



October 6, 2015

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Michael Braverman
Deputy Commissioner of Code Enforcement
417 E. Fayette Street, 3rd Floor
Baltimore, MD 21202

Re: Notice Number 1293211A-1
(Allegation of Code Violation at 847 Washington Blvd.)

Dear Mr. Braverman:

I write on behalf of Mr. Maurice A. Whitehurst, who, on September 10, 2015, was issued a citation for alleged graffiti at his property at 847 Washington Boulevard in Baltimore. The citation alleges a violation of Building, Fire, and Related Codes of Baltimore City § 304.25 PMCBC, for defacement of an exterior surface, because Mr. Whitehurst spray-painted political messages on the wall of his own property.

In our view, however, Mr. Whitehurst cannot be in violation of § 304.25 because there exists no regulatory, statutory, or constitutional authority for the City to issue a citation for marking political messages on *one's own home*. Rather, a property owner such as Mr. Whitehurst is entitled to protections of free speech under the First Amendment to the U.S. Constitution. Accordingly, on September 15, 2015, Mr. Whitehurst responded, in writing, to request administrative review of the citation, in keeping with the code's requirements for an appeal.¹ Please accept this correspondence in further explication of Mr. Whitehurst's appeal.

Building Code § 202.2.7 defines "blight" as including "exterior surfaces defaced by carvings, markings, or graffiti" and § 304.25 requires that defaced property "must be restored to an approved state of maintenance and repair." Nowhere in the Baltimore City Code is a definition of graffiti provided. However, the State of Maryland defines "graffiti" as "a permanent drawing, permanent painting, or a permanent mark or inscription *on the property of another without the permission of the owner of the property.*" MD Crim. L. § 6-301 (emphasis added). Likewise, our research shows that a lack of consent seems universally to

¹ That is, the appeal was made in writing within ten (10) days of service of the alleged violation, setting forth the reasons for review.

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be a necessary element of any graffiti offense.²

Thus, in order for criminal charges for graffiti to be proper, the marking *must* have been without permission of the owner of the property. Since Mr. Whitehurst is the owner of the property at issue here, this element of the offense is lacking. As such, Mr. Whitehurst did not violate § 304.25 for writing political messages on his own house.

If § 304.25 were to be construed to expand the definition of graffiti to one's own personal property, it would violate property owners' free speech rights under the First Amendment to the U.S. Constitution. The Supreme Court has rejected claims of a city's esthetic concerns as a legitimate reason to restrict free speech, in order to protect an individual's free speech on his/her own property: "Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else Precisely because of their location, such signs provide information about the identity of the 'speaker.'" *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994). The First Amendment guarantees a "special respect for individual liberty in the home . . . [holding a] special resonance when the government seeks to constrain a person's ability to *speak* there." *Id.* at 57–58. Mr. Whitehurst is using the side of his home as a canvas for political messages that define his political identity, and he is exercising his free speech to provoke critical thought on social justice issues that we face as a society. *See Texas v. Johnson*, 491 U.S. 397, 408 (1989) ("A principal function of free speech . . . is to invite dispute"). City Housing officials have no authority to override Mr. Whitehurst's exercise of free speech under a vague and overbroad application of § 304.25.

For these reasons, I urge you to dismiss the § 304.25 charge for exterior surface defacement. Please feel free to contact me with any questions or concerns. I will follow up with you in case the issue has not been resolved.

Sincerely,

Nick Steiner
Litigation & Policy Fellow

² *See* Montgomery County, Md. Housing Code § 32-12A(a)(1) ("Graffiti means the marks . . . on any real or personal property of another without the consent of the owner"); New York City, N.Y. ADC. Law § 10-117(a) ("No person shall write, paint or draw any inscription . . . on any public or private building . . . unless the express permission of the owner . . . has been obtained."); St. Louis, Mo. Code of Ordinances § 1120.020(2) ("Graffiti . . . shall mean any writing . . . on any privately owned building . . . which is applied without the consent or authority of the owner . . ."); Boston, Mass. Ch. XVI § 16-8.5(b) ("*Graffiti* means the intentional . . . defacement of any . . . property without the prior written consent of the owner.").