October 16, 2017

STEPHEN C. SUTTON
Interim Vice Chancellor for Student Affairs

Subject: Major events hosted by non-departmental users (interim policy)

Dear Vice Chancellor Sutton,

On September 25, 2017, Divisional Council (DIVCO) discussed the interim policy governing major events hosted by non-departmental users, informed by the commentary of the committees on Academic Freedom (ACFR), Demonstrations and Student Actions (DSA), Graduate Council (GC), and Undergraduate Council (UGC). The committee comments are appended in their entirety for your consideration.

Recent occurrences on campus underscore the need to promulgate clear, consistent policies for managing major events at Berkeley. While we appreciate this attempt to codify clear and transparent rules for hosting events on campus, the discussion in DIVCO and in the committee reports highlight a number of concerns, and offer suggestions to improve the interim policy, as the campus works toward a permanent one.

General procedures
DIVCO agreed with ACFR that the designation of "major event" should not be construed as a punitive measure:

> … we encourage the policy to explicitly state that designation as a "Major Event" is not punitive or intended to restrict a non-departmental user's ability to execute the event. Indeed, classification as a "Major Event" ensures that the University is able to assess, and expend, the resources that will be necessary to ensure that the event takes place as scheduled.

Further, as noted in the ACFR commentary, in order to ensure that the policy is applied fairly and consistently, we recommend making all provisions mandatory:

Some of the requirements are aspirational and use the word "preferably" (see #4 and #12), while others appear to be mandatory (see #5). If the purpose of the policy is to clearly delineate criteria that can be applied in a uniform and even-handed manner, then we suggest using mandatory language for all of the requirements in this section.

Our discussion underscored DSA's point about time deadlines for notifications and applications:

It would be valuable to carefully scrutinize the deadlines and make them as close as practically possible to the events. Deadlines that are a bit far (e.g. 8 weeks) from an event can seem unreasonable and make enforcement of the policy without exceptions difficult.

We also agree that the creation of a public website to track application submissions and associated deadlines will result in a more transparent process.
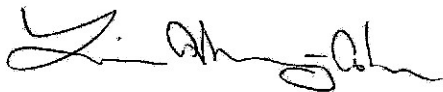
Security procedures
With respect to the security procedures, while we appreciate UCPD's professional assessment of risk based on specific criteria, we believe the policy should include provisions for a timely, impartial appeal process.

Next steps
We understand that a committee will be convened in the near future to finalize the policy. The Senate stands ready to partner with campus administration on this important undertaking.

In sum, DIVCO believes the interim policy moves the campus in a positive direction. At the same time, the policy could be strengthened as described in the committee commentary. Please refer to the full text of the committee reports for additional detail.

Sincerely,

Lisa Alvarez-Cohen
Chair, Berkeley Division of the Academic Senate
Fred and Claire Sauer Professor
Department of Civil and Environmental Engineering

Encls.

Cc: Executive Vice Chancellor and Provost Paul Alivisatos
       Ty Alper, Chair, Committee on Academic Freedom
       Robert Van Houweling, Chair, Committee on Demonstrations and
       Student Actions
       Whendee Silver, Chair, Graduate Council

Mark Stacey, Chair, Undergraduate Council
Sumei Quiggle, Associate Director staffing Graduate Council and
Undergraduate Council
Associate Vice Chancellor Phyllis Hoffman
Chief of Staff Anne Jones

MEMORANDUM

TO: U.C. Berkeley Divisional Council

FROM: U.C. Berkeley Committee on Academic Freedom

                    Ty Alper (Law), chair
                    Sean Gailmard (Political Science)
                    Niko Kolodny (Philosophy)
                    Maya Petersen (Public Health)
                    Terry Regier (Linguistics)

DATE: September 6, 2017

RE: Comments on Proposed Major Events Policy for U.C. Berkeley Non-
                    Departmental Users

Thank you for the opportunity to comment on the proposed interim policy regarding
major events hosted by non-departmental users.

Last year's Committee on Academic Freedom issued a statement to the Divisional
Council urging that the U.C. Berkeley administration develop guidelines regarding
approval of major events. In particular, our statement read: "We urge the creation,
adoption, and prominent publication of a clear set of such guidelines. Such guidelines
would govern: (a) how outside speakers are scheduled, (b) what sort of evidence could be
taken as a basis for denying a venue to a speaker on the speaker's requested date, and
importantly (c) how much of that evidence can be made public so that there is no room
for suspicion that the decision might have been ultimately ideologically based."

We applaud the development of the policy we have been asked to review, and we offer
the following comments. We begin with several general comments particularly related to
free speech and academic freedom principles, followed by some suggestions that may be
less directly connected to these principles but that we offer nonetheless in the event they
are useful to your review of the proposed policy. We are happy to answer any questions
about these comments and/or provide any legal citations that may be useful.

General Comments

First, we emphatically agree with what we understand to be the intent of this policy,
which is to create a set of uniform guidelines that will be applied evenhandedly to all
proposed events on campus, without regard for the viewpoint or content of the proposal.
The decision whether to allow an event on campus must be made without regard to
viewpoint or content. At the same time, the university has an obligation and
responsibility to ensure the safety of its community.

However, we are concerned that language mandating viewpoint-neutrality in the proposed policy is used in contexts that are not necessary to protect the important First Amendment principles at stake, and are not workable in terms of providing adequate safety at potentially unsafe events.

To be specific: On Page 2, we do not understand how conditions 2,3, and 4 can be applied to determine whether an event is a "Major Event" without taking into account "the content or viewpoints anticipated to be expressed during the event." If, for example, a white supremacist organization seeks authorization to use a campus venue for a rally, would not the content – and the viewpoint, for that matter – of that proposed event be relevant to a determination of "the complexity of the event" and its likelihood to "significantly affect campus safety and security"? We understand, and agree with, the principle that the fact that the proposed event is a white supremacist rally cannot be the basis for denial of the venue. But surely the nature of the event may be taken into consideration in deciding whether it is deemed a "Major Event" that triggers a certain set of requirements outlined in the Policy.

We have the same concern about section B on Page 7. How can UCPD assess the security needs without taking into account the "anticipated expression of event speakers"? We fear that this is a misunderstanding of the law regarding time, place, and manner restrictions on free speech. There is nothing unlawful about campus officials taking into account the nature of an event, including the content and anticipated expressions of the participants, in determining reasonable time, place, and manner restrictions. Indeed, doing so is necessary to secure campus safety, and we should not pretend otherwise. What the university may not do is take into account the content or viewpoint of the proposed speakers and act in a way that precludes their right to speak at all – either by cancelling the event altogether or constructively cancelling it by moving it to an unreasonable venue or an unreasonable time/date. It is particularly important to guard against the "heckler's veto," a situation in which those who oppose the proposed speaker use the threat of violence to force a government entity to cancel or constructively cancel the proposed speech. Where the "hecklers" do pose a threat of harm or violence, it is incumbent upon the university to a) provide the necessary public safety resources to allow the speech to occur safely and b) impose reasonable time, place, and manner restrictions to maximize that result. Precluding campus officials from taking into account the nature of the event is, we think, a recipe for disaster.

It may be possible to retain the prohibition on taking into account the proposed speaker's viewpoint and anticipated expression, but only if campus officials are permitted to take into account the "anticipated response" to the event. We therefore recommend that the policy explicitly allow officials, at the very least, to take into account the "anticipated response" to the proposed event in making assessments about the complexity of an event and the security necessary to ensure that the event takes place as scheduled. The policy should then also explicitly state that the assessment of public safety and complexity must be exactly that, and may not be used as a pretext for silencing a particular viewpoint or speaker.

Second, we encourage the policy to explicitly state that designation as a "Major Event" is not punitive or intended to restrict a non-departmental user's ability to execute the event. Indeed, classification as a "Major Event" ensures that the University is able to assess, and expend, the resources that will be necessary to ensure that the event takes place as scheduled. This point is related to the previous point. There is no First Amendment problem, or policy problem, with relying on the anticipated response to an event in order to assess its complexity and venue/security needs because that assessment is critical to the University's ability to make good on its commitment to provide reasonable fora for free speech regardless of content or viewpoint. Making this point explicitly in the policy will add transparency as well as clarity.

Other Comments

Page 1

1. This comment relates to the first general comment above. The "Policy Statement" states that "All criteria for assessing events must be applied in a viewpoint-neutral manner." Elsewhere (such as Page 7), the policy states that considerations must be content-neutral as well. Is this an oversight, or is there a distinction being made in the general policy that the criteria may be applied in a manner that is not content-neutral? Neither "viewpoint neutral" nor "content neutral" is defined in the policy. For a regulation to be content neutral it must be both subject matter neutral *and* viewpoint neutral. Subject matter neutral means that the regulation is not based on the topic of the message. Viewpoint neutral means that the regulation is not based on the ideology of the message. We suggest that the policy clearly define these terms.

2. Although "non-departmental users" is defined at the bottom of page 1, we recommend moving the definition to immediately follow the first mention of the term in the second paragraph of page 1, as the term is non-intuitive.

Page 2

1. We are unsure the justification for considering any dance or concert, regardless of the number of attendees, to be a "Major Event." Is this true even if it is a small gathering or performance for a dozen people? The requirements of the Policy seem excessive in that instance and appear to single out musical and dance events for heightened process, which does not necessarily raise issues of free speech or academic freedom, but may need to be explained or reconsidered.

2. We suggest defining "authorized campus officials."

Page 3

1. The "Why We Have This Policy" section seems unnecessary where it is, and we suggest moving the substance of it into the "Policy Statement" section of the

policy. Moreover, the last sentence of this section regarding the failure to comply with the policy seems to belong elsewhere, in the actual provisions of the policy, as it is not a reason "why we have this policy."

Page 4

1. The section titled "Student Organization Events" should probably be renamed "Student Organization Major Events" because it appears that the purpose of this section is to describe what needs to happen when an event is deemed to be a "Major Event." Using the phrase "event" is confusing if the purpose is to refer to what the policy defines as a "Major Event." We suggest carefully reviewing the entire policy for consistent use of the terms "event" and "major event."

Page 5

1. Some of the requirements are aspirational and use the word "preferably" (see #4 and #12), while others appear to be mandatory (see #5). If the purpose of the policy is to clearly delineate criteria that can be applied in a uniform and even-handed manner, then we suggest using mandatory language for all of the requirements in this section.

Page 6

1. It is not clear whether the section entitled "All Other Non-Departmental Users" also applies to Student Organizations. If they are explicitly excluded from these requirements, it is probably advisable to make that clear.

Page 7

1. Is it not clear whether the section entitled "Security Procedures" applies to all events, or only Major Events. If the latter, we suggest making it explicit that the following security procedures apply to any event that has been deemed a "Major Event."

Page 9

1. The first and last sentences of section A are inconsistent with each other.

September 19, 2017

To: Lisa Alvarez-Cohen
From: Rob Van Houweling
RE: Comments on Major Events Policy

The DSA committee met on September 19th and had an extensive discussion of the proposed "Major Events Hosted by Non-Departmental Users" policy.   Below, I summarize our views on a set of issues that the administration might want to consider in drafting a final policy.

1) Clarity and enforcement of deadlines.   In some cases the policy qualifies deadlines with terms like "preferably" and in other cases states them as hard deadlines.   It might be better if the policy stated every deadline as a hard deadline without a qualifier, but included a statement concerning the process for waiving deadlines. We would suggest that deadlines in the policy can be waived if missing the deadline is unforeseeable or unavoidable. We would also include an explicit statement indicating that decisions about whether to waive deadlines will be made in a viewpoint neutral manner. Our view is that it will be easier to enforce the letter of the policy if deadlines are state unequivocally and exceptions are admitted under pre-specified circumstances.

2) Timing of deadlines.   It would be valuable to carefully scrutinize the deadlines and make them as close as practically possible to the events.   Deadlines that are a bit far (e.g. 8 weeks) from an event can seem unreasonable and make enforcement of the policy without exceptions difficult.

3) Adding a deadline for notification of intent to host.   It might make sense to include a deadline for notification of intent to host an event that comes prior to booking a venue. We also understand that identifying an appropriate location for an event can involve a dialog between the administration and the group hoping to host the event.   We have also heard that some venues do not admit bookings during the summer that would meet the 8-week deadline currently proposed.   Incorporating an explicit stage in the process that would allow for a dialog between a group and the administration in locating an event, and accommodate any restrictions on booking venues could alleviate these problems.

4) Publicly Tracking Deadlines. It might be useful to have a publicly viewable webpage that identifies key deadlines and events in the planning stages, and indicates whether a host has met those deadlines.   This transparency could underscore that the university is enforcing the policy in a fair manner.

5) Events on Sproul Plaza and Savio Steps.   Events in these venues seem not to be governed by this policy. However, many of the security and safety concerns that the Major Events policy is meant to address will also accompany events in these

venues. It might be valuable to review the policies that apply to events in these venues.

6) The requirement that UCPD assess event risks independent of event content. The policy requires the UCPD to assess security risks associated with an event without taking into account the event's content or viewpoint.   This does not seem reasonable because the risks associated with events can be directly related to their content. Thus, in making realistic risk assessments, the UCPD might reasonably violate this policy as it is currently drafted.   We support the underlying motive of ensuring that an event's content does not affect its viability.   However, we would recommend clarifying this language so it does not prevent a realistic risk assessment by UCPD.

September 21, 2017

PROFESSOR LISA ALVAREZ-COHEN
Chair, Berkeley Division of the Academic Senate

Re: Interim Policy on Major Events Hosted by Non-Departmental Users

Dear Chair Alvarez-Cohen,

At its September 11 meeting, the Graduate Council reviewed this interim policy. We offer the following comments.

- What is included in "basic event security" (p. 9), which event sponsors must agree to reimburse the costs of, is not clear. The policy should make clear what the actual security requirements and costs are.
- For "Free Speech Week," the Sproul Hall steps have been reserved for amplified sound for four days in a row. This impinges on the work of those in Sproul Hall, and does not suggest balanced access. The policy should include provisions for balanced access to venues and locations.

Sincerely,

Whendee Silver
Chair, Graduate Council

WS/scq

UGC Comments on Interim Policy for Major Events

The UGC spent most of a special meeting on September 20 discussing this policy, and the context for this policy in the current campus climate and considerations of free speech. Specifically regarding this interim policy, we came to understand that: (a) the interim policy would not have held for the outdoor events of this week; (b) the interim policy was only intended to get us through the fall semester while a permanent policy could be developed. In view of these two facts, the UGC focused on a broader discussion of how disruptive events should be handled on campus, with an eye towards developing a perspective for the permanent policy. Regarding the current interim policy, it was noted that the current interim policy imposes significant costs on student groups even if they are only one of many partners on an event.

Regarding the broader discussion of what a permanent policy should contain, the UGC discussion centered on three priority considerations for any policy that emerges: 1. Student Safety; 2. Academic Disruption; 3. Specific Context Associated with the Invited Individuals. The first two are likely to be clear priorities, and are already present in discussions of both the interim and permanent policies, but the third requires more consideration. Specifically, UGC members believed that historical incitement of violence by speakers or organizations should be a factor in how events are evaluated, approved and prepared for, so that the policy should not be entirely content-neutral. This issue is, of course, fraught, and extensive additional discussion is required.