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Sequence Number: 07-15-14  
 Rule ID(s): 5759-5760  
 File Date (effective date): 7/18/14  
 End Effective Date: 1/14/15

# Emergency Rule Filing Form

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

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Assistant General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
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<b>Email:</b>	scoggins@tennessee.edu

**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"). Pursuant to that rule, 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. 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. 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
1720-01-02	Access to University Property
Rule Number	Rule Title
1720-01-02-.01	Restrictions

Chapter Number	Chapter Title
1720-01-02	Use of University Property
Rule Number	Rule Title

1720-01-02-.01	Dedication of University Property
1720-01-02-.02	Authorized Users

The University of Tennessee (All Campuses)  
Chapter 1720-01-02  
Access to University Property/Use of University Property  
Repealed/New Rule

Chapter 1720-01-02 Access to University Property is repealed in its entirety and substituted with the following title and language, so that the new rule shall read:

Chapter 1720-01-02 Use of University Property

1720-01-02-.01 Dedication of University Property. The University of Tennessee dedicates its property to the advancement of the University's principal missions of teaching, research, and service.

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.

1720-01-02-.02 Authorized Users. The following persons or groups may use University property, subject to other University rules, policies, or procedures adopted by a University campus, center, or institute, and federal, state, and local laws:

- (1) University students;
- (2) University employees;
- (3) Members of the Board of Trustees;
- (4) Government officials;
- (5) A person or entity invited by the University, including, but not limited to, a University contractor;
- (6) A person who has been invited by a student, a student organization, or an employee in his/her personal capacity, to join the student, student organization, or employee in the use of University property (e.g., friends and family), but not including the use of University property for free expression activities;
- (7) A person using University property for free expression activities pursuant to Chapter 1720-01-12 (Use of University Property for Free Expression Activities by Non-Affiliated Persons);
- (8) Volunteers of the University, as defined by University policy;
- (9) Prospective students visiting University property and persons accompanying prospective students;
- (10) Alumni visiting University property and persons accompanying alumni;
- (11) A person who has a right of access to University property under Tennessee Code Annotated § 8-50-1001 or any other statutory provisions permitting access to University property;
- (12) Any person or entity engaged in one of the following uses of University property:
  - (a) The use of University property for the purpose of attending a University activity or event that is open to attendance by the members of the general public at a designated place and time (e.g., athletic contests, plays, lectures, concerts);
  - (b) The use of University-owned streets, or University-owned sidewalks bordering University-owned streets, as thoroughfares while traveling from one location to another location;

- (c) The use of University property that is open to the general public (e.g., campus bookstore, library, museum);
- (d) The use of University property consistent with the terms of a lease agreement with the University; or
- (e) The use of University property for a purpose relating to obtaining medical treatment from 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.

1720-01-02-.03 Use of University Property for Free Expression Activities. Chapter 1720-01-12 (Use of University Property by Non-Affiliated Persons for Free Expression Activities) governs the use of University property for free expression activities by persons who are not affiliated with the University. To the extent of any conflict between this Chapter and Chapter 1720-01-12, Chapter 1720-01-12 shall control.

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				

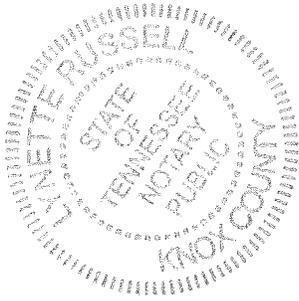
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 06/20/2014

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: Lynette 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.

  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
7-14-14  
 Date

**Department of State Use Only**

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 2014 JUL 18 PM 1:12  
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 SECRETARY OF STATE

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  
 Secretary of State

## **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 rule provides that University property is dedicated to the advancement of the University's principal missions of teaching, research, and service. The law allows the University, like a private owner of property, to preserve the property under its control for the uses to which it is dedicated. The rule describes the categories of persons generally authorized to use University 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

Matthew Scoggins  
Assistant General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE  
(ALL CAMPUSES)**

**CHAPTER 1720-1-2  
ACCESS TO UNIVERSITY PROPERTY**

**TABLE OF CONTENTS**

1720-1-2-.01 Intent 1720-1-2-.02 Repealed

~~1720-1-2-.01 RESTRICTIONS.~~ The University's campuses and facilities shall be restricted to students, faculty, staff, guests, and invitees except on such occasions when all or part of the campuses, buildings, stadia, and other facilities are open to the general public.

~~Authority:~~ *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History:* *Original rule filed September 15, 1976; effective October 15, 1976.*

~~1720-1-2-.02 REPEALED.~~

~~Authority:~~ *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History:* *Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986.*

**CHAPTER 1720-01-02  
USE OF UNIVERSITY PROPERTY**

1720-01-02-.01 DEDICATION OF UNIVERSITY PROPERTY. The University of Tennessee dedicates its property to the advancement of the University's principal missions of teaching, research, and service.

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.

1720-01-02-.02 AUTHORIZED USERS. The following persons or groups may use University property, subject to other University rules, policies, or procedures adopted by a University campus, center, or institute, and federal, state, and local laws:

- (1) University students;
- (2) University employees;
- (3) Members of the Board of Trustees;
- (4) Government officials;
- (5) A person or entity invited by the University, including, but not limited to, a University contractor;
- (6) A person who has been invited by a student, a student organization, or an employee in his/her personal capacity, to join the student, student organization, or employee in the use of University property (e.g., friends and family), but not including the use of University property for free expression activities;
- (7) A person using University property for free expression activities pursuant to Chapter 1720-01-12 (Use of University Property for Free Expression Activities by Non-Affiliated Persons);

(Rule 0000-00-00-.00, continued)

- (8) Volunteers of the University, as defined by University policy;
- (9) Prospective students visiting University property and persons accompanying prospective students;
- (10) Alumni visiting University property and persons accompanying alumni;
- (11) A person who has a right of access to University property under Tennessee Code Annotated § 8-50-1001 or any other statutory provisions permitting access to University property;
- (12) Any person or entity engaged in one of the following uses of University property:
  - (a) The use of University property for the purpose of attending a University activity or event that is open to attendance by the members of the general public at a designated place and time (e.g., athletic contests, plays, lectures, concerts);
  - (b) The use of University-owned streets, or University-owned sidewalks bordering University-owned streets, as thoroughfares while traveling from one location to another location;
  - (c) The use of University property that is open to the general public (e.g., campus bookstore, library, museum);
  - (d) The use of University property consistent with the terms of a lease agreement with the University; or
  - (e) The use of University property for a purpose relating to obtaining medical treatment from 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.

**1720-01-02-.03 USE OF UNIVERSITY PROPERTY FOR FREE EXPRESSION ACTIVITIES.** Chapter 1720-01-12 (Use of University Property by Non-Affiliated Persons for Free Expression Activities) governs the use of University property for free expression activities by persons who are not affiliated with the University. To the extent of any conflict between this Chapter and Chapter 1720-01-12, Chapter 1720-01-12 shall control.

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