



MEMORANDUM

March 28, 2012

To: Members of the Board of Trustees
From: Nancy L. Zimpher, Chancellor
Subject: Use of University Facilities for Commercial Purposes

Action Requested

The proposed resolution adopts a new policy for the use of University facilities for commercial purposes, and repeals the existing policy.

Resolution

I recommend that the Board of Trustees adopt the following resolution:

Whereas it is in the interest of the State University and compatible with the University's Strategic Plan 2010 and Beyond to expand the use of University facilities for entrepreneurial activities; now, therefore, be it

Resolved that the Policy for the Use of University Facilities for Commercial Purposes, copy of which is attached hereto, be, and the same hereby is, approved; and, be it further

Resolved that the existing policy on the use of University facilities by commercial enterprises, promulgated by Resolution 66-156, adopted May 12, 1966, as amended by Resolution 73-56, adopted February 28, 1973, and by Resolution 79-100, adopted May 23, 1979, be, and the same hereby is, repealed.

Background

The proposed Policy for the Use of University Facilities for Commercial Purposes replaces a restrictive policy first promulgated in 1966 and last amended in 1979. The 1966 policy as amended, applicable to the use of University facilities by private commercial entities and inapplicable to the

University's auxiliary services corporations, authorizes use solely for a defined list of ten activities (e.g. bookstore, food, banking, cultural activities) and for no other activities.

As the University seeks to become more entrepreneurial and to encourage public-private partnerships, the limits of the existing policy have become apparent, and it has become out of sync with our recent and current goals.

The proposed policy encourages the appropriate commercial use of University facilities, and empowers each campus to authorize commercial uses of its facilities so long as the commercial use:

- Advances campus mission and does not interfere with normal campus operations for academic, research and related purposes;
- Advances the University's strategic plan; and
- Does not compete with activities of SUNY auxiliary services corporations, foundations, or other campus-related entities.

The proposed policy requires each campus to adopt a local policy that identifies who is responsible for authorizing commercial use, facilities available for commercial use, costs to be charged for the use of such facilities, and standards that identify when fair market appraisals shall be undertaken to determine use charges.

Use of University Facilities for Commercial Purposes

It is the policy of the State University to encourage the use of capital facilities of the University for appropriate commercial uses. For purposes of this policy, "commercial use" means use for profit or potential profit, including research, by public or private entities.

A campus may authorize commercial use of its capital facilities subject to the following principles:

- Use of University facilities for instruction, research and public service take priority over the commercial use of University facilities.
- Commercial use shall not be in conflict with, and shall advance the mission of, the campus, and shall not infringe upon, delay or conflict with the normal operation of the campus.

- Commercial use shall not be in conflict with and shall advance the University's strategic plan.
- Commercial use shall not have a significant potential for material adverse effect on the reputation of the campus for academic integrity and independence.
- Commercial use shall not compete with or replicate activities of the campus auxiliary services corporation, campus foundation, or other campus-related entities.
- Commercial use shall not violate existing agreements between the campus, its auxiliary services corporation, foundation or other campus-related entities and vendors providing goods or services on campus.
- Commercial use shall conform to federal tax law restrictions on private use of facilities financed by tax-exempt bonds.
- Commercial use shall comply with Federal research guidelines, to the extent applicable.

Each campus shall adopt a local policy that identifies who is responsible for authorizing commercial use, facilities available for commercial use and costs to be charged for the use of such facilities. Each policy shall include standards pursuant to which fair market value appraisals shall be required for commercial use in excess of a certain value or for a period of time in excess of a specified number of years.

A campus shall enter into a written agreement with the public or private entity that authorizes use by the public or private entity for a defined period of time and that requires the entity to:

- comply with the regulations and policies of the University and campus
- indemnify the University from liability arising out of the entity's use
- provide evidence of appropriate insurance protection
- reimburse the University for damage or destruction to University facilities
- provide appropriate compensation to the campus.