

February 27, 2026

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Jenna Beckham
Board President

Chantal Stevens
Executive Director

Sent via email

Re: Article VI of the Asheville Code of Ordinances

Dear Mayor Manheimer, City Manager Wesley, and Members of the Asheville City Council:

We are attorneys with the American Civil Liberties Union of North Carolina, a nonprofit organization dedicated to defending the civil rights of all North Carolinians. We represent Virginia Harding, a City of Asheville resident who drew political chalk cartoons on the sidewalk in front of her home and was then cited for violating the City's graffiti ordinance. Ms. Harding appealed the citation and the fine was waived, but she was informed that she would face escalating penalties for future violations.

For the reasons discussed below, Article VI, Section 10-110(b) of Asheville's Code of Ordinance is unconstitutional under the First and Fourteenth Amendments. We demand that the City repeal or revise this ordinance and, in the interim, commit to not enforcing it against Ms. Harding for engaging in protected First Amendment activity.

I. Background

Ms. Harding began drawing political cartoons in erasable chalk on the public street in front of her house in Asheville around the beginning of the pandemic in spring 2020. She continued to do so nearly every day, without issue, until February 19, 2025. Ms. Harding's cartoons feature a cartoon drawing of her dog, Auggie, with a thought bubble above his head. Auggie's messages frequently include political subject matter, such as criticisms of the Trump Administration and commentary on other salient political issues. Here are a few examples:



On February 19, 2025, City workers saw Ms. Harding chalking, and later that day her cartoon was pressure-washed away by the City. This began a routine of the City power-washing away her cartoons frequently, nearly every day, for about a month. During this month, Ms. Harding also noticed pro-Trump and other critical messaging appearing in chalk next to her drawings. She had not previously received similar critical responses to her cartoons. Around the same time, a local paper wrote an article about the City’s pressure washing of the cartoons, prompting public criticism of the City’s actions. The power washing ceased on March 25, 2025.

Ms. Harding did not have any further interaction with the City or its officials regarding the chalking—despite continuing to draw new cartoons nearly every day—until October 30, 2025, when she received notice of violation of the graffiti ordinance. Attached to the notice were five photos of her cartoons taken between July 25 and August 4. A lawyer assisted Ms. Harding in appealing the citation, but on December 9, 2025, Ms. Harding received a letter from the Interim City Manager stating that, although the penalty would be waived, she was still in violation of the ordinance and would be fined and subject to prosecution for future violations.

Since then, Ms. Harding has moved her chalk drawings to a private



area on the side of the house, which is not in view from the public sidewalk. If not for the threat of civil and criminal penalties, Ms. Harding would continue chalking on the public street where she had before so that her messages could reach a larger audience.

II. First Amendment Violations

The First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Accordingly, “political speech occupies a distinctive place in First Amendment law.” *Washington Post v. McManus*, 944 F.3d 506, 513 (4th Cir. 2019). The importance of First Amendment protections is “at its zenith” in the context of political speech. *Meyer v. Grant*, 486 U.S. 414, 425 (1988). And speech on public streets and sidewalks occupies a “special position in terms of First Amendment protection.” *United States v. Grace*, 461 U.S. 171, 180 (1983). That is because public streets and sidewalks “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939). Writing political messages, including criticism of elected officials, on public sidewalks with chalk “invokes these core principles in nearly their purest form.” *Bledsoe v. Ferry Cnty.*, 499 F. Supp. 3d 856, 871 (E.D. Wash. 2020).

The City’s graffiti ordinance facially violates the First Amendment because it is a content-based regulation of speech that is not narrowly tailored to serve a compelling state interest.

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Government regulation of speech is content based if a law applies to “particular speech because of the topic discussed or the idea or message expressed.” *City of Austin v. Regan Nat’l Advert. of Austin*, 596 U.S. 61, 69 (2022) (quoting *Reed*, 576 U.S. at 163). Courts will consider whether a regulation of speech “on its face ‘single[s] out specific subject matter for differential treatment.’” *Id.* at 76. A regulation of speech “cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a ‘function of purpose’ proxy that achieves the same result.” *Id.* at 74. And “an innocuous justification cannot transform a facially content-based law into one that is content neutral.” *Reed*, 576 U.S. at 166.

The Asheville graffiti ordinance exempts “easily removable chalk . . . markings which are used in connection with traditional children’s activities” or to “temporary, easily removable markings used in connection with any lawful business or public purpose or activity . . .” ASHEVILLE, N.C., CODE OF ORDINANCES art. VI, § 10-110(b). These exceptions use a “function or purpose” proxy to target speech based on its subject matter; messages related to “business” activity, a “public purpose,” or “children’s activities” receive differential treatment. These exceptions depend on *what* a temporary marking says—whether its “communicative content” or “topic” or “subject matter” is related to a business activity or another exception. So, speech concerning business is permitted, while speech on other subjects is not.



The ordinance is therefore content based and subject to strict scrutiny. To survive strict scrutiny, a law must further a compelling government interest and be narrowly tailored to that interest. The stated purpose of the City’s graffiti ordinance is that graffiti, including chalk drawings, “is destructive of the rights and values of public and private property owners” and makes neighborhoods “less desirable places in which to live, work, and visit . . .” § 10-110(a).

Even assuming that those are compelling government interests, the City’s graffiti ordinance cannot survive strict scrutiny unless it “actually necessary” to protecting those interests. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011). That is doubtful here. Many of Ms. Harding’s neighbors have written letters of support for her chalk cartoons. One neighbor stated, “It’s not a good look when local government try to be the arbiters of what is and isn’t ‘desirable’ to the residents of our city.” Others shared the view that Ms. Harding’s cartoons in fact make the neighborhood more desirable by contributing to its “spirit of creativity, public art and community.”

A law will also fail strict scrutiny where it is underinclusive in relation to the government’s asserted interests. *See Reed*, 576 U.S. at 171 (holding that a sign ordinance imposing different restrictions on outdoor signs based on their subject matter fails strict scrutiny as “hopelessly underinclusive” relative to the government’s asserted interests of preserving aesthetic appeal and traffic safety). Asheville’s ordinance fails for this same reason. There is no reason to believe that temporary markings unrelated to business or hopscotch are more injurious to property rights or more likely to make a neighborhood “less desirable” than other markings. As just described, many of Ms. Harding’s neighbors enjoy and value her chalk cartoons.

III. Due Process Violation

The ordinance is also void for vagueness. “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Additionally, “where a vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit the exercise of [those] freedoms.’” *Id.* at 109.

A law can be impermissibly vague for either of two independent reasons. First, if it “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2002). Laws that regulate conduct based on “wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings” raise vagueness concerns. *United States v. Williams*, 533 U.S. 285, 306 (2008). A law or regulation is impermissibly vague when it is “unclear about what fact must be proved” to establish a violation. *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012).

Here, the ordinance’s exception for temporary markings “used in connection with any lawful . . . public purpose or activity” renders it void for vagueness. Someone who wishes to make a temporary marking for a reason unrelated to the ordinance’s other exceptions can only guess at the meaning of “public purpose.” For example, a reasonable person could understand commentary on public affairs to qualify. Additionally, without any official guidance on how the exception is interpreted, the exception provides standardless discretion to an unknown person. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969) (invalidating ordinance that allowed denial of permits for parades and demonstrations based on “the public welfare, peace, safety, health, decency, good order, morals or convenience”).

We ask that you respond to this letter within thirty days. If the City refuses to repeal or revise the ordinance and, in the interim, commit to not enforcing it against Ms. Harding, we intend to take prompt legal action on her behalf.

Sincerely,


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