

Tombstone uses hired gun to rewrite new solicitation ordinance

By Dana Cole

Herald/Review

Published/Last Modified on Monday, Aug 17, 2009 - 03:39:37 am MST

TOMBSTONE — For a number of months now, Tombstone has been involved in a different kind of battle than the one that earned the town its gunslinging notoriety.

A city ordinance that prohibited the distribution of handbills and other forms of solicitation — an ordinance that has been in place since 1988 — came under scrutiny by one of the local business owners. After filing a lawsuit against the city of Tombstone for citations he and some employees received for distributing handbills, business owner Mike Caraffa won a battle against the city when all four citations were dismissed July 23 in Tombstone Magistrate Court.

In the lawsuit, Caraffa claims his First Amendment rights have been violated because of the ordinance.

And now — after Caraffa filed the lawsuit — the city’s original ordinance has gone through a makeover.

Ordinance No. 2009-02 is an amended version of the previous solicitation ordinance that had been in place in Tombstone. The new ordinance was drafted by Andrew Petersen of Humphrey and Petersen, PC, a law firm out of Tucson that is affiliated with Southwest Risk, Tombstone’s retention pool. All claims and lawsuits filed against the city of Tombstone go through Southwest Risk.

When questioned about changes in the ordinance, Tombstone Marshal Larry Talvy said, “Due to a lawsuit that we have pending, claiming the original city ordinance is unconstitutional, we had Southwest Risk look at it. An attorney with Southwest Risk felt the ordinance was too vague, and made some changes to the original one to clarify it.”

The amended ordinance was drafted by Petersen and approved by the city council and Mayor Dustin Escauple during a city council meeting Tuesday evening. Despite hearing from a string of upset business owners who objected to the revised ordinance during the meeting’s call to the public, the amended version was approved unanimously.

About 40 people attended the meeting, many representing different businesses with locations off Allen Street, where most of the tourist traffic congregates. In a community that thrives on tourism, business owners with establishments tucked off the main street say they need to be able to communicate with tourists to let them know where their businesses are located.

Sylvia Prysant, the owner of Tombstone Boarding House and Lamplight Room, a bed-and-breakfast and restaurant located at Fourth and Safford streets, addressed council members about her concerns regarding the revised ordinance, which prohibits businesses from distributing handbills or talking to tourists along Allen Street if the proprietor's business is not located on that street. Businesses are, however, able to distribute handbills within 15 feet of their own establishment. That's not much consolation for those businesses that are off the main drag.

"It's unconstitutional to deny people the right to advertise their business," said Prysant, who typically passed out handbills on the corner of Fourth and Allen, one of the prohibited areas. "Our city council is killing our businesses."

Peter Tiscia, owner of Tombstone Pawn, pleaded with the city to start getting along. "Everybody needs to take care of their own house, mind their own business and get along," the shop owner stated. In a later interview, Tiscia said, "The way this ordinance is written, it benefits the businesses along Allen Street only."

One of the arguments presented to the council was that "hawkers" are actually good for the town's tourism.

It's something one council member touched on during the meeting.

"I do have some issues with the ordinance," Councilman Steve Troncale said. "The restrictions on where people can be, I feel, are too restrictive. The people who are doing the hawking are usually in period costumes, and they add to the ambiance of this town."

City Attorney Randall Bays assured the council there are no ordinances that restrict people from wearing period costumes, nor are there ordinances against boardwalkers. The ordinances that are in place are geared toward certain activities the city hopes to control, the attorney added.

"There are a small number of proprietors here that are fighting among each other, and that fighting is hurting Tombstone," Bays said.

As a result of the amended ordinance, all solicitors representing businesses that are not along Allen Street will be restricted to the intersections of Sixth and Allen and Third and Allen streets. In addition, there will be no solicitors within 15 feet of each other, and there will be no solicitors from the same type of business or show in one location.

On Wednesday, just one day after Tombstone City Council and the mayor approved the amended ordinance, there were problems.

Caraffa, who owns Six Gun City, an establishment on the corner of Sixth and Toughnut, was told that business owners had filed complaints about some of his employees who were soliciting at the designated locations.

“I put my guys on the corner of Sixth and Allen and heard from the marshal’s office because an owner of one of the businesses in that location complained,” Caraffa said. “I removed them right away. I’m friends with these people and don’t want any more animosity directed against me.” At the same time, Caraffa had other employees on the opposite end of the street, at Third and Allen, the other area designated by the city council. He received a phone call from a business on that end, also objecting to his employees’ presence at that location. Caraffa said he removed those employees, as well.

“The marshal’s office assured me I was not in violation with any of the ordinances, but I moved my guys anyway,” Caraffa said. “As a business owner in this town, this really creates problems for me. I have to find a way to let tourists know where my business is located.”

Caraffa, who said he filed a complaint with the marshal’s office about stagecoaches on Allen Street and the money exchanged for the rides, believes the stagecoach businesses violate city ordinances. One of the stagecoach businesses is owned by the mayor’s wife. Caraffa said he was told by the marshal’s office that the stagecoaches fall under a different ordinance.

The issue of the mayor’s involvement in decisions during city council meetings was a hot topic among proprietors following Tuesday’s council meeting.

Shirley Bovis-Dejournett, along with her husband, Andree Dejournett, owns and operates Good Enough Mine Tour. She said the inconsistencies in how ordinances are enacted have become a “big point of contention within the town.”

Dejournett said, “We have one of the top mine tours in the country, and all we’re doing is promoting our business. At tonight’s (Tuesday’s) meeting, he (Escapule) should have abstained from voting. He owns the stagecoaches which sit right on Allen Street, and his employees take money from tourists. He also owns a local newspaper (the Tombstone News). The mayor has a vested interest in this town and should not be voting on agenda items that directly affect businesses.”

Andree Dejournett agrees with his wife. As a former Tombstone mayor whose term ran from 2004 through 2006, Dejournett claims Escapule is taking advantage of his position.

Talvy says stagecoaches are allowed to sit along Allen Street because there is a specific ordinance that allows horse-drawn conveyances to be there.

“It’s to help enhance the historic appeal of the town,” Talvy explained.

When approached for comment regarding some of the statements, Escapule was told by the city attorney not to comment and that the matter regarding the ordinance is in litigation. When questioned about the amended ordinance and how it differs from the previous handbill and solicitation ordinance, Bays declined comment on that issue, as well.

Lee and Marla McKechnie, owners of the Tombstone Trolley, claim the city's solicitation ordinance has been designed to benefit a few, powerful business owners.

"If a potential business owner were to approach me, expressing an interest about coming into this town, and that business isn't going to be along Allen Street, I would tell that person to go home," Marla McKechnie said. "If your business is not along Allen Street, there's a pretty good chance you're not going to survive in this town."

WHAT THE REVISED ORDINANCE SAYS

Ordinance No. 2009-02 is an amended version of a previous solicitation ordinance that had been in place in Tombstone since 1988.

The following ordinance changes are some of the features that a few Tombstone business owners were objecting to at the meeting:

Solicitation on Allen Street and the Boardwalk:

(1) Solicitation on Allen Street and the Boardwalk between Third Street and Sixth Street is limited to the following areas:

- The intersection of Third Street and Allen Street not to exceed 15 feet east of the intersection.
- The intersection of Sixth Street and Allen Street not to exceed 15 feet west of that intersection.

(2) No person engaged in solicitation may solicit within 15 feet of another person engaged in soliciting, including solicitors from the same business or show.

(3) Established businesses may solicit within 15 feet on each side of the front door of their own establishment.