

ORDINANCE NO. _____ (2021 SERIES)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING TITLE 12, STREETS SIDEWALKS AND PUBLIC PLACES, MUNICIPAL CODE CHAPTER 12.22, OPEN SPACE REGULATIONS, TO ADD ADDITIONAL LANGUAGE TO 12.22.050(B) TO ALLOW A SPECIAL PROGRAM FOR WINTER EVENING HOURS OF USE AT CERRO SAN LUIS NATURAL RESERVE

WHEREAS, the City of San Luis Obispo has a substantial interest in promoting the public health, safety and welfare of its residents, visitors and businesses, as well as the environmental qualities of the City; and

WHEREAS, the City of San Luis Obispo owns and manages a network of protected Open Space properties totaling over 4,000 acres, including the 118-acre Cerro San Luis Natural Reserve, and also administers open space easements and conservation easements that permanently protect over 3,500 acres of land within the City's Greenbelt; and

WHEREAS, members of the public provided testimony to the City Council requesting expanded hours of use in the City's Open Space during the winter; and

WHEREAS, in 2015 a wide-ranging survey of open space trends and levels of use was conducted. This study utilized an EcoCounter™ device to track frequency of human use and hours of use at Cerro San Luis Natural Reserve, among several locations, including the timeframe between December 2014 and March 2015 and during evening hours between 6:00 PM and 9:00 PM (City of San Luis Obispo, Open Space Survey. Riggs et. al. 2015). It is through this study that an existing average daily baseline use of 65 individuals was established; and

WHEREAS, the City Council reviewed and City staff implemented a Pilot Program for winter open space hours of use at Cerro San Luis Natural Reserve following a Council-directed process during the winter seasons of 2018-2019 (November 4 to March 10), 2019-2020 (November 3 to March 8), and 2020-2021 (November 1 to March 14) and the pilot program ended on March 14, 2021; and

WHEREAS, the Pilot Program included oversight and additional patrol during the published timeframes of the winter evening hours, deployment of an EcoCounter™ device to track frequency of human use and hours of use at Cerro San Luis Natural Reserve, as well as a new reservation permitting system "app" in order to ensure that use during expanded hours remained commensurate with existing average daily baseline use of 65 individuals that was established prior to the Pilot Program; and

WHEREAS, during the Pilot Program, a total of 3,160 permits were issued during the 2018- 19 season, 2,747 permits were issued during the 2019-20 season, and 2,702 permits were issued during the 2020-21 season. In total, 7,783 permits were issued, of which 826 were bikers and 6,957 were hikers based on self -designation at the time of permit reservation. During all three seasons, in general, less than the full amount of permits available were reserved during the months of November and January through March. During the holiday season in December, however, permits were typically fully subscribed, and the City's Ranger Service had to turn away numerous parties interested in accessing the Reserve at the trailhead and instances of non-compliance were tracked.

WHEREAS, at the conclusion of the Pilot Program, staff conducted a Study Session and presented a Final Summary Report of the Pilot Program, and the City Council directed staff to prepare an amendment to the City's Open Space Regulations to allow for ongoing Winter Evening Hours of Use at Cerro San Luis Natural Reserve only.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Findings. The Council hereby finds and declares the following:

1. The above recitals are true and correct and are incorporated herein by reference.
2. The ongoing Winter Evening Hours of Use at Cerro San Luis Natural Reserve program has been prepared in accordance with Council direction.
3. An Initial Study and Negative Declaration of environmental impact has been prepared and adopted by Resolution R-[XXXX] (2021 Series) in accordance with the requirements of the California Environmental Quality Act that concludes "there is no substantial evidence, in light of the whole of the record before the agency, that the project may have a significant effect on the environment" and therefore a Negative Declaration is the appropriate environmental determination in accordance with the California Environmental Quality Act (CEQA Guidelines §15070 and §15075).
4. The Project Description for Winter Evening Hours of Use at Cerro San Luis Natural Reserve is incorporated by reference, including continuation of provisions for Public Information and Education Materials and an Evening Use Permitting System, as follows:
 - a. Public Information and Education Materials. City staff shall utilize additional information and educational materials for the public that is specific to Winter Evening Hours of Use at Cerro San Luis Natural Reserve. These materials will re-iterate the City's rules and regulations in effect, as well as highlight the sensitivity of evening use and potential for wildlife interactions and impacts, and methods to avoid or reduce impacts, including requiring visitors to stay on established trails during nighttime use. These informational materials will be available on the City's website, on the main kiosk at the entrance of the Reserve, and on pamphlets that can be handed out or placed in a rack on the kiosk.

- b. Evening Use Permitting System. City staff shall implement the internet-based permitting system “app” and the visitor use tracking system using the EcoCounter™ device to track frequency of human use and hours of use in order to ensure that evening use (from one hour after sunset until 8:30 PM) during Winter Evening Hours of Use at Cerro San Luis Natural Reserve is kept at or below existing average daily baseline use of 65 individuals. Individuals will be required to have evidence that they have the required permit in their possession during the month of December, unless the City Council chooses to require a permit during all program months. Individuals that are stopped by Ranger personnel and do not possess a permit when required will be subject to citation under municipal code section 12.22.050(B). Permit applicants will also be provided with the information and educational materials during the application process and be required to acknowledge receipt and confirm understanding prior to receiving the permit.
5. Prior to the Pilot Program, the average daily use at Cerro San Luis Natural Reserve between the hours of 6:00 PM and 9:00 PM was recorded as 65 individuals, despite the City’s existing Open Space Regulations provision that open space is closed one hour after sunset. Therefore, the existing average baseline use that will be adhered to during the ongoing Winter Evening Hours of Use at Cerro San Luis Natural Reserve program is 65 individuals. Existing case law supports the establishment of existing, average baseline conditions that are occurring in the environment as a basis for environmental review [see *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270; *Communities for a Better Environment v. South Coast Air Quality Management District, et al.* (2010) 48 Cal.4th 310 (“*Communities for a Better Environment*”); *Communities for a Better Environment v. South Coast Air Quality Management District (Tesoro Refining and Marketing Company, LLC, Real Party in Interest)* (2nd Dist. 2020) 47 Cal.App.5th 588].

SECTION 2. Title 12, Streets, Sidewalks, and Public Places, Municipal Code Chapter 12.22, Open Space Regulations, is amended as follows, as shown in underlined text:

12.22.050(B): Presence in Open Space Lands Restricted to Certain Hours – No Overnight Usage. Open space lands where public access is permitted shall be open to the public from dawn to dusk. It shall be unlawful to enter or remain within such lands between one hour after sunset and one hour before sunrise of the following day without approval from the director. Notwithstanding the foregoing, the City may implement a special program at Cerro San Luis Natural Reserve only that allows for extended hours of use until 8:30 PM, Pacific Standard Time, when daylight savings time is not in effect, in accordance with City Council Resolution R-[XXXXX] (2021 Series) adopted on October 19, 2021, or as such Resolution may be subsequently amended by the Council consistent with the purpose of this ordinance and the environmental review document supporting this provision. All other provisions of the Open Space Regulations contained in this Chapter 12.22 shall remain in effect.

SECTION 3. Ordinance Number 1332 § 1 (part) (1998 Series) is hereby amended and superseded to the extent inconsistent herewith.

SECTION 4. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The New Times, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after its final passage.

INTRODUCED on the ____ day of ____, 2021, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the ____ day of ____, 2021, on the following vote:

AYES:

NOES:

ABSENT:

Mayor Erica A. Stewart

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington
City Clerk

O _____