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*Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

January 24, 2008

**KATHERINE N. LAPP
EVP FOR BUSINESS OPERATIONS**

Re: Proposed Regulations Governing Conduct of Non-Affiliates

Dear EVP Lapp:

The Academic Council has received comments from the Senate's system-wide committees and divisions regarding UCOP's proposed policy on non-affiliates. UCB, UCD, UCI, UCLA, and UCSB responded to the proposed policy. UCM, UCSC, UCAP, and UCR&J declined to comment on the proposed policy. Generally, commenting divisions noted that the provisions contained in the proposed policy are too broad, especially regarding the definition of 'non-affiliates'. Moreover, criminalizing certain behaviors may restrict freedom of speech and freedom of assembly in various ways. Sufficient and/or appropriate background information is also lacking for the proposed policy. With this in mind, Council requests that you consider the following specific concerns in redrafting of the proposed policy.

Areas of Specific Concern

- **Definition of Non-Affiliates:** The Los Angeles division expressed concerns that one must be a student, officer, or employee of the University of California to be counted as an affiliate. For example, graduate students who let their enrollment lapse for a quarter would be considered non-affiliates, and would be subject to these regulations. There were also concerns about the status of non-affiliated students who volunteer in campus labs, as well as emeriti and docents/volunteers (UCI and UCSB).
- **Freedom of Speech:** The Davis, Irvine, Los Angeles, and Santa Barbara divisions all expressed freedom of speech concerns. Davis remarked that non-affiliates could easily include speakers invited by faculty or student organizations; the policy appears to criminalize all sorts of conduct in which such guests might be involved. The proposal should make it clear that no one would be arrested or prosecuted for a misdemeanor unless a request is first made to leave or desist, thereby making it clear that the offender may be charged with a misdemeanor, and the prohibited activity continues after that request. Also, the requirement that non-affiliates produce identification, as contained in the "Passage on University Property and Proof of Identity," is problematic (UCSB).

Though not specifically requiring affiliates to produce identification as well, an unintended consequence of this regulation is that affiliates would also be asked to produce identification under certain circumstances.

The Los Angeles division suggested [the following introduction to the section on ‘Signs, Posters, Placards, Banners, Handbills, Displays/Structures’ (p. 5) in order to strengthen the academic freedom of non-affiliates who speak on campus:

“Non-affiliates' ability to speak on campus -- for instance, by leafleting, by asking questions at speeches and debates, and by participating in peaceful and orderly rallies and demonstrations -- adds to the vibrant exchange of ideas at the university, and enhances the intellectual life of students, staff, and faculty. At the same time, reasonable content-neutral restrictions on non-affiliates' speech can help make sure that events remain peaceful, and can help the university preserve university property for the functions for which it is primarily dedicated.”

- Signs, Posters, Placards, Banners, Handbills, Displays/Structures: The Davis division notes that this section states that "review under this section shall not be made on the basis of content." However, in subsequent provisions (such as #4 "Posting"), it is unclear that decisions shall not be based on content. This should be corrected so that all review is content neutral. Finally, the basis on which the Designated University Official will grant or deny permission to carry large signs, make postings, distribute materials, or erect structures or displays needs to be articulated.
- Discretionary Powers of the University: The Santa Barbara division raised a number of questions regarding the discretionary powers of the University in enforcing this policy. These include limitations on such powers if a member of the University community believes that one of the regulations is being violated; their enforcement on a consistent basis; and their legal and judicial implications (e.g., how legally binding are they in a judicial setting?).
- Artistic Expression: Under the provisions covering nudity, the exemption for “individuals or groups participating in visual or performing arts productions” should explicitly include performances conducted under the auspices of auxiliary programs, such as Cal Performances.

Thank you for the opportunity to comment on this proposed policy. For your reference, the responses received are attached. Please do not hesitate to contact me if you have any questions.

Sincerely,



Michael T. Brown, Chair
Academic Council

Copy: Academic Council
María Bertero-Barceló, Senate Director

Encl: 1



December 10, 2007

MICHAEL T. BROWN
Chair, Academic Council

Subject: Proposed regulations governing conduct of non-affiliates

Dear Michael,

On December 3, 2007, the Divisional Council of the Berkeley Division (DIVCO) discussed the proposed regulations governing the conduct of non-affiliates. DIVCO found the proposed guidelines to be reasonable, but noted one point that should be clarified. Under the provisions covering nudity, the exemption for "individuals or groups participating in visual or performing arts productions" should explicitly include those performances conducted under the auspices of auxiliary programs, such as CalPeformances. On occasion dance companies visiting Zellerbach Hall have exposed the female breast, of course, in an entirely tasteful way. I'm sure the University has no intention of interfering with artistic expression. With this clarification, DIVCO approved the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Drummond', written over a light gray rectangular background.

William Drummond
Chair, Berkeley Division of the Academic Senate



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ONE SHIELDS AVENUE
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December 17, 2007

MICHAEL BROWN, CHAIR

Assembly of the Academic Senate
Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Re: System-wide Review of Proposed Regulations Governing Conduct of Non-Affiliates

The subject proposal was distributed to all of the Davis Division standing committees and the Faculty Executive Committees of the schools and colleges. Comments were received from the Committee on Academic Freedom and Responsibility as follows:

"The Committee on Academic Freedom objects to various aspects of the proposed regulation of non-affiliates. The language in the regulation is overly broad, especially in light of the fact that violation of the regulations is punishable as a misdemeanor. From an academic freedom perspective, the most problematic portions of the regulation are the requirement for prior approval for gatherings and demonstrations (p.2 of the regulations) and the rules governing signs, posters, etc. (pp.5-6). Non-affiliates could easily include guests of affiliates or speakers invited by faculty or student organizations, and the rules appear to criminalize all sorts of conduct that such guests might be involved in. To address concerns that prior approval may be difficult to obtain, and the need for it not widely known, the proposal could be modified to make it clear that no one would be arrested or prosecuted for a misdemeanor unless a request was first made to leave or desist, making the misdemeanor possibility clear, and the prohibited activity continued after that request.

Furthermore, while the "Requirements for Size" provision governing signs, posters, etc. states that "review under this section shall not be made on the basis of content," subsequent provisions (such as #4 "Posting") do not make clear that decisions shall not be based on content. The proposal should be amended to add a general provision that "implementation and enforcement of these regulations shall not be based on content."

The regulations are also problematic in that they fail to articulate the basis on which the Designated University Official will grant or deny permission to carry large signs, make postings, distribute materials, or erect structures or displays. Specific, content-neutral criteria should be included.

The Committee further notes that other prohibitions in the proposal are also unnecessarily broad. For example, various prohibitions might be enforced against members of the general public using campus grounds for innocent recreational purposes. A family on a picnic may bring a knife longer than 2.5 inches to cut food, or a young boy may climb a tree for fun without damaging it. Or a person stopping to briefly visit a campus with a trailer in tow might run afoul of the prohibition against "[b]ring[ing] onto University property any unauthorized carts, carriages, trailers . . ." In all these cases, the regulation would criminalize perfectly innocent conduct. At the very least, those involved should be warned of the possible misdemeanor and asked to leave or desist, rather than being charged for a misdemeanor for an activity that they may not have suspected would be one."

The Davis Division of the Academic Senate is able to support the proposed regulations if the aforementioned suggestions and concerns are addressed in the final version of the regulation.

Sincerely,

A handwritten signature in cursive script that reads "Linda F. Bisson".

Linda F. Bisson
Professor of Viticulture & Enology
Chair of the Davis Division of the Academic Senate



Office of the Academic Senate
2300 Berkeley Place South
Irvine, CA 92697-1325
(949) 824-2215 FAX

December 5, 2007

Michael Brown, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Systemwide Review of Proposed Regulations Governing the Conduct of Non-Affiliates

At its meeting of December 4, 2007, the Irvine Division Academic Senate Cabinet reviewed the proposal by the Office of the President regarding regulations governing the conduct of non-affiliates on University property. Cabinet members raised several concerns:

- Members noted the lack of background information in the proposal, specifically what issue prompted the creation of the new regulations.
- Some members questioned the need for the regulations, especially if pre-existing policies are in place. Also, there was concern regarding the potential for constitutional challenges including free speech.
- The proposal does not include language regarding non-affiliated students who volunteer in labs. Moreover, UCI was concerned for the implications of this policy on the residents in faculty housing.

The Cabinet agreed that it was not willing to consider this policy as it criminalizes certain actions based on inadequate information related to the University's purpose for implementing such a restrictive policy. The Cabinet unanimously endorsed the motion to decline to opine on the proposed regulations governing the conduct of non-affiliates.

A handwritten signature in black ink, appearing to read "Tim Bradley".

Tim Bradley, Senate Chair

C: María Bertero-Barceló, Executive Director, Academic Senate



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January 3, 2008

Michael Brown
Chair of the Academic Council

In Re: *New UCLA Response to Proposal on Non-Affiliates*

Dear Michael,

This letter supersedes the UCLA response to the Proposal on Non-Affiliates dated December 12, 2007. Since then, the Executive Board, which speaks for the Division on such matters, has also had an opportunity to review and opine on the matter and seeks to be on record and unanimously endorsing the views of the Graduate Council and Academic Freedom. As you may recall, I had specifically requested that the Graduate Council (GC), Undergraduate Council (UgC), and Academic Freedom Committee (AFC) opine. While the UgC declined to opine, finding no direct relevance to its charge, GC and Academic Freedom both outlined concerns with the proposal as written. I have attached their responses for your consideration. Given this, the UCLA Division will support the proposal contingent upon revisions as outlined below.

- The Executive Board and GC opined that the definition of “non-affiliate” is too broad (page 1). “As written, one must be a student, officer, or employee of the University of California to be counted as an affiliate. At any given time, the Graduate Council estimates that there are numerous graduate students on campus who, perhaps due to questions of inadequate funding or other extenuating circumstances, let their enrollment lapse for a quarter. Such students would be counted as non-affiliates and would, therefore, be required to leave the campus between the hours of midnight and 6 AM, unless otherwise posted by the campus (page 3). Given the varied study and research schedules of graduate students, Council members find this an unacceptable consequence of the proposed policy. Moreover, the Council is concerned that it is not in the best interests of the University to designate official volunteers (i.e., the Board of Directors for the UCLA Foundation or the Alumni Association, major donors, invited guests, vendors, etc.) as ‘non-affiliates.’

The GC recommends amending the definition of non-affiliates to be inclusive of the full range of the University community, especially with regard to graduate students.”

- The Executive Board and AFC recommends language to introduce the section “Signs, Posters, Placards, Banners, Handbills, Displays/Structures” states as follows (Page 5): “Non-affiliates' ability to speak on campus -- for instance, by leafleting, by asking questions at speeches and debates, and by participating in peaceful and orderly rallies and demonstrations -- adds to the vibrant exchange of ideas at the university, and enhances the intellectual life of students, staff, and faculty. At the same time, reasonable content-neutral restrictions on non-affiliates' speech can help make sure that events remain peaceful, and can help the university preserve university property for the functions for which it is primarily dedicated.”

Please do not hesitate to contact me should you have any questions. And again, thank you for the opportunity to opine.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth L. Bjork". The signature is written in black ink on a light-colored background.

Elizabeth Ligon Bjork
UCLA Academic Senate Chair

Cc: María Bertero-Barceló, Systemwide Senate Executive Director
Jaime Balboa, UCLA Senate CAO



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Joel Michaelsen, Chair
Claudia Chapman, Executive Director

December 12, 2007

Michael Brown, Chair
Academic Council

RE: Proposed Conduct of Non-Affiliates Policy

Dear Michael:

The Santa Barbara Division has completed its review of the proposed policy governing conduct of non-affiliates. The Undergraduate Council, Council on Faculty Issues and Awards, and Executive Council members were asked to review and comment. The Division recognized the importance of providing a safe environment for faculty, staff and students and providing the means to achieve those ends. In addition, we recognized and appreciated the ability of current university administrators to respond to the challenges faced by a large public university in a prudent manner, and agree that a comprehensive policy governing non-affiliate conduct is necessary. However, some concerns and questions were raised on this draft.

The definition of non-affiliates brought up concern as to where emeriti and docents/volunteers fit in. If they are not presently employees of the University, one must conclude that they are non-affiliates by this definition. Is this the intent?

Other parts of the proposed regulations could have a chilling effect on the legitimate conduct of faculty, staff and students. For example, in the second paragraph in the section entitled "Passage on University Property and Proof of Identity," non-affiliates cannot refuse to provide identification when the individual is engaged in conduct that can or will interfere "with the peaceful conduct of the activities of the campus." The unintended consequence of this regulation is that affiliates must also provide identification in order to distinguish themselves from non-affiliates under such circumstances. Requiring faculty, staff or students to provide identification in the exercise of their constitutionally protected rights to free speech or assembly could be seen as threatening if their legitimate activities conflicted with the views of the administration.

The issue was brought up as to whether the discretionary powers of the University would be limited if a member of the University community believes that one of the regulations is being violated. Do the regulations create a presumption that administrators will enforce them on a consistent basis? In what ways do these regulations legally bind the University to respond based on perceptions by affiliates of potential threats?

By the same token, the comprehensive nature of the proposed regulations brought up worry that non-judicial enforcement of the regulations would sweep benign and non-threatening actions off campuses, diminishing the vibrancy of the public spaces.

Finally, how legally binding are these regulations in a judicial setting? In spite of the disclaimer in the first paragraph, it appears that a non-judicial enforcement of these rules could potentially impact freedom of assembly and speech.

Sincerely,

A handwritten signature in black ink that reads "Joel Michaelsen". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joel Michaelsen
Divisional Chair

Cc: Executive Council