Ball State University
Commercial Activity on University Property

Please direct questions about this policy to the Vice President for Business Affairs

Ball State University (the "University") values the constitutional rights to engage in free speech and to assemble for peaceful purposes. The University must also preserve its Campus and Facilities for their teaching, learning, research, and administrative purposes while providing a safe Campus environment and preserving the Campus aesthetic.

The University's Campus and Facilities are dedicated to the fulfillment of the University's educational mission and are provided for the purpose of fostering and accommodating that mission. The University may from time to time permit certain portions of its Campus or Facilities to be used by certain persons for Commercial Activity subject to specific regulations or limitations.

This policy governs all Commercial Activity on the University's Campus and in its Facilities except that it does not apply to (1) activities of the University itself, (2) activities of the University's employees or agents acting within the scope of their approved agency, or (3) activities of persons acting under a contract, lease, or license with the University.

1. Definitions

1.1. Campus: All Facilities and land owned, leased, or under the control of the University.

1.2. Campus Reservationist: The University employee who reserves space in a particular building or outdoor space. Recognized Student Organizations typically will go through the Student Center Facilities Coordinator regardless of the venue. Other persons typically will reserve space through a different employee (e.g., the Director of Emens Auditorium and Pruis Hall, the Special Events Manager for Sports Facilities Management, or the Facilities Accounting/Space Coordinator for buildings and/or outdoor space not served by an assigned reservationist).

1.3. Commercial Activity: Any activity that (1) proposes a commercial transaction, (2) serves an economic motivation by advertising a product or service, or (3) serves an economic motivation by promoting a company, product, or service's brand awareness or brand loyalty.

1.4. Distribution Activity: Giving out printed materials, goods, or services without requesting, directly or indirectly, a donation or other consideration in return.

1.5. Facilities: All buildings, other structures (e.g., parking garages, stadium, light posts, statues), or defined outdoor spaces (e.g., University Green, the North Quad, Lafollette Field, vendor tables at the Scramble Light, Noyer Bowl) owned, leased, or under the control of the University.

1.6. Fronting: Permitting a Non-Affiliated Person to use University Facilities and services under the guise that the activity is University-sponsored or the use by any Non-Affiliated Person of any University-Affiliated Person or any student organization to help sell a

product or service. For example, a company cannot ask an individual student or a student group to reserve space on Campus simply for the company to sell its product or service even if the student or organization receives a portion of the profits.

1.7. **Non-Affiliated Persons:** Any person, organization, or other entity that is not a University-Affiliated Person.

1.8. **Non-Commercial:** When referring to expressive conduct, "Non-Commercial" means all expressive conduct that is not Commercial Activity.

1.9. **Recognized Student Organization:** A student organization properly registered and recognized by the Office of Student Life.

1.10. **University:** Ball State University, inclusive of its University Departments.

1.11. **University-Affiliated Persons:** All students, faculty, employees, or agents of the University.

1.12. **University Department:** A Ball State University school, college, department, unit, institute, center, or officially recognized affiliated entity.

2. General Prohibition

Except as expressly authorized in this policy, Commercial Activity is not permitted on Campus or in any University Facility.

3. Permitted Commercial Activity at Beginning of Calendar Sessions

Commercial Activity, including the use of tables, booths, or other apparatus, is permitted on Campus between 7:00 a.m. and 11:00 p.m. during the seven calendar days preceding the fall and spring semesters and first summer session and during the first day of the fall and spring semesters and first summer session.

That Commercial Activity is subject to the following regulations:

3.1. It must take place in the area designated by the University for Commercial Activity.

3.2. Space must be reserved on a first-come, first-served basis by registering with the Student Center Campus Reservationist at any time during the eight-week period preceding the desired use.

3.3. The University will impose rental fees in a content-neutral manner.

4. Other Permitted Commercial Activity

4.1. A Recognized Student Organization may engage in Commercial Activity incidental to an event subject to the following regulations.

4.1.1. The Commercial Activity must be incidental to a larger scheduled event of a Recognized Student Organization and must be provided under contract with the

Recognized Student Organization for the convenience of those attending the event (e.g., food sales at a philanthropic event).

4.1.2. The Commercial Activity is conducted in the name of the Recognized Student Organization without promoting the name of any Non-Affiliated Person or the trade name of any Non-Affiliated Person's goods or services.

4.2. Occupants of offices, residence hall rooms, and family apartments may invite a person to their office, residence hall room, or apartment for Commercial Activity within the privacy of the occupant's office, residence hall room, or apartment subject to the following regulations.

4.2.1. No door-to-door Commercial Activity is permitted within offices, residence halls, or family housing apartments.

4.2.2. Invited Commercial Activity within an office may not interfere with any University employee's performance of job duties.

4.2.3. Invited Commercial Activity within residence hall rooms or family apartments may not interfere with another resident's ability to sleep or study. Such activity also remains subject to any rules and limitations set forth by Housing and Residence Life.

4.3. Commercial Activity by a Person connected with a performance or special event is permitted only under contracts reviewed and/or drafted by the University's Director of Contracts and approved by the Vice President for Business Affairs and Treasurer or a designee.

4.4. Commercial Activity by a Recognized Student Organization in conjunction with a Non-Affiliated Person for the purpose of raising funds for the Recognized Student Organization's treasury may be approved on a limited basis by the Vice President for Business Affairs and Treasurer or a designee and the Vice President for Student Affairs or designee if the proposed activity meets the following criteria:

4.4.1. The activity complies with all restrictions applicable to Non-Commercial expressive conduct in the University's *Non-Commercial Expressive Activity and Assembly on University Property* policy and does not violate any other University policy.

4.4.2. The activity will not materially impact University revenue streams or violate existing University contracts.

4.4.3. The activity does not involve material liability risks or, if it does, appropriate insurance has been obtained.

4.4.4. A permit shall be issued and displayed as directed by Facilities Planning and Management on any Campus property occupied by the business.

4.4.5. The business cannot be operated from residence hall rooms or a family apartment unless an exception is granted, in writing, from the Office of Housing and Residence Life.

4.5. For the purpose of promoting an educational entrepreneurial experience, enrolled full-time students in good standing may conduct Commercial Activities upon prior written approval by the Vice President for Student Affairs, or a designee, and the Vice President for Business Affairs and Treasurer, or a designee. Such activities will be approved only if they meet and abide by the following criteria:

4.5.1. The activity complies with all restrictions applicable to Non-Commercial expressive conduct in the University's *Non-Commercial Expressive Activity and Assembly on University Property* policy and does not violate any other University policy.

4.5.2. The activity will not materially impact University revenue streams or violate existing University contracts.

4.5.3. The activity does not involve material liability risks or, if it does, appropriate insurance has been obtained.

4.5.4. A permit shall be issued and displayed as directed by Facilities Planning and Management on any Campus property occupied by the business.

4.5.5. The business cannot be operated from residence hall rooms or a family apartment unless an exception is granted, in writing, from the Office of Housing and Residence Life.

5. Limitations Governing Permitted Commercial Activity

Notwithstanding anything in this policy to the contrary, the following limitations apply to Commercial Activities permitted under this policy.

5.1. The restrictions applicable to Non-Commercial expressive activity in the University's *Non-Commercial Expressive Activity and Assembly on University Property* policy apply to all Commercial Activity approved under this policy.

5.2. No Commercial Activity may violate any existing University contract or license.

5.3. Commercial Activities may not compete with existing University contracts or revenue streams. For example, no goods or services may be made available for sale if similar goods or services are available for sale on University property by the University or persons under contract with the University. University or University contractor sales typically take place at the Emens Auditorium, John E. Worthen Arena, L.A. Pittenger Student Center, Pruis Hall, Scheumann Stadium, and Sursa Hall.

5.4. Commercial Activities must comply with the *Tobacco-Free Campus Policy*.

5.5. Proof of liability insurance and an indemnification agreement must be submitted to, and approved by, the Office of Risk Management before any Facility or property may be used for Commercial Activities.

5.5. To reduce the risk of liability and maintain quality, food safety, and control, all food and beverages sold and provided on Campus and in any University Facility must be supplied by University Dining, University Catering, a University-contracted third-party food-service provider, or as approved by the University under the *Food Safety Policy for Temporary Food Service*.

5.6. Alcoholic beverages may be served only if approved under the *Procedure for Scheduling Alcohol Related Events*. Any approved alcoholic beverages must be provided by University Catering.

5.7. Commercial Activity may not include sound-amplification equipment unless the activity is sponsored by the President or Executive Cabinet or is incidental to an official University-sponsored event.

5.7.1. The amplification must comply with all restrictions on Non-Commercial expression in the University's *Non-Commercial Expressive Activity and Assembly on University Property* policy, including, but not limited to, restrictions on sound amplification.

5.7.2. Use of amplification must be approved in writing and in advance by the Vice President for Business Affairs and Treasurer or a designee. Alternatively, the Vice President for Student Affairs and Dean of Students, or a designee, may approve amplified sound and/or music for Recognized Student Organizations' events.

5.8. No alterations may be made to University property unless authorized in advance by the Vice President for Business Affairs or a designee.

5.9. If a circumstance beyond the University's control requires the University to cancel a previously scheduled event, it may do so without penalty unless otherwise specified in a written contract. If an event is canceled, the Campus Reservationist will contact the primary contact to discuss the cancelation and opportunities for rescheduling.

5.10. Fronting is prohibited.

5.10.1. Any University-Affiliated Person, University Department, or student organization that reserves or permits the use of University property or services by a Non-Affiliated Person under the guise that the activity is a University-sponsored program or event is participating in prohibited Fronting.

5.10.2. Non-Affiliated Persons must schedule use of Facilities through the appropriate Facility manager and must pay for and use the space and any services in accordance with applicable University policies and fee schedules.

5.10.3. The Vice President for Business Affairs and Treasurer or a designee, in consultation with the Vice President for Student Affairs or a designee when student groups or organizations are involved, will determine whether particular conduct amounts to Fronting.

6. Facility Reservations and Fees

6.1. The University Facilities listed below have dedicated purposes and require a reservation (and may require payment of rental fees) for any other uses. Information about reserving University Facilities may be obtained by contacting the Campus Reservationist.

6.1.1. Alumni Center

6.1.2. All Athletic Facilities

6.1.3. Recreation Services

6.1.4. Emens Auditorium and Pruis Hall

6.1.5. L.A. Pittenger Student Center

6.1.6. Residence Halls Multipurpose Rooms

6.1.7. Multicultural Center Multipurpose Room and Conference Room

6.1.8. University Dining (The Atrium)

6.1.9. Brown Family Amphitheater and Lawn

6.2. The University reserves the right to substitute an alternative space for any facility reserved if necessary to conduct official University business or special programs.

6.3. Tables and chairs may be reserved through Purchasing Services / Central Stores.

7. Sanctions

The University may sanction individuals or groups for violating this policy, including engaging in conduct that materially and substantially disrupts the protected expressive activity of another employee, student, student organization or contractor of the University. Possible sanctions may include:

7.1. Immediate cessation of the Commercial Activity;

7.2. Disgorgement of any profits earned in violation of this policy;

7.3. Removal from Campus;

7.4. Suspension of the sponsoring individual or group from hosting, or participating in, future activities on Campus;

7.5. Placing a Recognized Student Organization on probation or withdrawing recognition;

7.6. Assessment of costs for expenses or damages incurred by the University;

7.7. Suspension or revocation of scheduling privileges;

7.8. Disciplinary action up to and including dismissal from the University; and/or

7.9. If applicable, criminal liability.

Any questions concerning the interpretation or application of this policy shall be submitted to the Vice President for Business Affairs and Treasurer's designee for resolution. The question shall be submitted in writing by the person affected and must set forth all facts and other information that the person believes to be relevant to the resolution of the question. The Vice President for Business Affairs and Treasurer's designee may conduct such investigation of the circumstances involved as deemed desirable and shall render a decision in writing. Any person who is informed that the person's conduct violates this policy shall immediately cease the violation. An appeal may be taken from the interpretive decision made under this paragraph.

8. Appeals

Appeals may be taken under this policy subject to the following procedures:

8.1. University actions may be appealed under this policy as follows.

8.1.1. Any sanction issued under this policy may be appealed to the Vice President for Business Affairs and Treasurer or a designee.

8.1.2. Interpretive decisions issued under Section 8 of this policy may be appealed to the Vice President for Business Affairs and Treasurer or a designee.

8.1.3. The removal of any content from University information-technology systems under the Information Technology Users' Privileges and Responsibilities policy may be appealed to the Vice President for Information Technology and Chief Information Officer.

8.2. Any appeal must be submitted in writing within ten (10) business days after the challenged sanction was imposed or the challenged interpretive decision was issued.

8.3. The written appeal must include the name(s) and address(es) of the individual(s) or group(s) that received the challenged sanction or interpretive decision, the nature of the action being appealed, and the grounds for the appeal.

8.4. Review of the appeal shall include the following:

8.4.1. The materials submitted by the appellant;

8.4.2. The basis or grounds for the University action, and any related information; and

8.4.3. Any additional information requested by the University official or designee deciding the appeal.

8.5. A final decision on the appeal shall be issued in writing within five (5) business days after the date the written appeal is filed, unless there is good cause for delay. The person filing the appeal will be notified in writing of any delays.

9. Amendment

This policy may be amended, added to, or revoked, in whole or in part, by the President of the University as the President from time to time may deem appropriate. Any such amendment, addition, or revocation shall be effective as determined by the President and does not require approval by the Board of Trustees unless the action is inconsistent with any then-existing policy of the Board of Trustees.

10. Disclaimer

In making its Campus available for use under this policy, the University assumes no obligation or responsibility for the activities of any Non-Affiliated Person or any University-Affiliated Person engaged in Commercial Activity on Campus. The University reminds all users to review and comply with applicable laws, including those concerning safety, libel, slander, defamation, and obscenity.

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