

From: [Midpeninsula Regional Open Space District](#)
To: [web](#)
Subject: Cornell
Date: Monday, June 15, 2015 10:47:59 AM

Submitted on Sun, 06/14/2015 - 6:05pm
Submitted by anonymous user: [2602:306:35c5:b420:e557:752c:efc4:eba]
Submitted values are:

First Name: Cornell
Last Name: Scanlan
Select a choice: Full Board of Directors and District Clerk
Email:
Location: (i.e. City, Address or District Ward): Sunnyvale
Daytime Phone Number (if you wish to be contacted by phone):
Comments:

Mid Peninsula Regional Open Space District (MPROSD) modified its hiking rules Feb 2014, but it has just becoming apparent how this modification has affected who is allowed to have small group hikes (20 people or less). Essentially these rules allow some folks to not need a permit for a small group hike, but dictates that other folks must have a permit. What distinguishes the two groups is the way they were formed. If a small group is formed using internet software such as meetup, a permit is required. If an equally sized group is formed by word of mouth for example, no permit is required. A small size group could be 2 to 20 people. The required permits for internet connected small groups are free, but the individual permit holder is required to indemnify MPROSD in case MPROSD is sued due to anything going wrong during the hiking activity. That means that if somebody wins a large lawsuit against MPROSD then the individual permit holder now has to reimburse MPROSD for all costs out of the permit holders own assets. This policy allows MPROSD to transferring all its liability to individuals no matter who is at fault. One MPROSD individual has suggested to me that to organize get together hikes without risk that I become an LLC (Limited Liability Corporation), have all hikers sign the LLC's waiver, and buy special LLC insurance in case someone who may or may not be on the hike sues. This is how LLC's such as Sierra Club and other corporations put on hikes without personal risk. My understanding as to why these rules were put into place was that some individuals using internet software claimed they had no control over the number of hikers who would show up, and places such as Rancho San Antonio have gotten overrun. However internet software such as meetup does allow limiting participants, and if someone uninvited insists on joining a hike, they are chased away. Using internet software should not be the criteria to force an individual to risk everything to hike with a few friends. Currently unless there is an overt violation, my understanding is that MPROSD is not issuing criminal misdemeanor citations if there are 20 or less hikers. These citations could come with a \$400 fine. Small groups all have the same impact. MPROSD lands used to be a friendly place to hike with friends. Is MPROSD trying to discourage small group get together hikes? If MPROSD wants to issue easy to get permits to better track possible overbooking issues, they should drop the indemnify clause to get better cooperation from individuals fearful that by getting a permit, they can lose everything. Indemnification is an agreement to be an insurer, and my umbrella policy does not cover bad agreements. However without an indemnify agreement, and if something were totally my fault, then I would have some protection under my umbrella policy. Under which circumstances would you like to organize a hiking get together?

The results of this submission may be viewed at:
<http://www.openspace.org/node/3/submission/16>



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

June 24, 2015

Dear Mr. Scanlan;

Thank you for your inquiry regarding the Midpeninsula Regional Open Space District's (District) requirements for permits on group uses of District lands.

Our records show that you presently hold a permit good for the year of January 12, 2015, through December 31, 2015, covering hiking activities for 20 people - with advance telephone notice to the appropriate District field office for particular dates in that period - at any of twenty (20) listed preserves. You hold that permit on behalf of "San Jose Mid-Week Hikers," which sets up organized hikes via a "Meetup" website. The Meetup website states that is comprised of 1,177 hikers, with a range of 6 to 23 hikers shown as planning to attend the various hikes listed on the website as of June 17, 2015.

From your letter we understand that you have two primary concerns. One is that you object to the District's ordinance (Section 408.1(a)) in that it requires permits for "any event or activity which is advertized or noticed in any publication, poster, electronic posting, social media, or flyer." More specifically you object to the "electronic posting, or social media" aspect.

The second concern you raise is the requirement in the group permit that the organizer or group applying for the permit must indemnify and hold harmless the District against any injuries or other damages arising from your group's event.

As to the first concern, your objection is noted. While we appreciate the fact that an electronic or social media posting might or might not generate a large group of attendees (i.e, 20 or more people per the other trigger for a permit requirement in Section 408.1(c)), it is the very fact of the open-ended nature of the size of the group that dictates the need for that trigger. Just as with a hard-copy publication or flyer, the electronic posting or social media publication leaves it unknown as to how many people your organizing efforts might attract for an event. You assure us that, in response to the need to control the number of hikers who would show up, if any "uninvited guests insists on joining a hike, they are chased away." Despite your implied intent to limit participation numbers, relying on organizers to chase people away is not a protocol on which the District Ordinance presently relies for being able to responsibly and safely manage group events.

As to the second concern, and as has been explained to you by staff previously, the indemnification requirement in the District's group permit is based on the notion that whomever controls the conduct of

a group activity is in the best position to ensure that it is done safely, and the most appropriate allocation of liability for risk is on that individual in control of how the activity is organized and led. Our California Joint Powers Insurance Authority, the source of the District's insurance coverage, expects the District to follow best practices for risk allocation, including specifically the requirement that group activity organizers must indemnify the District as set out in the permit.

Note also that in certain circumstances, such as competitive events, alcohol, or groups of a larger (50+) size, there are also requirements that the organizer provide proof of insurance sufficient to stand behind that indemnification, with "additional insured" coverage specifically covering the District. We understand that this insurance requirement, however, has not been imposed on you and your group activities.

We hope that this explanation of the District's Ordinance and its permit requirements is helpful, and that we can move forward together in providing excellent and safe experiences for the community on the District's properties and trails.

Sincerely,

Pete Siemens

President, Board of Directors