

Chalk up another downtown controversy

Court to decide Santa Cruz rule against marking on sidewalks

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SANTA CRUZ — A minor city law has started a major controversy over what constitutes defacing public property and what constitutes free speech.

In the past month, at least three people have been arrested on vandalism charges for writing in chalk on the Pacific Avenue sidewalk. Police say they are not trying to hassle people, but that their warnings and citations are being ignored.

"We give lots and lots of warnings," police Chief Steve Belcher said "Most people stop but some keep going."

A city ordinance, MC 9.20.010, makes it an infraction to deface public sidewalks.

Nathan Kennedy said late last month that he set out to protest the law by writing in chalk on the sidewalk in front of Borders bookstore at Pacific and Soquel avenues. Police warned him not to do it again and washed the chalk away, Kennedy said.

But Kennedy did it again and received a citation, then did it again and received another, and another, until he had been cited for chalking on the sidewalk four times in 24 hours. At that point, police arrested him on suspicion of misdemeanor vandalism. He has pleaded innocent.

Last week, Becky Johnson, an activist for the homeless, said she and artist Tim Rinker were getting signatures for a petition in front of the O'Neill surf shop on Pacific Avenue when Rinker began writing "Vandals don't use chalk" on the sidewalk.

Johnson drew a peace symbol along with the words, "Sleeping is not a crime." Johnson said the two were later cited by police. When they expressed their right to be immediately heard by a magistrate, they were arrested and brought before Judge Kathleen Akao, who ruled they should face charges.

At a hearing Wednesday, Johnson said, Court Commissioner Irwin Joseph said he thought what Johnson and Rinker were doing was an act of civil disobedience, and he scheduled a Sept. 13 hearing to determine if the police citations for violating the city ordinance violated their First Amendment right to free speech.

Johnson said the city asked the court to issue an injunction stopping her from writing on the sidewalk in chalk, but Joseph declined.

Johnson said as far as she is concerned, it was not even an act of civil disobedience, and she was committing a lawful act. She said she doesn't understand how writing on a sidewalk

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in chalk, which washes away, can be considered defacing public property.

Belcher said it is not that simple. He said it costs the city about \$150 to clean up Kennedy's chalking because a power washer was used to clean the whole area. He said the concrete on the sidewalk is porous, making it difficult to clean.

"It becomes a real eyesore," he said.

Lt. Patty Sapone said Johnson and Rinker's chalk work covered most of the sidewalk in the area around the surf shop, and was difficult to clean. She said what they wrote was not offensive and would have been protected speech if they had said it or distributed their comments on a flier. But because somebody has to clean the sidewalks, it changes the situation.

Belcher said that it is not up to him to interpret the law, just to enforce it.

"If a law is on the books, I've taken an oath to enforce it," Belcher said. "They want to cry 'free speech,' but they can write anything they want on a piece of paper. They are making a conscious decision to violate the law."

Belcher said the chalkers and other people downtown who have been clashing with merchants who want them away from their stores are following a pattern. He said the activists are protesting simple warnings and citations from police, creating confrontations with officers.

Johnson called that police spin, saying officers are harassing homeless and young people in an effort to run them off the block.

Stacy McIntyre, manager of O'Neill surf shop, said, her store spent \$275 to clean the sidewalk the morning before the Johnson chalking incident. She said normally the store does not mind having people hang out in front, but in the past month the chalkings have escalated.

"Lately it's been a problem," she said, theorizing that recent City Council meetings aimed at ending downtown tensions between aggressive panhandlers and merchants is actually stirring things up. On Friday morning, the phrase "Chalk Crime Scene" could be seen in front of the store.

Borders manager Dave Sauley said he knew nothing about the chalking incidents, and it didn't bother him if people wrote on the sidewalk. But another store employee, who asked that his name not be used, said he saw the Kennedy incident and thought police exercised great patience before arresting the man. He said officers washed the chalk away, and that Kennedy was back in less than an hour writing on the sidewalk again.

"Sure they have a right to free speech, but what about the tourists?" the employee said. "Don't they have a right to shop in a clean environment? It comes down to my rights vs. your rights, and who is right."

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