

**SPECIAL COUNCIL MEETING  
MONDAY, APRIL 24, 2017  
10:00 A.M.  
SCHIEFFELIN HALL  
(CORNER OF FREMONT AND FOURTH STREET)**

- I. **CALL TO ORDER** Mayor Dustin Escapule called the Special Council Meeting to order on Monday, April 24, 2017.
- II. **PLEDGE OF ALLEGIANCE** Mayor Dustin Escapule led the Common Council and the general public in a recitation Of the Pledge of Allegiance.
- III. **ROLL CALL**
- |                              |         |
|------------------------------|---------|
| Councilmember Anna Salcido   | Absent  |
| Councilmember Bill Barlow    | Present |
| Councilmember Brian Davis    | Present |
| Councilmember James Newbauer | Present |
| Mayor Dustin Escapule        | Present |

Also in attendance: P. Randall Bays – City Attorney

**A Quorum was declared**

IV. **NEW BUSINESS**

- A. **DISCUSSION AND/OR ACTION:** Approval of Ordinance No. 2017-03; An ordinance of the Mayor and Common Council of the City of Tombstone, Cochise County, Arizona declaring an emergency and amending Title 4, Chapter 3 of the City Code regarding street sales and solicitations.

**MOTION** by Councilmember Newbauer, **SECOND** by Councilmember Barlow to approve Ordinance No. 2017-03; An ordinance of the Mayor and Common Council of the City of Tombstone, Cochise County, Arizona declaring an emergency and amending Title 4, Chapter 3 of the City Code regarding street sales and solicitations.

**DISCUSSION:** Councilmember Barlow; “on the third page under item B; within twenty five feet radius from the front door of their own establishment having no more than two solicitors per business operation. I don’t have no problem with changing that two to four unless someone else has a problem with it.”

Councilmember Davis; “I’m sorry what was your comment? Within twenty five feet you want to change that to what?”

Councilmember Barlow; “from the front of their own establishment not having more than two solicitors per business ownership changed from two to four. I am tossing this out for discussion.”

Councilmember Davis; "I don't think I have a problem with that. I would like to ask what is the motivation for all of this change?"

Mayor Escapule; "Marshal would you please come up and explain to the Council why we are here today."

Marshal Randall; "This ordinance came under scrutiny last week and prior to that it had been operating for about six or seven years as written. Prior to my time as Marshal the ordinance was expanded by word of mouth to allow solicitors to be on the corner of Allen and their prospective streets so that they could solicit business. Last couple of weeks we have been getting a lot of complaints. Every staff meeting that we have either the Mayor or Mr. Barlow have complaints from citizens and tourists, merchants that the intersections are getting too crowded. I have actually witnessed it several times where a group of solicitors will be in the middle of Fourth Street and Allen, traffic can't get through. The drivers are either calling over to the solicitors and trying to find out information or the solicitors are actually (inaudible) to the drivers. Either way it was getting congested. Last Monday during our staff meeting the complaint came up again that there were tourists that were feeling threatened and some of them had actually left town because they did not want to deal with the gauntlet. During our staff meeting it was brought up that maybe we should reduce the number of solicitors at the corners. I said; "yeah, I think that is a good idea" so later that afternoon I went around to the three major solicitors advised them that we needed to have no more than two solicitors at the individual intersections. For the most part, that was acceptable. The next day after I informed my deputies what I we decided to do one of my deputies went through the intersection at Fourth Street and found that there was three to five solicitors from the Helldorado Gunfighters in the intersection. My sergeant then told them; "Hey, we're cutting it down to two per outfit. An argument ensued about; okay, I own two businesses therefore I can have four and that sort of thing. We settled it at two. Later that afternoon I received a phone call accusing me of not enforcing the ordinance. The person demanded that I enforce the ordinance as written. I agreed. (Marshal Randall interrupted by Mike Carrafa; Mr. Carrafa stated that it was "lie") The person was Mike Carrafa! He called me and accused me of not enforcing the ordinance. Asking me why I wasn't enforcing the ordinance and I said basically alright I will enforce it. I went to the corners and told the businesses that I was going to enforce the ordinance until we could get it amended. The ordinance at that time or at this time states that you can have solicitors within fifteen feet of your business and that is all it says. My opinion, the ordinance should have been amended several years ago because the way it is written doesn't do any good to any of the businesses. After I informed each of the businesses that we were enforcing the ordinance as written I went directly back to the Mayor's Office, advised the Mayor that I had shut down the businesses as they have been allowed to do over the years and told the Mayor that it was my opinion that we should amend this ordinance as soon as possible. Based on that conversation the Mayor and the City Attorney got together as well as myself the ordinance was re-written given back to the City Attorney for approval and that brings us here this morning."

Councilmember Davis; "I have been here for about twelve years. It says within twenty five feet. Supposed you moved them twenty five miles away; do you think that would change the situation of them harassing citizens?"

Mayor Escapule; "I am not sure I follow you."

Councilmember Davis; "The distance thing. You say twenty five feet. You've eliminated virtually any distance on Toughnut or Fremont from soliciting in Tombstone on Allen Street."

Mayor Escapule; "Hold on a minute. Mr. Bays would you explain exactly what this means. I think it's misinterpreted."

City Attorney Bays; "Your reading that actually backwards. You can solicit, it was fifteen feet of the door of your business and now what we have done is we have expanded that to twenty five feet of the door of your business; you can solicit."

Councilmember Davis; "Your own business that you are soliciting?"

City Attorney Bays; "Correct."

Councilmember Davis; "Okay that would eliminate any business on Fremont or Toughnut from soliciting on Allen Street."

Councilmember Barlow; "No, the next part councilor addresses that, his question. The next part behind the road closed barricade."

Marshal Randall; "It's either or. You can solicit in front of your business or you can go to Allen Street. That's the way this ordinance is supposed to be written. That way it allows the Gunfight Palace for instance; they don't go to the corner of Allen they solicit in front of their shop. The OK Corral they solicit in front of their shop and we expanded it twenty five feet. So that these two folks in particular would be within the ordinance. It's an either or. If you don't want to solicit in front of your shop you can go down to Allen."

Councilmember Davis; "That's not obvious from reading this. Is that obvious to you?"

City Attorney Bays; "I think it is. You have, in fact I think the suggesting is going to be that we have up to four people in front of your business or you can go down to these stations so to speak and solicit at these designated stations throughout town but you are limited to two people."

Councilmember Davis; "Okay, If that be the case I would ask that this (inaudible). That's not clear to me!"

Marshal Randall; "if I may as long as were amending this ordinance as it was written I would suggest that we do put an "or" at the end of the first clause. Where it says you can have up to four solicitors within twenty five feet or go down to Allen Street. That would be my suggestion."

Councilmember Barlow; "When they go past the "or" to the "behind the road closed" it drops to two and you don't have to be within twenty five feet of your business. I don't see a problem with that."

Mayor Escapule; "Mr. Bays, Can you make those changes in....do we need to make an amendment in the motion or can we just amend it?"

City Attorney Bays; "We can make a motion to amend. There is a couple more areas that I think we need to flush out real quickly. So far we are going to have two amendments. One would be the area that Councilmember Barlow brought up going from "two to four" and then you amendment would be to add add the word "or". There's one more area that is really just a typo under four dash three dash two, A two; second line from the bottom that starts with aggressively solicit from a person and it has after the person and then it has after the person. Just take out the first after the person and I think we are good"

Mayor Escapule; "That would be considered a typo Mr. Bays?"

City Attorney Bays; "Consider it as a typo."

Mayor Escapule; "Do we need to make an amendment on that or?"

City Attorney Bays; "No, I have already discussed it with Regina. It's not something that a rocket scientist would really catch."

**MOTION** by Councilmember Barlow, **SECOND** by Councilmember Davis to amend the section where it states within twenty five feet radius from the front door of their own establishments having no more than four rather than two solicitors per business ownership.

Councilmember Barlow; "Before we second that can we make a motion to make the three changes that you suggested? The one he just read goes from two to four, after ownership is "or" and then we would delete.... "

Mayor Escapule; "What you are saying is to combine all of them into one motion Mr. Bays?"

City Attorney Bays; "Correct I agree with that!"

Councilmember Barlow; "and we would delete the other "from a person after a person" second paragraph of the third page. My motion would be to amend where it says twenty five feet, we would amend from two solicitors to four. At the end of that small paragraph; after per business ownership add "or" and going back to 4-3-2 Prohibit Solicitations, Number two; the second line from the bottom; aggressively solicit from a person, has given an active response, we would delete "after the person" for the second one. "Inaudible"

City Attorney Bays; "That is correct!"

Mayor Escapule: "Okay we have a motion on the table! Can I have a second?"

**Roll Call Vote:**

Councilmember Salcido	Absent
Councilmember Barlow	Yes
Councilmember Davis	Yes
Councilmember Newbauer	Yes
Mayor Escapule	Yes

**4 Yes Votes, 1 Absent, 0 No Votes**

**VOTE: 4/1/0**

**MOTION:** Carried

Councilmember Newbauer; "Regarding the "behind the barrier on the street" and people have seen, I am sure some of the re-enactors, actors going up to the boardwalk to the edges of the curbing actually walking up on the boardwalk in front of other businesses and trying to get the people down to the show and I was wondering if there was a limitation to the area whether there would on the one side of the road close or on the other side. Would the re-enactors be able to just disperse where they want to go say down toward the OK Corral or to Third Street or all the way up to Sixth Street to impede traffic would they have free access basically on Allen Street, behind the boardwalks in any areas behind the barricades and would they be allowed to step up in front of businesses to solicit business or to draw away tourist who may be wanting to go to those businesses?"

Mayor Escapule; "Mr. Bays can you respond to that?"

City Attorney Bays; "Yes, the reason why that is not in this ordinance; that's the way it used to be; about fifteen years ago. This issue recycles itself every probably five or six years. It got really, really bad about fifteen years ago. Where the solicitors were just all over the place. So much so that tourist were not coming back to Tombstone because of this. As a result we eventually starting passing the solicitation ordinance in order to protect the tourist, protect the ...another issue that was coming up is; that a number of different establishments were going in front of the for example; the Longhorn and fights were breaking out, literally fights were breaking out; because they were fighting over who's going to get this particular person to come down to a show or something like that. So as a result of these issues; by the way Mr. Carrafa was involved in that too, we passed the solicitation ordinance ...

Mr. Carrafa; "I would like to respond to his statement!"

Mayor Escapule; "Sir if you disrupt the meeting again I am going to ask you to leave."

Mr. Carrafa; "I would like to respond to his statement!"

Mayor Escapule; "No Sir! No!

Mr. Carrafa; "I was not involved in any fight!"

Mayor Escapule; "I am going to tell you one more time do not disrupt this meeting! Thank you!"

City Attorney Bays; "Everything was documented with the Marshal's Department at that point in time. So that resulted in us actually preparing a very I guess sophisticated solicitation ordinance that in fact went through the Risk Pool, the insurance for the City. They suggested that we have the Risk Pool attorney that represents the City actually review and modify it which is when a person by the name of Andrew Peterson got involved and actually drafted the solicitation ordinance before this one. This issue has again risen its head again because the cycle continues and so we again asked Andrew Peterson to provide his input into this ordinance after we got the information from the Marshal. The Marshal wants to actually expand the ordinance to allow proprietors to solicit a little more in Tombstone but still keep the restrictions so that we are not offending the tourist or sending them away and making sure again that we are not having these fights break out in front of the establishments that are on Allen Street. So that is where we are today!"

Councilmember Newbauer; "It was just one of the things that I was concerned about because I again have seen it where some of the actors, re-enactors walk right up in front of another business when someone is actually walking into it or thinking about going into it and basically draw them away. It not only hurts the business but again it hurts tourism because they are thinking I don't feel I should be here and that is a sad thing to say about people coming to Tombstone that they have to say that! Thank you Randy!"

Mayor Escapule; "Anything further?"

Councilmember Newbauer; "One other question. Regarding the re-enactors again I have noticed some of them, a few of them not a lot, will draw their firearms on the street; spin them, point them at some people; that to me, everybody knows I love firearms and I am a gun person myself but respect the rights of the gun ownership whether it is a blank firing, a non-firing or a real gun. The person that you maybe pointing it at or showing it to may not know that it is unloaded or not and they may consider that a threat. So if you are going to be on the street as a re-enactor I suggest that they keep their guns holstered until they go to the show. That's specific to me!"

Mayor Escapule; "Mr. Bays isn't there a state statutes and other ordinances already in place that would prohibit someone from brandishing a firearm out on the street whether they are an actor or just a pedestrian or John Doe citizen?"

City Attorney Bays; "There is both. In fact the prior administration actually addressed that issue."

Mayor Escapule; "and that is a separate issue from this ordinance that we are working on today but it does not mean that it can't be addressed. I'm sure that if we bring it to the Marshal's attention he will know where to go on Arizona Revised Statutes as well as the City Code to address it."

Mayor Escapule; “Any further discussion?”

There being no further discussion Mayor Escapule asked for a roll call vote on the approval of the amended motion.

**Roll Call Vote:**

Councilmember Salcido	Absent
Councilmember Barlow	Yes
Councilmember Davis	Yes
Councilmember Newbauer	Yes
Mayor Escapule	Yes

**4 Yes Votes, 1 Absent, 0 No Votes**

**VOTE:** 4/1/0

**MOTION:** Carried

Mayor Escapule; “Just to clear the air; Mr. Bays since we just passed this, this Ordinance goes into effect immediately?”

City Attorney Bays; “Yes, Mr. Mayor!”

Mayor Escapule; “All businesses that are conducting business and want to be up on the street; they can be up there legally today as long as they comply with what the ordinance says?”

City Attorney Bays; “That’s correct!”

Mayor Escapule; “and I think this thing has been blown way out of proportion just because of one man but that is okay. We will deal with that later!”

**V. MOTION TO ADJOURN**

Mayor Escapule entertains a motion for adjournment.

**MOTION** by Councilmember Barlow, **SECOND** by Councilmember Davis, to adjourn the Special Council Meeting for Monday, April 24<sup>th</sup>, 2017.

**VOTE:** 4/0

**MOTION:** Carried

The Special Council meeting for Monday, April 24<sup>th</sup>, 2017 thereby adjourned at 10:45 a.m.

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Dustin Escapule, Mayor

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Brenda A. Ikirt, Interim City Clerk