

Bill No. 2009-2

ORDINANCE #163

Ordinance providing for the maintenance and beautification of public property within the limits of the city of Caliente, including but not limited to the protection, maintenance and beautification of the public parks, and for the preservation of the peace on such public property.

Section 1: **Statement of Purpose:** The city council hereby declares that the preservation of the peace, maintenance and beautification of public property within the limits of the city of Caliente can contribute to community pride, have a positive effect on the property values and make the city a more desirable place in which to live. Accordingly, the city council hereby ordains that the purpose of this ordinance is to protect, maintain and preserve said public property, particularly the public parks within the limits of the city.

Section 2: **Definitions:** In the construction of this ordinance, the following definitions shall be observed, unless the context clearly requires otherwise:

- A: **Foul or Obscene Language or Gestures:** Language, statements, verbal conduct the making of or engaging in gestures which, to the average person, applying the local community standards and taken as a whole: 1) predominantly appeals to prurient interests, 2) lacks serious literary, artistic, political, or scientific value, and 3) depicts or describes nudity, sex, or excretion in a patently offensive way.
- B: **Graffiti:** Graffiti is the unauthorized marking, such as initials, slogans, inscriptions, figures, marks, or drawings commonly known and referred to as graffiti (or tagging), written, spray-painted, etched, or sketched on a sidewalk, wall, building, fence, sign, or any other public or private surface. (Reference NRS 268.4075).
- C: **Litter:** In this ordinance, litter shall have the same meaning as it has in Ordinance #138. In sum, litter shall include garbage, refuse, rubbish, junk and trash, all of which shall have the same meanings and definitions set forth in Ordinance #138.
- D: **Person:** Person is any person, firm, partnership, association, corporation, company or organization of any kind.
- E: **Public Place:** Public place is any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

- F. **Skate Park:** The skate park is the area or areas of the City owned public parks, or other City owned or controlled property, whereon skateboarding and other related activities are specifically allowed and such property has been designated for said use.
- G: **Unauthorized:** Unauthorized means without the prior permission of the property owner or responsible party.

Section 3: **Prohibited Conduct**

- A: **Graffiti:** No person may write, paint, spray, etch or draw any inscription, figure or mark of any type on any public or private building or other real or personal property owned, operated or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm or corporation, including personal property within the confines of the public park, unless the express permission of the owner or operator of the property has been obtained.
- B: **Litter:** No person shall throw or deposit, or cause to be thrown or deposited, in or upon any public place within the limits of the city of Caliente, including but not limited to city parks, public rights-of-way, public buildings, public grounds or recreational areas, any litter, junk, garbage, rubbish or trash.
- C: **Possession with Intent:** No person may possess any litter or items that may become litter, or instrumentalities of Graffiti, with the intent to violate the provisions of this ordinance.
- D: **Foul or Obscene Language or Gestures:** No person shall use any language, make any statements, engage in verbal conduct or make gestures which, to the average person, applying the local community standards and taken as a whole: 1) predominantly appeals to prurient interests, 2) lacks serious literary, artistic, political, or scientific value, and 3) depicts or describes nudity, sex, or excretion in a patently offensive way.

Section 4: **Conduct Particular to the Skate Park:**

- A: **Courtesy:** All persons who use the skate park shall be required to conduct themselves with a reasonable degree of courtesy and civility, and to not act in any way that would disturb the public peace.
- B. **Personal Safety Equipment:** Due to the particular character of and dangers presented by the equipment in the area of the skate park and the activities taking place thereon, and in the interest of the public welfare and safety, all persons who wish to use the skate park are required to wear protective

equipment. Such equipment shall include, but be not limited to: a protective helmet, knee pads and elbow pads.

- C. **Limit of Liability:** This ordinance will act as notice that all persons who undertake to use the skate park do so AT THEIR OWN RISK. By using the skate park, the participant agrees to hold the City harmless for all injuries that occur thereon, except those that result from the intentional or reckless conduct of the City or its employees.
- D: **Prohibition on Tobacco Products, Food and Drink inside the Skate Park:** All persons who use or otherwise enter the skate park shall be prohibited from smoking, chewing, spitting or otherwise consuming or possessing tobacco products of any kind. Additionally, in order to keep the park safe and clean, all persons who use or otherwise enter the skate park shall be prohibited from drinking or eating in the skate park, and shall likewise be prohibited from bringing food or drink into the skate and from possessing food or drink while in the skate park.
- E: **Incorporation:** Nothing in this section should be interpreted to limit the applicability of the other sections of this ordinance to the area or areas known as the skate park. This section is not intended to replace or displace any instructions or prohibitions concerning conduct, rather it is intended to supplement such provisions.
- F: **Signage:** The City hereby ordains that a sign may be placed at the area known as the skate park that reads, substantially as follows:

If you use the Skate Park you must abide by the following rules:

1. You must speak and act COURTEOUSLY.
2. You must wear SAFETY EQUIPMENT, including: a helmet, knee pads, elbow pads.
3. By using the skate park or letting your child use the skate park, you agree to hold the City harmless for any and all injuries that occur thereon.

City of Caliente Ordinance # ____ , Section 4

Section 5: **Criminal Penalties:** A person convicted of a violation of this section is guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for a term of up to six months, or by both such fine and imprisonment. In addition to any other punishment, the court shall order restitution to the city of Caliente for damage or loss caused directly or indirectly by the defendant's offense in an amount to be determined by the court.

Section 6: **Civil Liability**

- A: **Individual Liability:** Any person who is responsible for the unlawful application of graffiti under this ordinance, or who is responsible for the unlawful throwing or depositing of litter, is liable civilly to a property owner, including the city, or to any other person who is damaged thereby.
- B: **Responsible Adult Liability:** Any act of a minor which results in the unlawful throwing or depositing of litter, or in the unlawful placement of graffiti on a building, fence, personal property, wall, rock, bridge, gate, tree, landscaping, or other fixture or item shall be imputed to that minor's responsible adult for civil liability purposes including, but not limited to, civil damages and attorneys' fees incurred in connection with the civil prosecution of any such claim for damages. The responsible adult shall be jointly and severally liable with the minor for all civil damages and attorneys' fees. Such obligations shall be enforceable as a civil debt.
- C: This section in no way limits or narrows the liability of a responsible adult for acts of a minor pursuant to any other provision of law.

Section 7:

Non-Infringement of Rights: The city council adopts this Ordinance in good faith with a reasonable belief that the actions taken by the city of Caliente are not in violation of any rights, privileges, or immunities secured by the Constitution of the Nation or the state or by laws providing for equal rights of citizens or persons.

Section 8:

Severability: If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision, shall in no way affect the validity and enforceability of the remaining provisions of this Ordinance.

Section 9:

Repealer: All Ordinances, parts of ordinances or chapters, sections, subsections or paragraphs contained in the City of Caliente Municipal Code in conflict herewith are hereby repealed.

PASSED, ADOPTED AND APPROVED THIS 6th DAY OF March, 2009.

COUNCILPERSONS VOTING "AYE"

Councilman Acton, Councilman Larson, Councilman Moore,
& Mayor Phillips

VOTING "NAY"

None

ABSENT

Councilwoman Tibbets

Approved:

Kevin J. Phillips
Kevin J. Phillips, Mayor

Attest:

Patrice Lytle
Patrice Lytle, City Clerk

The above and foregoing ordinance was first proposed and read by title to the City Council on the 19th day of February, 2009. City of Caliente Bill 2009-2, Ordinance 163 was published in the Lincoln County RECORD on 03/12/09 and 03/19/09.