

*Originally published in the Tombstone Tumbleweed -
Thursday, January 5, 2006 Volume XIX, No. 15*

**CITY DECIDES TO INVESTIGATE THE LEGALITY OF STREET
PROMOTION**

An Editorial by Jaye Anders

Perhaps somewhat after the fact but certainly better late than never, the City of Tombstone has decided to consult with City Attorney Ed Matchett concerning legal issues with the promotion of businesses on Allen Street. The practice of “hawking” on Allen Street has again caused controversy in Tombstone.

It began on December 26th, arguably one of the busiest days of the season for downtown. Local business owner Steve Goldstien filed a complaint with the Tombstone Marshal’s office against a group of gunfighters from Six Gun City, claiming that they were advertising their business and violating a current city ordinance, 5-1998, regarding street sales and solicitation. Goldstein had complained at the City Council Meeting on December 20th about this practice but adamantly supported the practice of issuing a permit to the Vigilantes for street promotion. To avoid conflict in front of the tourists, Joe Muñoz, manager of Six Gun City, removed his gunfighters from the street and a meeting was then held with interim Marshal David Nash. Sometime later, the groups from Helldorado Town and OK Corral were also informed that they must leave the street. The Texas Kate Show was not required to leave the street since a special use permit had previously been issued by the City Council for that business.

The ordinance being cited was passed in 1998 and declared that the Mayor and Common Council find and determine that the increase in street solicitation throughout the City has become extremely disturbing and disruptive to tourists, visitors and businesses and has contributed not only to the loss of access to and enjoyment of public places, but also to an ENHANCED SENSE OF FEAR, INTIMIDATION AND DISORDER. Paragraph four of the ordinance states that this ordinance is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. The final paragraph states sections of this code are not intended to create a result through enforcement that is absurd, impossible or unreasonable. This code should be held “inapplicable in any such cases where its application would be unconstitutional under the Constitution of the State or Arizona or the Constitution of the United States.”

Speaking of which, for those of us who don’t remember our history lessons, Amendment 1 of the Bill of Rights states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government or a redress of grievances.

According to the Encyclopedia of Everyday Law, The Supreme Court has identified seven kinds of expression that the government may regulate to varying degrees without running afoul of the Free Speech Clause. They are (1) core political speech; (2) speech

that incites illegal or subversive activity; (3) fighting words; (4) obscenity and pornography; (5) symbolic speech; (6) commercial speech; and (7) student speech.

Commercial speech, such as advertising, received more First Amendment protection than subversive advocacy, fighting words and obscenity. Advertising is afforded more protection than these other categories of expression because of the consumers' interest in the free flow of market information. In a free enterprise system, consumers depend on information regarding the quality, quantity and price of various goods and services. Thus, the First Amendment permits governmental regulation of commercial speech only for the prohibition of false, deceptive and misleading advertisements and the regulations are no more extensive than necessary to serve that interest.

It should be noted that no city ordinance or law can supersede a Supreme Court Ruling. In several cases, cities have attempted to ban the distribution of advertising materials and have been struck down by the Supreme Court. One example was the attempt by the city of Las Vegas to ban the distribution of material advertising prostitution. While some of this material was considered almost pornographic, the Supreme Court ruled against the city citing *Jamison vs. Texas* and *Marsh vs. Alabama*; a state or municipality may NOT ban the distribution of leaflets on street sidewalks or public places.

The City Of Tombstone is acting responsibly in their efforts to determine the legality of the aforementioned ordinance. In the meantime, it's basically, business as usual on Allen Street.