



OFFICE OF
POLICE OMBUDSMAN
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201
509.625.6742
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June 15, 2016

Spokane, Washington

RE: OPO # 16-13/C16-032, Notice of Ombudsman certifying completed Internal Affairs investigation

Dear

This correspondence serves as notice the Office of Police Ombudsman ("OPO") has reviewed and certified Internal Affairs' ("IA") completed investigation into your concern as timely, thorough, and objective, pursuant to Spokane Municipal Code §04.32.030(F).

The scope of the investigation was specific to biased policing in enforcing chalk art under the graffiti vandalism ordinance. The following information aided in my determination:

1. Emails provided showed the police department's actions were in response to numerous complaints about you and your chalk art from business owners.
2. Your identity was not checked at the time of citation because it had been identified from multiple previous contacts.
3. On February 26, 2016, officer Field Interview notes documented an officer warned that use of sidewalk chalk that requires more than a pressure washer to remove was a crime and you would be charged.
4. Prior to issuing the citation, the officers consulted with the Prosecutor's office to determine how to appropriately respond to this situation.

I reserve jurisdiction to the Courts over the portion of your complaint regarding the regulation of the chalk art you created based on the type of chalk used as a violation of

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protected free speech under the First Amendment. It is worth noting that the Prosecutor assigned to this case dropped the charges without prejudice under prosecutorial discretion.

Further, there is an effort locally and nationwide to protect chalk art as free speech. Spokane is moving toward decriminalizing chalk art as graffiti vandalism. On June 6, 2016, City Council passed Ordinance No. C35392. This amends SMC §10.10.070 to include, "an individual who uses non-permanent chalk to express themselves on the public right of way shall not be guilty of the offense of graffiti vandalism under this section." Nationwide, federal courts have recognized there is a difference between temporary and permanent markings and the City may not selectively enforce an ordinance based on its preference for the speaker. See attached letter from Rick Eichstaedt from Center for Justice for further explanation.

I will forward a copy of this letter and the attachment from Center for Justice to the police department for their information and for training purposes.

As discussed, if you would like, I would be happy to schedule a meeting with Captain Arleth from the Downtown Precinct to discuss any further concerns.

Sincerely,



Bart Logue

Interim Police Ombudsman



CENTER FOR JUSTICE
EMPOWERING PEOPLE & COMMUNITIES

June 13, 2016

Bart Logue
Office of Police Ombudsman
1st Floor, City Hall
808 W. Spokane Falls Blvd.
Spokane, WA 99201

RE: First Amendment Issues

Dear Mr. Logue;

Thanks for the discussion regarding the recent incident involving [redacted]. As we discussed, the Center believe that sidewalk chalk art engaged in by [redacted] is protected First Amendment speech. This is particularly the case given that the City has sanctioned some forms of chalk and sidewalk art, such as the horse project in the Huntington Park plaza and the painted shamrocks and lilacs located on sidewalks and streets around the downtown core. This was confirmed by a 2012 case from the Federal District Court in Florida, which stated:

Particularly since the City has encouraged chalk messages and chalk writing by other groups whose messages showed their esthetic contribution, "civic pride," or "community involvement," use of the Ordinance to prevent ephemeral dissemination of political messages offends the First Amendment. The City has allowed and encouraged the writing of messages in chalk on the Plaza sidewalks as part of the Rotary Club art festival, endorsing a Mayor's Award, and the 2009 Orlando Magic Playoffs "chalk up the streets" campaign. ... The City's encouragement of these particular uses of chalk demonstrates the fundamental difference between a temporary marking and a more permanent one (e.g., carving, painting or gluing a message). The City may not selectively interpret and enforce the Ordinance based on its own desire to further the causes of particular favored speakers.

Osmar v. City of Orlando, No. 6:12-CV-185-ORL-DAB, 2012 WL 1252684, at *5 (M.D. Fla. Apr. 13, 2012).

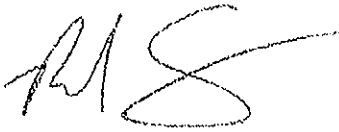
That said, the Center for Justice is willing to participate or provide any assistance in matter related

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to First Amendment issues. We understand that the urban environment can create tension between these rights and the rights and interests of business owners working to keep our community vibrant. We would certainly welcome dialogue on how these conflicts can be resolved without running foul of anyone's protected rights.

Thanks again for the work you do.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Eichstaedt', with a long horizontal flourish extending to the right.

Rick Eichstaedt
Executive Director