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 Rule ID(s): 5761
 File Date (effective date): 7/18/14
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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

The need for this rule arises out of the decision of the United States Court of Appeals for the Sixth Circuit in *McGlone v. Cheek*, a lawsuit filed against The University of Tennessee, Knoxville. The suit challenged Chapter 1720-01-02 ("Access to University Property") and the University's "Speaker Policy." Pursuant to those policies, the University required that persons not affiliated with the University (members of the general public) obtain sponsorship to speak on campus. The plaintiff also sought a preliminary injunction to prevent the University from enforcing Chapter 1720-01-02 and the Speaker Policy. The University filed a motion to dismiss the suit, and the United States District Court for the Eastern District of Tennessee granted the University's motion and denied the plaintiff's motion for a preliminary injunction. The plaintiff appealed, and the Sixth Circuit reversed the District Court's judgment and remanded for further proceedings. The suit has been dismissed pursuant to a Consent Order and Judgment under which the University is permanently enjoined from enforcing Chapter 1720-01-02. Although the suit was filed against The University of Tennessee, Knoxville, the Court's Consent Order and Judgment affects all campuses and institutes in the University of Tennessee system and leaves the entire University without an enforceable policy in this area, which creates an immediate danger to the health, safety, and welfare of students and employees of the University. The new rules will be promulgated in accordance with both the emergency rulemaking procedures and the ordinary rulemaking procedures of the Tennessee Uniform Administrative Procedures Act.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1720-01-12	Use of University Property by Non-Affiliated Persons for Free Expression Activities
Rule Number	Rule Title
1720-01-12-.01	Purpose and Application of This Chapter
1720-01-12-.02	Definitions
1720-01-12-.03	General Rules

1720-01-12-.04	Non-Affiliated Persons Invited to Participate in the Free Expression Activities of Student Organizations and Faculty Members Using Limited Public Forums
1720-01-12-.05	Non-Affiliated Persons Invited to Participate in Free Expression Activities in Connection with an Official Activity of a University Unit
1720-01-12-.06	University Streets and Sidewalks
1720-01-12-.07	Other Free Expression Activities
1720-01-12-.08	Time, Place and Manner Restrictions

The University of Tennessee (All Campuses)
Chapter 1720-01-12
Use of University Property by Non-Affiliated Persons for Free Expression Activities
New Rule

Chapter 1720-01-12 is added to Chapter 1720-01 All Campuses and shall read as follows:

Chapter 1720-01-12 Use of University Property by Non-Affiliated Persons for Free Expression Activities

1720-01-12-.01 Purpose and Application of This Chapter. The purpose of this Chapter is to provide a uniform basis on which the University of Tennessee will regulate the use of University property by non-affiliated persons for free expression activities through reasonable, viewpoint neutral regulations consistent with and in furtherance of the University's principal missions of teaching, research, and service. To the extent of any conflict between this Chapter and Chapter 1720-01-02 (Use of University Property), Chapter 1720-01-08 (Assembly Policy), or Chapter 1720-01-07 (Solicitation on University Property), this Chapter shall control. This Chapter supersedes and replaces the "Speaker Policy" adopted by the University of Tennessee Board of Trustees on June 19, 1969.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.02 Definitions.

- (1) The term "academic freedom" means the academic freedom of a University faculty member described in the University of Tennessee Board of Trustees' Policies Governing Academic Freedom, Responsibility, and Tenure.
- (2) The term "designated public forum" means property that has not traditionally been regarded as open to free expression activities but which has been intentionally opened by the University for the purpose of free expression activities by members of the general public.
- (3) The term "free expression activities" means expression and/or assemblies protected by the First Amendment, including, but not limited to, picketing, distributing printed materials, public speaking, demonstrations, rallies, vigils, parades, and marches.
- (4) The term "limited public forum" means property that has not traditionally been regarded as open to free expression activities but which has been intentionally opened by the University for the purpose of free expression activities by certain groups or opened by the University for the purpose of free expression activities that are dedicated solely to the discussion of certain subjects.
- (5) The term "non-affiliated person" means any person or entity who is not a University unit, student, student organization, employee, or volunteer.
- (6) The term "nonpublic forum" means property that is not a forum for free expression activities.
- (7) The term "printed materials" means publications, handbills, posters, leaflets, petitions, fliers and all other types of written matter.

- (8) The term "public speaking" means:
 - (a) orally and audibly expressing;
 - (b) a message, idea, opinion, concept, principle, or belief;
 - (c) to one or more other persons;
 - (d) in public; and
 - (e) in a manner other than through a private conversation.
- (9) The term "student organization" means a student organization registered with the University in accordance with University rules.
- (10) The term "traditional public forum" means property that by tradition or by government fiat is open to assembly and debate by members of the general public, such as city streets, sidewalks, and parks.
- (11) The term "University" means the campuses, centers, and institutes of the University of Tennessee, and all their constituent parts, and the University of Tennessee system administration.
- (12) The term "University unit" means any academic, administrative, or auxiliary department or division of the University or any other official entity of the University, functioning through University employees acting within the scope of their University employment.
- (13) The term "University property" means all land, grounds, structures, and any other physical property owned, controlled, or operated by the University.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.03 General Rules.

- (1) The University's property is dedicated to the advancement of the University's principal missions of teaching, research, and service. The University's property is not a traditional public forum or a designated public forum and thus is not open for use by non-affiliated persons, either by tradition or by University policy, for free expression activities, except as otherwise expressly provided in this Chapter. Rather, with the exception of the streets and sidewalks described in Section .06, University property consists of a variety of limited public forums and nonpublic forums.
- (2) Free expression activities permitted by this Chapter are subject to the time, place, and manner restrictions in Section .08.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.04 Non-Affiliated Persons Invited to Participate in the Free Expression Activities of Student Organizations and Faculty Members Using Limited Public Forums.

- (1) The University has opened many of its outdoor spaces and indoor facilities as limited public forums for use by students and by faculty members exercising academic freedom. In accordance with well-established First Amendment law, the University does not regulate these free expression activities on the basis of viewpoint.
- (2) A student organization using a University limited public forum may invite a non-affiliated person to participate in the student organization's free expression activities, subject to the terms of the

invitation and subject to the time, place, and manner restrictions in Section .08. The student organization that invites the non-affiliated person shall be responsible for ensuring that the non-affiliated person is knowledgeable about the restrictions in this Chapter.

- (3) A faculty member using a University limited public forum in the exercise of his or her academic freedom may invite a non-affiliated person to participate in the faculty member's free expression activities, subject to the terms of the invitation and subject to the time, place, and manner restrictions in Section .08. The faculty member who invites the non-affiliated person shall be responsible for ensuring that the non-affiliated person is knowledgeable about the restrictions in this Chapter.
- (4) A non-affiliated person invited pursuant to this Section .04 is not a guest of the University. Rather, the non-affiliated person is a guest of the student organization or faculty member who is using the University's limited public forum.
- (5) A student organization or faculty member deciding whom to invite or not invite as a participant in free expression activities in a University limited public forum pursuant to this Section .04 does not exercise the governmental authority of the University or the State of Tennessee (i.e., the student organization or faculty member is not acting as a governmental official deciding who is allowed to use a limited public forum). Rather, the student organization or faculty member is the user of the forum, with First Amendment rights to decide whom to include in the free expression activities. An invitation extended to a non-affiliated person by a student organization or faculty member under this Section .04 shall not be construed to imply approval or endorsement by the University of the views expressed by the non-affiliated person.
- (6) The participation of a non-affiliated person in free expression activities under this Section .04 is by invitation initiated by a student organization or faculty member. Nothing in this Chapter shall be construed to grant a non-affiliated person a right to solicit such an invitation from a student organization or faculty member or require a student organization or faculty member to respond to such a solicitation from a non-affiliated person.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.05 Non-Affiliated Persons Invited to Participate in Free Expression Activities in Connection with an Official Activity of a University Unit.

- (1) A University unit may invite a non-affiliated person to participate in free expression activities in connection with an official activity of the University unit (e.g., lecture, presentation, debate, panel, symposium) if the head of the University unit determines that the non-affiliated person's participation would advance one or more of the University's principal missions of teaching, research, and service. In making such a determination, the head of the University unit is deciding how to use University property to advance the University's mission. That decision is government speech, which is not subject to the restrictions of the First Amendment's Free Speech Clause.
- (2) The participation of a non-affiliated person in free expression activities under this Section .05 is by invitation initiated by a University unit. Nothing in this Chapter shall be construed to grant non-affiliated persons a right to solicit such an invitation or to require a University unit to respond to such a solicitation from a non-affiliated person.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.06 University Streets and Sidewalks.

- (1) Subject to the time, place, and manner restrictions in Section .08, the following University property may be used by a non-affiliated person for free expression activities:
 - (a) A street owned or controlled by the University;

- (b) A sidewalk owned or controlled by the University that runs parallel to a street owned or controlled by the University; or
 - (c) A sidewalk owned or controlled by the University that runs parallel to a street owned or controlled by a municipality, county, or the State of Tennessee.
- (2) Section .06(1) does not include: University access or service roads (i.e., roads with the primary function of providing for the movement of vehicular traffic between a street and a University facility or parking lot); parking lots; ramps; alleys; mass transit loading zones or waiting areas; driveways; or any property with the primary function of providing for the movement of pedestrian traffic, such as sidewalks not described in Section .06(1), pedestrian malls, pedestrian bridges, greenways, and trails.
 - (3) This Chapter does not apply to streets, sidewalks, or other traditional or designated public forums owned by a municipality, county, or the State of Tennessee, the uses of which are subject to compliance with federal, state, or local law, rule, regulation, or ordinance.
 - (4) For purposes of this Section .06, the term "State of Tennessee" does not include the University.
 - (5) Each campus shall publish on its website a map that indicates the streets and sidewalks described in Section .06(1).

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.07 Other Free Expression Activities.

- (1) Subject to the time, place, and manner restrictions in Section .08, a non-affiliated person may communicate a message on "The Rock" at the University of Tennessee, Knoxville.
- (2) Subject to the time, place, and manner restrictions in Section .08, nothing in this Chapter shall be construed to prohibit a non-affiliated person who is engaged in a use of University property permitted under Chapter 1720-01-02 (Use of University Property) from engaging in free expression activities such as a private conversation, gesturing, operating a vehicle displaying written expression, standing, or wearing expressive clothing, accessories, buttons, or stickers.
- (3) Certain University activities and events are open to attendance by non-affiliated persons at a designated place and time, such as athletic contests, plays, lectures, and concerts. Subject to the time, place, and manner restrictions in Section .08, nothing in this Chapter shall be construed to prohibit a non-affiliated person from attending and participating in such an activity or event and participating in free expression activities germane to the activity or event (e.g., cheering at a football game, singing at a concert).
- (4) The University may designate certain University property as available for lease to non-affiliated persons for free expression activities under standard terms and conditions and subject to the time, place, and manner restrictions in Section .08. In the event of any inconsistency between this Chapter and the terms of a lease agreement between the University and a non-affiliated person, the terms of the lease agreement shall control over this Chapter.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-01-12-.08 Time, Place, and Manner Restrictions.

- (1) The University will regulate the time, place, and manner of free expression activities in order to prevent substantial disruption of the advancement of the University's teaching, research, or service missions; prevent substantial disruption of normal or scheduled uses of University property by persons affiliated with the University; facilitate traffic on University property; preserve

residential tranquility for students; preserve an atmosphere conducive to learning; preserve University property and prevent the use of University property contrary to law or University policies; and protect the health, safety, and welfare of persons affiliated with the University and/or persons using University property pursuant to Chapter 1720-01-02 (Use of University Property).

- (2) A non-affiliated person using University property shall not:
- (a) block or substantially impede vehicular, bicycle, pedestrian, or other traffic, as the right of way of streets, sidewalks, and pedestrian malls must be maintained;
 - (b) block or substantially impede entrances or exits to University property;
 - (c) substantially disrupt or interfere with University operations, events, or activities;
 - (d) substantially disrupt or interfere with the ability of a student to sleep or study in a University residence hall between the hours of 10:00 p.m. and 6:00 a.m. during an academic term, or the ability of a student to study in a University library;
 - (e) violate a federal, state, or local law, rule, regulation, or ordinance;
 - (f) engage in speech that is obscene; is defamatory; consists of fighting words; communicates an objectively serious expression of intent to commit an act of unlawful violence to a particular individual or group; or is directed to inciting or producing imminent lawless action and is likely to incite or produce such action;
 - (g) engage in camping in violation of Tennessee law, the Equal Access to Public Property Act of 2012, unless the area on which camping occurs has been specifically designated by the University as available for camping;
 - (h) unreasonably threaten the health or safety of another person; or
 - (i) damage or deface University property, including, but not limited to, grass, shrubs, trees, or other landscaping.
- (3) A non-affiliated person permitted to distribute printed materials under this Chapter shall refrain from littering and may be held responsible for costs incurred as a result of littering.
- (4) A non-affiliated person shall not place any signs, banners, posters, or other displays on or against, attach them to, or write on any structure or natural feature of University property, including, but not limited to, doors, buildings, windows, walls, the surface of walkways or roads, fountains, utility poles, lampposts, waste receptacles, trees, street signs, ash urns, benches, bus stops, University-owned signage, emergency phones, railings, newsstands, and utility boxes. Nor may any chalk, paint, or permanent markings be placed on or against, attached to, or written on such structures or natural features. Signs, banners, posters, and other displays causing ground penetration are prohibited. This Section .08(4) shall not apply to "The Rock" at the University of Tennessee, Knoxville.
- (5) A non-affiliated person shall not distribute printed materials on motor vehicles parked on University property.


Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson				x	
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda				x	
Charles C. Anderson, Jr.	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
Robert J. Duncan			Non-voting		
J. Brian Ferguson	x				
John N. Foy	x				
Crawford Gallimore	x				
Dr. David Golden			Non-voting		
Vicky B. Gregg	x				
Monice Moore Hagler	x				
Raja J. Jubran	x				
Brad A. Lampley				x	
Bonnie E. Lynch	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Karl A. Schledwitz	x				
Don C. Stansberry, Jr.	x				
Betty Ann Tanner	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				
Dr. Thaddeus A. Wilson	x				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: ²⁰¹⁴ 06/19/2014

Signature: 

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel

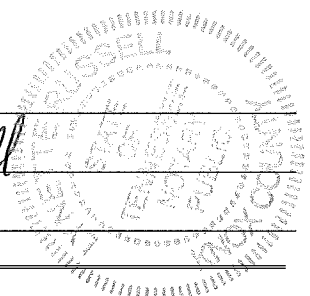
Subscribed and sworn to before me on: 6-20-14

Notary Public Signature:

Walter Russell

My commission expires on:

1-27-15



All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

7-14-14

Date

Department of State Use Only

Filed with the Department of State on:

7/18/14

Effective for:

180

*days

Effective through:

1/14/15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
Secretary of State

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Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This new rule regulates free expression activities on University property by persons other than University students, employees, and volunteers. Because the University is an instrumentality of the State of Tennessee, the rule must conform to the requirements of the First Amendment to the United States Constitution.

Section .01 describes the basic purpose of the rule and explains the relation of the rule to other University rules. Section .01 also notes that this rule replaces the "Speaker Policy" adopted by the University's Board of Trustees on June 19, 1969, a copy of which is included in the meeting materials following the new rule. The Speaker Policy only addressed the subject of outside speakers invited by student organizations.

Section .02 sets forth definitions of key terms used in the rule. The rule uses common First Amendment terms like "traditional public forum," "designated public forum," "limited public forum," "nonpublic forum," and "free expression activities," and defines those terms consistently with First Amendment jurisprudence.

Section .03 sets forth the general rule that University property is not open for free expression activities for persons who are not students, employees, or volunteers. Courts have rejected the proposition that a university must make all of its property equally available to students and nonstudents alike, or that a university must grant free access to all of its property. The University, no less than a private owner of property, has the legal right to preserve the property under its control for the use to which it is lawfully dedicated. Section .03 explains that University property, which consists primarily of its many campus grounds and facilities, is dedicated to the advancement of the University's principal missions of teaching, research, and service. The University's property is not open, either by tradition or by University policy, for the general public's free expression activities, in the sense that many public streets, sidewalks, parks, auditoriums, or meeting rooms are often available in society as public forums for expression. Section .03 also explains that any free expression activity permitted under the rule is subject to the time, place, and manner restrictions in Section .08.

Section .04 recognizes that the University makes available limited public forums for use by its students and faculty members for free expression activities. Section .04 provides that a person not affiliated with the University may be invited by a student organization or a faculty member to participate in those free expression activities (for example, as a speaker, panelist, commentator, or performing artist). In such instances, the invited participant is not a guest of the University, and the invitation is not extended by the University, but rather the invited participant is a guest of the student organization or faculty member. In deciding whom to invite or not invite, the student organization or faculty member is not exercising the governmental authority of the University to decide who is allowed to use the limited public forum. Rather, they are the users of the forum with the First Amendment freedom to decide whom to include in the free expression activities. An invitation extended to a non-affiliated person under Section .04 does not imply approval or endorsement by the University of the views expressed by the non-affiliated person.

Section .05 provides that a person not affiliated with the University may be invited by a University unit to participate in free expression activities in connection with an official activity of the unit (for example, a lecture, presentation, debate, panel, or symposium) if the head of a University unit determines that the person's participation in the activity would advance one or more of the University's principal missions of teaching, research, and service.

Section .06 allows a person not affiliated with the University to use certain streets and sidewalks owned by the

University for free expression activities.

Section .07 allows a person not affiliated with the University to use University property for the certain other free expression activities.

Section .08 establishes reasonable regulations of the time, place, and manner of free expression activities permitted under other sections of the rule. These regulations serve such purposes as preventing substantial disruption of the advancement of the University's missions; preventing the disruption of the use of University property by the University community; preventing the use of University property contrary to law or University policies; and protecting the health, safety, and welfare of persons the University community. For example, a person permitted to use University property for free expression activities is not allowed to block pedestrian traffic; block an entrance to a building; violate the law; disrupt a University activity; or damage the property.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

See Statement of Necessity.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students and faculty of the University of Tennessee are most directly affected by this rule. Although no rulemaking hearing was held, the University's administration solicited comments from student and faculty leaders and received favorable comments concerning the rule. In addition, the student and faculty members of the UT Board of Trustees voted to approve the rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Matthew Scoggins
Assistant General Counsel
University of Tennessee

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Matthew Scoggins
Assistant General Counsel
University of Tennessee

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.