set forth at the beginning of this Agreement. Licensor hereby designates the President of the College as the agent to receive notices intended for Licensor. A copy of all notices sent to Licensor shall also be given in the same manner as provided herein, to the General Counsel, The City University of New York at 535 East 80th Street, New York, New York 10075. Notices shall be deemed given when received, if delivered personally, or upon deposit with the United States Post Office, if mailed.

#### XXII. MODIFICATIONS

Any change, addition, or alteration to this Agreement shall not be binding unless made in writing and signed by the Licensor and approved as to form by the General Counsel of the University.

#### XXIII. ENTIRE AGREEMENT

This Agreement contains all of the terms of the understanding between the parties hereto and shall not be binding until signed by the Licensor and Licensee and approved as to form by the General Counsel to the University.



XXIV. GOVERNING LAW

This Agreement shall be governed by the laws of The State of New York.

XXV. AUTHORIZATION

The parties represent that the persons signing this Agreement have been duly authorized to do so.

**LICENSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSOR: THE CITY UNIVERSITY OF NEW YORK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ COLLEGE

*The City University of New York*  
*Office of the General Counsel and Vice Chancellor for Legal Affairs*  
*535 East 80<sup>th</sup> Street, New York, N.Y. 10021*  
*Phone: (212) 794-5382*  
*Fax: (212) 794-5426*

*Writer's direct phone: (212) 794-5506*  
*Writer's e-mail: frederick.schaffer@mail.cuny.edu*

*Frederick P. Schaffer*  
*General Counsel*

*Jane Sovern*  
*Deputy General Counsel*


*Amy S. Bennett*  
*Jane E. Davis*  
*Marina B. Ho*  
*Abby L. Jennis*  
*Richard Malina*  
*Daphna H. Mitchell\**  
*Linda M. Myles*  
*Paul F. Occhiogrosso*  
*Katherine Raymond*  
*Michael D. Solomon\**  
*Jo-Anne Weissbart*

*\*Associate General Counsel*

October 14, 2004

**ADMINISTRATIVE ADVISORY MEMORANDUM**

To: College Presidents

From: Frederick P. Schaffer 

Re: Use of College Facilities by Candidates for Public Office

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This memorandum addresses questions concerning what is permissible on campus with respect to the use of college facilities by candidates for public office. In this Presidential election season, questions have especially arisen where student groups wish to invite one Presidential candidate or his representative or have candidates for other offices appear on campus.

The courts of this State have recognized that partisan political activities are private, not public functions, and the use of public resources for such purpose is improper. Nevertheless, members of the University community retain the right of all other citizens to free speech, including taking positions on public issues, and as individuals to support and vote for candidates for public office. Internal Revenue Service rulings applicable to tax exempt organizations under Section 501(c) (3) have recognized that while a tax exempt organization is prohibited from using its financial resources, facilities or personnel in support of a particular candidate during an election campaign, a forum which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, is acceptable.

Therefore, consistent with the prior memorandum on this subject issued on December 14, 1999, when a candidate for public office is invited to speak at a campus in connection with his or her candidacy for office, all other recognized candidates should be provided the same or comparable opportunity to speak. This obligation of providing an equivalent opportunity to all candidates may be satisfied either by extending actual invitations to all candidates or having a college policy that provides for equal access to all candidates for public office to speak. In order to satisfy the criteria for equal access through a college policy, the "equal access to political candidates" policy should be available to the public and posted on the college website and should also include the name, address, and phone number of an employee or office to call in the event a candidate wishes an opportunity to speak on the campus. This opportunity should be available to all candidates regardless of whether one has already been scheduled to appear on campus since it would be an unfair burden to require the other candidates to investigate whether their opponents have been invited.

This policy applies to all of the campus constituencies including the administration, faculty, and students. If a student organization chooses to invite one candidate to address the organization or the student body, it must afford any other candidate who asks a comparable opportunity. If a college chooses to continue to require invitations, these invitations may either be extended by the student organization which invites the initial candidate or by another student organization or the college administration.

Finally, college facilities may be rented for partisan political purposes including fundraisers. When this occurs, the political organization or candidates must be charged the fair market value. If the fair market value is not charged, then the college is in the prohibited position of using public resources for partisan political purposes and making the equivalent of a campaign contribution.

- c: Chancellor's Cabinet
- College Presidents
- Chief Academic Officers
- Chief Administrative Officers
- Chief Student Affairs Officers
- Directors of Student Activities
- Legal Affairs Designees
- Labor Designees
- Chief Security Officers