

# 'NO LOITERING' CHALLENGED

## Attorney Says Loitering Sign Has 'Chilling Effect,' May Be Unconstitutional

By LAEL MORGAN  
Staff Writer

Is it illegal to loiter? The Fairbanks City Fathers say, yes! Loitering is a crime punishable by 60 days in jail or a \$600 fine or both. Whether they can prove it is something else again.

And they may have to, or take down the bevy of "no loitering" signs that bloom throughout the business district.

Challenging are members of the Tanana Chiefs, lawyer Millard Ingraham and the man on the street. What's wrong with loitering, they want to know?

"I'm a chronic loiterer. I've loitered in New York City, Denver, Big Piney, Wyoming, and many other cities in the U.S., Mexico and Europe," confesses Ingraham who was one of the first to broach the subject with city officials.

"I enjoy loitering and I think it's a great way to spend time. It's beneficial to health, keeps

the mind active and eyes sharp. I think loitering should be encouraged!"

"Those 'no loitering' signs are an attempt to get the Natives off the streets and back into the bars," maintains Tim Wallis, president of the Fairbanks Native Association and a member of the Tanana Chiefs. "It seems you can only loiter if you have money in your pocket."

Of like mind are Sam Kito, director of the Fairbanks Welcome Center, and Al Ketzler, president of the Tanana Chiefs. After loitering friends ran afoul of the law recently, they considered personal suit to challenge the constitutionality of the signs.

"And we're still considering it," Kito said.

"To loiter," according to our dictionary, is "to delay one's actions with aimless idle stops, to linger, to hang around, to lag."

The city ordinance goes well beyond this, however. City Police Chief Robert Sundberg cites Section 6.101 (J.) which forbids standing upon any street so as to obstruct vehicular traf-

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IT'S A CRIME—Not "loitering" but the sign that forbids it. That's the opinion of Tanana Chiefs Al Ketzler (left), Sam Kito (center) and

Tim Wallis who challenge the ruling.

—Photo by LAEL MORGAN

# No Loitering Sign...

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fic or in such a manner as to annoy, molest or interfere with passage of pedestrians.

There is also a sub-section of the ruling which says no person can sit, lie or sleep upon the street, sidewalk or public way. (It does not apply, we are relieved to note, while watching a parade or using a public seating facility.)

Sundberg said the ordinance was particularly important two years ago when crowds in front of the pool hall on Second Ave. got out of hand.

"But I think the number of arrests this summer have not been over six...mostly long haired, bearded types.

"We're taking a very cautious approach. We don't want to use the alternate route if possible. If we see a group starting to congregate we ask them to move along. The cooperation we've received has been very good."

Ingraham is quite familiar with Sundberg's ordinance.

"You can't loiter and conduct

yourself in a lewd, lascivious manner or in such a manner as to molest pedestrians or obstruct traffic. But why don't the signs say that?

"I never did like those signs and a couple of weeks ago an attorney friend mentioned a recent U.S. Supreme Court ruling where loitering ordinances, at least certain aspects of them, were unconstitutional. The right of free assembly is, after all, guaranteed by the First Amendment. The signs at best have a chilling affect on the first amendment and the Supreme Court has said a state or city cannot do anything that has a chilling affect on free assembly.

"I'm sure the purpose of those signs is to keep the Natives and long haired kids off the streets. I have personally seen city councilmen and prominent city officials loiter all over Second Avenue and they have never been detained by the police."

The attorney brought the subject to the attention of Mayor Julian Rice, "just as a joke," but discovered it is no laughing matter at City Hall.

"In the first place there have been no end of complaints of molestation and interference with individuals using our city streets," Rice explained. "With the signs people are warned in advance not to interfere with use of the sidewalks."

The Mayor reported he'd heard nothing more than a general complaint about the signs, and only from one source.

"I checked with the City Attorney and as far as I know we have a clean bill of health," he said.

Tundra Times also checked with City Attorney Ben Delahay who said for the record. "The signs are up and the police should be enforcing them. As far as this is a constitutional ordinance, for the city, it will be enforced."

Delahay would not comment on constitutionality of the ruling, noting he was a hired consultant to advise the council.

"No man has more respect for the constitution than I do," Mayor Rice added. But he did not care to comment further unless the ordinance was questioned more specifically.

"We're always willing to be convinced," he concluded.

In the meantime, anyone wishing to deliver any material on the subject to the Tundra Times office had better walk swiftly. We, too, have a city "no loitering" sign posted outside our front door.