Amendment to Graffiti Ordinance

Code of Ordinances, Chapter 10, Article VI, *Regulation of Graffiti*

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Key Takeaways

- Code of Ordinances, §§ 10-110–10-115, regulate graffiti as public nuisance.
- Current definition of “graffiti “ in §10-110 includes temporary, easily removable chalk and other water soluble materials unless used “in connection with traditional children’s activities” or “any lawful business or public purpose or activity.”
- Proposed amendment would modify the definition of “graffiti” to:
  - Remove “chalk” from general definition (but add/define “sprayable chalk” to include industrial-grade, less soluble sprayable chalk similar to spray paint);
  - Remove undefined terms like “lawful business” and “public purpose or activity;”
  - Exclude “chalk” markings from definition of graffiti so long as they are placed upon streets or sidewalks and do not pose any public safety risk; and
  - Keep exceptions for any markings done for utilities or surveys.

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Background

- Graffiti ordinance was first passed in 2014.
- Ordinance allows criminal and civil enforcement via penalties to perpetrators and property owners who fail to remove graffiti after notice.
- Contains a provision for appeals of enforcement actions.
- The current definition of “graffiti” includes “**chalk**,” unless it is “used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities” or “in connection with any lawful business or public purpose or activity.”
- Amendment is intended to update ordinance according to evolving first amendment legal guidance, improve clarity, and to ensure efficiency of staff resources.

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Background (cont.)

- In November, a resident who was cited for chalk markings made on a public sidewalk appealed the NOV and citation.
- The appeals committee (convened of dept. directors, per ordinance) recommended upholding the NOV but removing the citation and considering amending the ordinance for clarity and efficiency.
- Consistent with the committee's recommendation, Interim City Manager Ben Woody issued his decision on the appeal to the resident, waiving the civil penalty but upholding the NOV.
- This amendment accordingly would remove unnecessary restrictions on sidewalk chalk.

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Proposed Amendment

- The amendment would:
  - (1) **remove "chalk"** (*but* add in "sprayable chalk" (as defined therein) in response to Public Works staff identifying the existence of industrial-grade, less soluble types of sprayable chalks similar to spray paint);
  - (2) permit temporary, easily removable chalk/water soluble markings provided they are placed upon **streets or sidewalks** (in response to Public Works staff identifying challenges stemming from chalk placed on monuments, vertical walls, sitting surfaces, etc. being more difficult to remove and not washing off naturally in rainy weather) *and* provided they do not pose any **public safety risk**; and
  - (3) **keep** the exception for *any* markings (of any material) made to denote locations of underground utility infrastructure, survey control data, and survey location points.

- The practical results of this amendment would be:
  - Chalk markings on streets and sidewalks no longer graffiti, unless they pose public safety risk.
  - Maintains exception for utility and survey markings.
  - May reduce staff time and material costs associated with addressing temporary, easily removable graffiti.

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Proposed Amendment (markup)

*The amendment would simply amend the **definition** of "**graffiti**" in the ordinance as follows:*

Graffiti: Writings, drawings, inscriptions, figures or marks of paint, ink~~, chalk,~~ dye, sprayable chalk (including chalk paint, marking chalk, inverted chalk, and similar substances), or other similar substances on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the property owner or possessor. Markings made using temporary, easily removable chalk or other water soluble markings are not included in this definition if made upon streets or sidewalks unless it is determined that such markings create a public safety risk. This definition shall not be construed to prohibit any markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews. For the purposes of this chapter, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or nature of materials used in the commission of the act, except as otherwise provided herein. ~~Provided however, this definition shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.~~

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Proposed Amendment (clean)

Graffiti: Writings, drawings, inscriptions, figures or marks of paint, ink, dye, sprayable chalk (including chalk paint, marking chalk, inverted chalk, and similar substances), or other similar substances on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the property owner or possessor. Markings made using temporary, easily removable chalk or other water soluble markings are not included in this definition if made upon streets or sidewalks unless it is determined that such markings create a public safety risk. This definition shall not be construed to prohibit any markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews. For the purposes of this chapter, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or nature of materials used in the commission of the act, except as otherwise provided herein.

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Questions?

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Suggested Motion

Move to adopt an ordinance amending Article VI, Regulation of Graffiti, of Chapter 10, Nuisances, of the Asheville Code of Ordinances to amend the definition of graffiti.

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