



Midpeninsula Regional
Open Space District

R-15-139
Meeting 15-24
September 23, 2015

AGENDA ITEM 4

AGENDA ITEM

Update to the 1978 Board Policy “Policies on Concessions on District Lands,” and New Fee Structure

GENERAL MANAGER’S RECOMMENDATIONS

A handwritten signature in black ink, appearing to be "G.M.", is written to the right of the "GENERAL MANAGER’S RECOMMENDATIONS" heading.

Review and approve the Legislative, Funding, and Public Affairs Committee’s recommended updates to the 1978 Board Policy “Policies on Concessions on District Lands,” and adopt a resolution approving the recommended new fee structure.

SUMMARY

In response to recent requests for concessions on Midpeninsula Regional Open Space District (District) lands, staff has reviewed the existing Board Policy called “Policies on Concessions on District Lands,” dated May 10, 1978 (see Attachment 3), and recommends changes to ensure activities conducted by concessionaires are carried out in such a manner as to be consistent with the District’s mission, and to protect District lands, resources, and the experience of other visitors. The proposed update includes related conditions and criteria to ensure the appropriate use of public resources and to issue permits in a fair and consistent manner. In addition, a related fee structure is also proposed.

The Legislative Funding and Public Affairs Committee reviewed the proposed Concessions policy at its meeting on September 8, 2015. LFPAC suggested language be included in the draft policy to clarify that the proposed fees are charged per individual event, which has been added.

DISCUSSION

Over the last several years, there has been a significant increase in the number of requests for use permits. Among those requests are questions about permits for concessionaire activities on District lands, most commonly, businesses and organizations who wish to impose a charge for participation at an event. The objective of updating the original policy, which was written in 1978, is to ensure clarity for the general public that permitted activities on District lands must be consistent with the District’s mission, and protect District land, resources, visitors, and sensitive wildlife.

Examples of activities that may be granted permits under this Board policy, dependent on the site controls and the pre- and post-event measures include: running events, filming permits, festivals, and food events such as farm-to-table type dining events that have grown in popularity in recent years.

Activities which would not be part of the District's permit system because they are authorized through separate agreements include grazing leases, long-term leases such as the Picchetti Winery, activities at the Driscoll Event Center, and rental of District properties.

Proposed Criteria for Permit Approval:

Clear, fair, and consistent criteria are needed to decide whether or not a permit can be issued to a concessionaire for revenue-generating activities. The General Manager recommends that permits be granted only for activities on District lands that are consistent with the District's mission and which can occur in such a manner as to protect District lands, resources, and the visitor experience. The following factors are recommended to be considered in making this determination:

1. Impact on the Land and Resources

Permits may not be issued for activities that would impact sensitive wildlife, flora, fauna or historical/cultural sites.

2. Impact on the Experience of other Visitors

Permits may not be issued for activities that would unduly impact the experience of other preserve visitors including the ability to enjoy low impact, quiet, enjoyment of the preserves. Impacts on the availability of parking for all visitors shall also be taken into account.

3. Impact on the Availability of Staff and Emergency Services

Permits may not be issued for activities for which District staff cannot provide sufficient coverage necessary for the event and to provide essential emergency services. When necessary, other emergency response agencies should be consulted prior to the issuance of a permit to assess the impact on emergency services.

Fee Structure Options and Analysis

There are several types of fees imposed by agencies when making property available for permitted uses. Below for reference is a summary of fees imposed by nearby agencies. The three main categories are: 1) cost recovery/reimbursement; 2) flat fee; and 3) a proportion of the revenue. In the table below the agencies use a flat fee for permit applications and a proportion of the revenue for the concessionaire fee.

The cost recovery fee is typically calculated based on the costs incurred in providing services for the event, e.g., staff time and direct operational costs. The flat fee is typically charged to defray overhead associated with an agency's routine permit application process. The proportion of revenue fee is set by an agency based on what the market will bear for renting out a venue for a commercial purpose. Staff recommends a flat fee for concessionaires for the reasons outlined below.

Table 1: Sample of Permit Fees Issued by Nearby Agencies

| Agency | Permit Application Fee/Permit Fee | Concession/ For Profit Fee |
|---------------------------------|-----------------------------------|---|
| East Bay Regional Park District | \$250 | \$75 per vendor per event, or 10% gross sales, whichever is greater |
| Santa Clara County Parks | None | \$460 + 10% of gross income |
| San Mateo County Parks | \$10 | \$5.00 per participant with a minimum of \$100.00 |

After a review of fees charged by other agencies for commercial uses and considering the District's operating needs, the following fee structure is proposed. Proposed fees are set forth in the attached Board resolution.

Proposed District Fee Structure

Permit Application Fee: \$200 per event

Refundable Deposit: \$300 per event

Staff time fee: \$55/hour

The proposed District fee structure would require organizations wishing to conduct revenue generating activities on District lands to 1) pay a flat application fee, 2) pay a refundable deposit, and 3) pay the District for hourly staff costs incurred by the District in facilitating the event. During the review by the Legislative, Finance, and Public Affairs Committee a clarification was requested to ensure that the permit application fee and the deposit are charged separately for each event, even if the applicant files one application for multiple events.

The proposed refundable deposit is \$300 per event. Any costs for repair of damage done, or additional staff time required to support the event beyond the amount initially estimated and charged, would be deducted from the deposit. If costs incurred by the District exceed the \$300 deposit then the concessionaire would be billed for the excess amount. Further criteria on when the deposit shall be wholly or partially withheld shall be developed in an Administrative Policy under the General Manager's authority.

Fees for staff time would help to defray the District's costs of hosting concessions on District property by addressing the costs of monitoring the protection of District resources and providing regular and emergency services related to the permitted event. The staff time per hour fee is based upon the overtime rate for a District ranger.

Although some agencies charge fees based on revenues generated by the event, this practice can become administratively burdensome and difficult to enforce, so it is not currently recommended. In particular, private payments received for use of District property and/or facilities that are funded by General Obligation bond proceeds must be carefully tracked to ensure they do not exceed a set dollar threshold prescribed by federal tax law.

Proposed Permit Application Fee Exemptions

An exemption to the application fee would be available for organizations which have 501(c)(3) non-profit status, government agencies, accredited educational organizations, and for small

group low impact activities where five or fewer paying participants are involved. However, the refundable deposit(s) and staff time fees would still be required.

The permit application fee(s) and staff time fee may also be wholly or partially waived at the discretion of the General Manager or his/her designee for permits where the District decides to co-sponsor the event due to the nature of the activity, specifically an event that the General Manager identifies as being particularly beneficial to the District and/or furthering its mission.

This fee structure would be periodically reviewed and any recommended changes would be brought to the full Board for approval.

FISCAL IMPACT

There is no practical way to estimate the annual cost/benefit of the proposed fee structure, however, the proposed permit fees are anticipated to be a partial offset for the administrative and staff costs associated with hosting concessionaire events and activities on District land.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item does not constitute a project under CEQA and is therefore not subject to CEQA compliance.

NEXT STEPS

If approved, the Board policy would go into effect immediately. The General Manager would implement associated Administrative Guidelines as authorized by the Board policy.

Attachments:

1. Resolution: Fees for Concessionaires Operating on District Lands
2. Draft Board Policy: Concessions Operating on District Lands
3. 1978 Board Policy: Policies on Concessions on District Lands

Responsible Department Head:
Michael Newburn, Operations Manager

Prepared by:
Gordon Baillie, Operations Analyst

Contact person:
Michael Newburn, Operations Manager

RESOLUTION NO. 15-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT ADOPTING FEES FOR CONCESSIONS OPERATING ON DISTRICT LANDS

WHEREAS, Public Resources Code section 5562 empowers the District Board of Director to adopt fees for use of facilities, services, and equipment; and

WHEREAS, the fees are intended to defray the cost of permitting certain activities on District lands held by entities that impose a charge on participants or raise money from donations; and

WHEREAS, the Legislative, Funding, and Public Affairs Committee has studied the fees and recommends them for Board adoption.

Now, therefore, the Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

SECTION ONE. Fees for Concessions Operating on District Lands, effective as of the date of adoption of this Resolution, are as follows:

| | | |
|------------------------|-----------------|---|
| Permit Application Fee | \$200 per event | Reduced to \$100 per event for organizations which have 501(c)(3) non-profit status, government agencies, accredited educational organizations, and for small group low impact activities where five or fewer paying participants are involved. |
| Refundable Deposit | \$300 per event | |
| Staff time fee | \$55 per hour | |

SECTION TWO. The General Manager or his/her designee is authorized to completely or partially waive the permit application fee(s) and staff time fee for permits where the District decides to co-sponsor the event consistent with the Board Policy on Concessions Operating on District Lands.

SECTION THREE. The General Manager is authorized to implement policies and procedures which are necessary or appropriate to the implementation of these fees.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2015, at a Regular Meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

APPROVED AS TO FORM:

General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

District Clerk

Board Policy Manual

| | |
|--|--|
| Concessions Operating on District Lands | Policy # Chapter # - Chapter Name |
| Effective Date: 9/24/15 | Revised Date: N/A |
| Prior Versions: Policies on Concessions on District Lands - 5/10/78 | |

Purpose

The following policy is created and approved by the Board of Directors in order to [1] protect District lands, resources, and the visitor experience when considering requests for concessions to be operated on District lands, [2] provide staff with guidance about under what circumstances it is appropriate to grant a permit to a concessionaire, [3] ensure that requests by those seeking to provide a concession are treated in a fair and consistent manner by use of standard criteria and conditions, and [4] establish certain fees related to concessionaire permits.

Definition: Concessions are activities conducted by entities that impose a charge on participants or raise money from donations. The activity need not be a profit-making operation in order to be considered a concession. Long term facility rentals, grazing leases, events at the Driscoll Event Center, and other facility leases that are negotiated separately are not considered concessions for the purposes of this policy.

Policy

Concession permits shall only be issued for activities that meet the criteria and conditions listed below:

Concession Criteria and Conditions:

[1] Concession permits shall only be issued for activities that are consistent with the District’s mission.

[2] Concession permits shall only be issued when the General Manager or his/her designee has determined that the activity will not unreasonably impact access to, and the quiet enjoyment of, District lands by other visitors.

[3] Concession permits shall only be issued when the General Manager or his/her designee has determined that there will not be excessive or irreparable damage to District lands or resources, and that wildlife will not be unduly impacted.

[4] Concessions that occur on District lands are subject to fees as established by the Board, including a per-event administrative fee, an hourly staffing fee related to the costs incurred by the District to properly prepare for and staff the activity. Organizations that have IRS 501(c)(3) status, government agencies, and accredited educational institutions, will receive an exemption from the permit application fee. A refundable per event deposit will be required for all concessions permits.

[5] The General Manager is authorized, at his/her discretion, to co-sponsor an event that is particularly beneficial to the District or in furtherance of its mission. Such events shall have all fees waived, but a refundable deposit shall still be required.

[6] Implementation of this Board Policy shall be in accordance with criteria and guidelines set forth in greater detail in an Administrative Policy developed by the General Manager.



MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

POLICIES ON CONCESSIONS ON DISTRICT LANDS

Adopted by Board of Directors
May 10, 1978

Concessionary Use Definition:

A concession is defined as a space or privilege within a District property which would be used for a subsidiary (privately operated) business or service.

Policies:

In order to provide public recreational opportunities, preserve and retain significant structures, or encourage agriculture; the District may permit concessionary use of District lands and facilities consistent with the adopted Organizational Use Policy and Policies Regarding Improvements on District Lands; provided that:

1. A finding be made by the Board at the time a permit is approved that such use is in the public interest and is consistent with the protection of natural and cultural resources.
2. The public be guaranteed access to the property.
3. The permitted use be consistent with the zoning regulations of the local government having jurisdiction.
4. Any permit or contract which allows a profit-making operation will define the benefit to the District and will contain provisions limiting the user to reasonable profits.