

MUNICIPAL CODE
OF THE
CITY OF ROCHESTER
ADOPTED BY THE BOARD OF ALDERMEN
JANUARY 1908
PUBLIC SAFETY AND
GOOD ORDER

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MUNICIPAL CODE

OF THE

CITY OF ROCHESTER

PUBLIC SAFETY AND

GOOD ORDER

COMPILED BY EDWARD R. FOREMAN
UNDER DIRECTION OF CORPORATION
COUNSEL WILLIAM W. WEBB
AND PRINTED BY THE AUTHORITY
OF THE COMMON COUNCIL

1905

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DEPARTMENT OF PUBLIC SAFETY

Under the White Charter the Mayor appoints the Commissioner of Public Safety and has general authority over all Departments and Bureaus. The Department of Public Safety comprises the Police, Fire, Health and Building Bureaus.

JAMES G. CUTLER, Mayor

GEORGE A. GILMAN
Commissioner of Public Safety

J. C. HAYDEN
Chief of Police

M. J. ZIMMERMAN
Acting Inspector of Police

CHARLES LITTLE
Chief of Fire Department

GEORGE W. GOLER, M. D.
Health Officer

JOHN A. P. WALTER
Fire Marshal

INTRODUCTION

This book presents chapter four of the penal ordinances of the City of Rochester which is a codification of the existing provisions relating to public safety and good order. The chapter is here published separately for public convenience.

All local rules and ordinances have been revised recently and will be published together as Volume Two of the Municipal Code of the City of Rochester. The portion of this revision passed by the Common Council includes special chapters on buildings and combustibles, licensed occupations, public health, public safety and good order, public service corporations and the public market. By authority other than the Common Council have been passed rules and ordinances governing the public parks, public schools, Mount Hope cemetery, civil service board, water works, police and fire departments and plumbing and drainage. Copies of any of these ordinances can be obtained on application at the department affected.

The White Charter creates a department of public safety which comprises the police, fire,

INTRODUCTION

health and building bureaus. The Commissioner of Public Safety and the subordinates appointed by him in the various bureaus are specially charged with the enforcement of all rules and ordinances relating to public safety and good order and for this reason the ordinance here presented is printed under the direction of Commissioner of Public Safety George A. Gilman by authority of the Common Council.

EDWARD R. FOREMAN

Rochester, N. Y., Oct. 7th, 1905

CERTIFICATE

OFFICE OF THE CITY CLERK

I Certify Hereby THAT THE COPY OF CHAPTER FOUR OF THE PENAL ORDINANCES OF THE CITY OF ROCHESTER RELATING TO PUBLIC SAFETY AND GOOD ORDER PRINTED IN THIS VOLUME IS A CORRECT TRANSCRIPT OF THE TEXT OF THE ORIGINAL ORDINANCE PASSED BY THE COMMON COUNCIL; AND THAT SAID ORDINANCE WAS DULY ENROLLED AND ATTESTED BY THE CLERK, SIGNED BY THE PRESIDENT OF THE COMMON COUNCIL, APPROVED IN WRITING BY THE MAYOR, PUBLISHED IN THE OFFICIAL NEWSPAPERS OF THE CITY IN COMPLIANCE WITH THE TERMS OF THE CHARTER, AND IS PUBLISHED IN THIS VOLUME BY AUTHORITY OF THE COMMON COUNCIL. THE SAID ORDINANCE, THEREFORE, IS ENTITLED TO BE READ IN EVIDENCE. (CODE OF CIVIL PROCEDURE, § 941; OLD CHARTER, § 44, AS AMENDED BY L. 1905, CH. 191).

THOMAS E. WHITE

CITY CLERK

Rochester, N. Y., Oct. 7th, 1905

MUNICIPAL CODE

OF THE

CITY OF ROCHESTER

PUBLIC SAFETY AND
GOOD ORDER

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MUNICIPAL CODE OF THE CITY OF ROCHESTER

VOL. II—PART FIRST—TITLE I—PENAL ORDINANCES

Passed October 11th, 1904

BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF ROCHESTER AS FOLLOWS:

CHAPTER IV

PUBLIC SAFETY AND GOOD ORDER

Article I. Acts Forbidden

Article II. Acts Regulated

Article III. Penalties and Repeals

ARTICLE I

ACTS FORBIDDEN

Within the city of Rochester **no person shall**

Section 1. Disturbing noises—Make any riot, disturbance or loud noise in or near any public street or place.

§ 2. **Disorderly conduct**—Make a disturbance or indulge in improper conduct in any church, theatre or public hall.

§ 3. **Steam whistles**—Blow, or cause to be blown, any whistle operated by steam or other artificial means for more than fifteen seconds at one time during a period of thirty minutes on any one day.

§ 4. **Hose and sprinkling carts**—While using a sprinkling cart or hose for sprinkling streets or any other purposes carelessly or maliciously throw water upon any person, animal or vehicle.

§ 5. **Gongs**—Carry for use upon any vehicle a gong similar to that used on ambulances or the vehicles of the fire or police departments.

§ 6. **Barkers**—Accost or compel any individual against his will to enter any place where merchandise is exposed for sale.

§ 7. **Games of sport**—Play at any game of sport with a ball or fly a kite in any public street.

§ 8. **Fruit skins**—Throw upon the sidewalk of a public street any banana peel or other fruit skin.

§ 9. **Intoxication**—Be intoxicated in a public place.

Public drunkenness is a crime—Liquor Tax Law, § 40, *People vs. French*, 102 N. Y. 583; jury trial may be had, *People vs. Putnam*, 3 Parker's Cr. 386, *People vs. French supra*; jurisdiction of courts of special sessions, *People vs. Mulkins*, 25 Misc. 599; does not make disorderly person under Code Criminal Procedure §§ 899-913, *People ex rel. Shortell vs. Markell*, 20 Misc. 149. Persons convicted of drunkenness in Rochester shall be committed to Monroe County Penitentiary, L. 1858, Ch. 188, also L. 1880, Ch. 14, § 264.

§ 10. **Malicious mischief**—Willfully injure or interfere with any public or private property, street-sign, street-lamp, lamp-post, danger lamp or other signals or barriers placed for public safety, or any monument locating the line of a public street, sidewalk or improvement.

§ 11. **Hindering street improvements**—Hinder or obstruct the construction or repair of any pavement, sidewalk or crosswalk, sewer or other public improvement which shall be done under

authority of the common council and the board of contract and supply or hinder or obstruct any person employed by the commissioner of public works in cleaning any public street or place.

§ 12. **Obstructing river or sewers**—Throw any substance into the Genesee river above the upper falls or into any mill-race or sewer which may tend to interfere with the free passage of water therein.

§ 13. **Vehicles and animals standing in streets**—Permit any horse or mule to stand in a public street unattended without being securely tethered or tied to a post, ring or secure weight or other secure fastening; or permit any animal or vehicle to stop or stand upon a crosswalk, sidewalk, or footpath of any bridge, except in case of accident or other emergency, or when directed to stop by the police; or without authority fasten any animal to a tree or public lamp post; or feed any animal in a public street without permission of the owner or occupant of the adjoining premises; or place or permit any vehicle to remain crosswise of any street for a period longer than may be actually necessary for the purpose of loading or unloading; or permit any vehicle to stop or stand within the intersections

of any street or within ten feet of a street corner, except in case of accident or other emergency, or when directed to stop by the police, or to allow another vehicle or pedestrian to cross its path; or permit any vehicle to stop in any public street or highway, except close to the curb, unless in case of accident or emergency, or when directed by the police to stop, or to allow another vehicle or pedestrian to cross its path; or permit any vehicle to stop with its left side to the curb. The provisions of this section shall apply to vehicles of all classes and descriptions, including motor vehicles. (*As amended July 11, 1905*).

City liable for permitting storing of wagons in streets—*Cohen vs. New York*, 113 N. Y. 532.

NOTE—As to street obstruction generally see this ordinance, § 37; as to rules of the road see § 32.

§ 14. **Driving on sidewalks and sidepaths**—Drive any vehicle, or lead, ride or drive any animal along upon any sidewalk intended for the use of pedestrians, or upon a sidepath constructed and intended for the use of bicycles, or upon any street car track, when such track runs inside the street curb, except that baby carriages and invalid chairs may be propelled on sidewalks and bicycles may be ridden on said sidepaths and street car tracks. The provisions of

this section shall apply to all vehicles, including motor vehicles. (*As amended July 11, 1905.*)

§ 15. **Sleigh bells**—Drive any animal attached to a sleigh upon a public street without having bells sufficient to give warning of approach.

§ 16. **Obstructing walks**—Drive, skate or slide over any sidewalk or crosswalk in such a manner as to hinder or endanger pedestrians; or occupy any sidewalk, crosswalk, bridge or entrance to a church or public hall in such a manner as to obstruct the free passage of the public.

§ 17. **Fast driving**—Drive or ride any animal or vehicle upon a public street at a speed exceeding eight miles per hour, or upon any bridge, excepting the stone arch bridges over the Genesee river, at a speed faster than a walk; drive or ride any motor cycle or motor bicycle upon a public street at a speed exceeding eight miles per hour, or upon any bridge, excepting the stone arch bridges over the Genesee river, at a speed faster than four miles an hour; drive or ride any motor vehicle on any bridge, excepting the stone arch bridges over the Genesee river, at a speed faster than four miles an hour. This section shall not apply to motor vehicles, except as specifically

mentioned herein, to electric cars, to the apparatus or wagons of the fire and police departments, to vehicles carrying United States mail, or to ambulances and vehicles of physicians responding to emergency calls. (*As amended July 11, 1905.*)

Persons driving in streets must use proper care—*Crocker vs. Knickerbocker Ice Co.*, 92 N. Y. 652.

Speed of automobiles, fixed at ten miles where territory closely built up, fifteen where it is not (*Motor Vehicle Law*); **electric cars**, at seven and fifteen miles (*Ordinance relating to Street Railroads*, passed Dec. 26, 1894); **ordinary bicycles**, same as other vehicles.

§ 18. **Wide tires**—Drive upon any improved street any vehicle having upon it a weight which together with the weight of the vehicle shall exceed two thousand pounds unless the tires upon such vehicle shall be at least three inches in width, or any vehicle having upon it a weight which together with the weight of the vehicle shall exceed five thousand pounds, unless such tires shall be at least four inches in width. This section shall not apply to vehicles used by farmers coming into the city with produce or fuel.

§ 19. **Rubbish in streets**—Scatter ashes, waste paper, rubbish or other materials in any public street or place except by permission in writing from the commissioner of public works.

§ 20. **Barbed wire**—Construct or maintain a fence of barbed wire, or of which barbed wire is a part, along the line of any public street or place, or use barbed wire in the construction of any division fence unless the person desiring to use such material shall first obtain the written consent of the owner of the adjoining property.

§ 21. **Swinging gates**—Construct or maintain a gate that shall swing outward over any sidewalk.

§ 22. **Cellar doors**—Leave a trap-door or grate open in any sidewalk at any time except when receiving or delivering goods, and during such time said door or grate shall be surrounded by barriers sufficient to secure public safety. All iron cellar doors, or covers of any kind over openings into areas, or gratings or glass skylights in sidewalks shall be kept covered with burlap or matting from November 15 to April 1.

§ 23. **Bathing**—Bathe in any canal, mill-race or river except in the Genesee river opposite the property of the Vacuum Oil Company above Clarissa street bridge, and on the east side of the river, opposite the property of the Rochester Brewing Company and opposite the property of the Rochester Gas and Electric Company, and

in the Erie canal at the eastern wide-waters, and at the western wide-waters, provided the body be concealed by a suitable covering extending from the knees to the shoulders.

§ 24. **Begging**—Publicly solicit alms or subscriptions without the consent of the mayor.

§ 25. **Steamboats near city hall**—Tie any steamboat at the south end of Irving Place on the Erie canal, nor stop such boat at any place on said canal within two hundred feet from the city hall for a longer period than five minutes.

NOTE—As to boats on the canal see Canal Law. As to smoke from canal steam craft see this ordinance, §39, subdiv. (c).

§ 26. **Fireworks** — Discharge any cannon, firearm or fireworks or build a bonfire. This section, or any part thereof, shall be suspended at such times and places as the mayor may permit.

NOTE—City may be liable for permitting special exhibition of fireworks. *Spier vs. Brooklyn*, 139 N.Y. 6; or for the general suspension of fireworks ordinance. *Landau vs. City of New York*, 180 N. Y. 48.

§ 27. **Fire and police apparatus**—Injure or interfere with any wire, pole, apparatus or other thing connected with, or auxiliary to, the fire

alarm or police patrol telegraph systems or with any apparatus of the police or fire departments without the consent of the commissioner of public safety; or make, or cause to be made, or have in possession, any key, or impression or duplicate of a key of any signal box of the fire alarm or police patrol telegraph systems without such consent; or give, or cause to be given, any false alarm of fire in any manner whatsoever.

§ 28. **Indecent advertisements or acts**—Sell, lend, give away, or post any indecent or immoral book, picture, advertisement, playbill or other printed matter, or any article which is intended for immoral or indecent use; or appear in a state of nudity, or in an indecent dress, or willfully and lewdly expose the person, or the private parts thereof, in any public street or place where others are present.

§ 29. **Improper resorts**—Keep any house of ill-fame, house of assignation, or place for persons to visit for unlawful sexual intercourse; or any place of public resort by which the peace, comfort or decency of a neighborhood is disturbed; or be an inmate of such a place, or knowingly rent any building or portion thereof for such purposes.

NOTE—A bawdy house is a nuisance *per se* at common law. See cases cited McQuillin's Municipal Ordinances, § 475.

§ 30. **Soliciting**—Solicit another to go to any gambling house, house of ill-fame, house of assignation or place kept for unlawful sexual intercourse.

§ 31. **Gambling**—Keep or use, or permit to be kept or used, any table, slot machine, instrument or device of any nature whatsoever for the purpose of gambling, or with which money, liquor or anything of value shall be played for in any manner; and no person shall be an inmate of any place where such gambling devices may be kept or used, nor be engaged in any game of chance as banker, dealer, player or otherwise. It shall be the duty of every member of the police force to take all lawful means to suppress gambling devices and games of chance, and to seize any tables, slot machines, instruments or devices used for the purpose of gambling, and upon conviction of the owner hereunder destroy them upon the order of the police justice.

NOTE—See Penal Code provisions as to gambling, §§ 336-351.

ARTICLE II

ACTS REGULATED

Within the city of Rochester acts affecting public safety and good order are regulated as follows:

§ 32. As to vehicles—

Subdivision (a) RULES OF THE ROAD— Vehicles shall keep to the right and as near the right hand curb as possible, and when meeting shall pass each other to the right; vehicles overtaking others shall in passing keep to the left and shall at the intersection of public streets keep to the right of the intersection of the centers of such streets when turning to the right, and pass to the right of such intersection when turning to the left; and shall when crossing from one side of the street to the other turn to the left so as to head in the same direction as the traffic on that side of the street; vehicles moving slowly shall keep as close as possible to the curb line on the right so as to allow faster moving vehicles free passage on the left. (*As amended July 11, 1905.*)

NOTE—See §§ 13, 14, 15, 16, 17 and 18 of this ordinance covering acts forbidden as to vehicles in streets. As to street obstructions generally see § 37.

Subdivision (b) **LEADING BICYCLES**—Riders of bicycles when dismounted may lead their bicycles along the sidewalk in single file. (*As amended July 11, 1905*).

Subdivision (c) **BELL OR WHISTLE**—Every person riding any bicycle, motor cycle or motor bicycle, shall give an alarm by bell, whistle or otherwise which may be heard one hundred feet distant when about to meet or pass pedestrians, or other vehicles. (*As amended July 11, 1905*).

Subdivision (d) **COASTING**—No person riding a bicycle shall coast upon any public street, or proceed with the feet off the pedals and hands off the handlebars, or practice any trick or fancy riding in any street. (*As amended July 11, 1905*.)

Bicycles—Side paths in Monroe County—L. 1898, Ch. 71, amended L. 1899, Ch. 194, repealed L. 1900, Ch. 640. Side paths in counties other than Monroe and Albany—L. 1899, Ch. 152, amended L. 1900, Ch. 640, including Monroe County. Authority given to county engineer—L. 1904, Ch. 342, amended L. 1905, Ch. 605. Use of bicycles regulated—L. 1899, Ch. 152, amended L. 1902, Ch. 305; L. 1899, Ch. 634. Bicycle races regulated—Penal Code, § 383 a. Riding on sidewalks forbidden—Penal Code, § 652 a, Code of Criminal Procedure, § 56, subdivision 26. Transportation on steamboats—L. 1903, Ch. 121; on railroads—Railroad Law, § 44.

Automobiles—Use of, regulated by the "Motor Vehicle Law"—L. 1904, Ch. 538. Penal Code provision as to, repealed L. 1904, Ch. 539; Highway Law provisions as to, repealed L. 1904, Ch. 540.

§ 33. As to fires—

Subdivision (a) **RIGHT OF WAY**—At any fire, or alarm of fire, the fire apparatus, and all city officials and employees, in the discharge of their duty, shall have right of way and full unobstructed use of the streets.

Subdivision (b) **FIRE LINES**—At any fire, the police on arrival shall immediately establish and maintain fire lines, by stretching ropes or otherwise as circumstances may require and shall exclude from the streets and sidewalks within the fire lines all vehicles and all persons, not officials or employees of the city in the discharge of duty, except such persons as are entitled to wear, and who are actually wearing conspicuously upon their outside garment, the fire line badge of the department of public safety.

Subdivision (c) **PROPERTY OWNERS**—Owners of property endangered, and personally known to the police to be entitled to remove the same, may be admitted within the fire lines but not otherwise except by the order of the senior officer present, and when possible such order shall be in writing.

Subdivision (d) **DISORDERLY CONDUCT** — No person shall in any way impede the access to the fire, or its vicinity, of any apparatus, official or employee of the city in the discharge of his duty, or break through or come unauthorized within the fire lines when established by the police, or by disorderly conduct or otherwise impede the work of extinguishing fire, or protecting lives and property.

Subdivision (e) **DANGER IN STREETS**—At the time of any fire, accident, riot, public peril, public parade, or other circumstance causing people to congregate or assemble, no person shall enter or remain within the fire lines; danger lines, or other bounds established by the police or by or under the direction of an authorized city official for the preservation of public safety, peace and order, unless such person be duly authorized by an officer there in charge or as provided in this ordinance. (*As amended June 27, 1905*).

NOTE—Corporations furnishing electric lights must respond at fires. (Ordinance, Jan. 29, 1901).

§ 34. **As to morgues and funerals—**

Subdivision (a) **LOCATION OF MORGUES**—No morgue or undertaking establishment hereafter shall be located within one thousand feet

by sidewalk distance of any building occupied as a school or church, nor outside said prohibited district except with the consent of the common council as herein provided.

Subdivision (b) APPLICATION TO COUNCIL—Every applicant for permission to locate a morgue or undertaking establishment is required to give one week's notice in writing, personally or by mail, to the owners, occupants or agents of all houses and lots within a distance of two hundred feet from where such morgue or undertaking establishment is proposed to be placed, and no such application shall be considered by the common council without verified proof of the service of the notice herein required or the written consent of such owners, occupants or agents.

Subdivision (c) FUNERAL PROCESSIONS—No person shall drive any vehicle or animal between the conveyances of a funeral procession, or interrupt or detain such procession or any part thereof in any manner, while it is moving along any of the public streets. This shall not apply to the drivers or persons in charge of public or private ambulances, the vehicles and apparatus of the fire department, or to conveyances of physicians while responding to emergency calls.

§ 35. As to public pounds —

Subdivision (a) ANIMALS AT LARGE—No animals or fowls shall run at large upon any public street or place, to the injury and annoyance of the public.

Subdivision (b) POUNDS ESTABLISHED — There shall be maintained one or more public pounds in which shall be distrained all animals or fowls running at large, and there shall be one or more pound-keepers whose duty it shall be to take and impound any such animals or fowls. Any person may seize and take to the public pound any animals or fowls found running at large, but such person shall receive no compensation therefor.

Subdivision (c) POUND-KEEPER— At each pound a book shall be kept in which the pound-keeper shall enter forthwith the name and residence of any person bringing any animals or fowls to the pound, the date when the same were brought, a description of said animals or fowls sufficient for identification, and the name and residence of the owner thereof, if known, which book shall at all times be open for public inspection.

Subdivision (d) IMPOUNDING FEES—There shall be charged for all cattle or horses im-

pounded a fee of fifty cents each, and also fifty cents for each day or part of a day that sustenance is provided for such cattle or horses, and for all fowls impounded a fee of twenty-five cents each, and also twenty-five cents for each day or part of a day that sustenance is provided therefor.

Subdivision (e) WARRANT FOR OWNER — When any horses, cattle or fowl shall be impounded as aforesaid, it shall be the duty of the pound-keeper forthwith to make complaint before one of the judges of the municipal court against the owner or owners thereof, if known, and thereupon a warrant shall be issued, and upon the return thereof, the defendant having appeared, it shall be the duty of said judge to inquire whether the defendant has been guilty of a violation of the ordinance of the city complained of, and if the defendant be found guilty, judgment shall be rendered against him for the penalty, impounding fee, cost of sustenance, and cost of suit, and an order shall be entered that the horses, cattle or fowl shall be sold to satisfy said judgment, in case the same shall not be paid forthwith; such order shall describe the horses, cattle or fowl, and state the time and place of impounding.

Subdivision (f) COURT PROCEEDINGS —

When the owner of any horses, cattle or fowl shall be unknown, it shall be the duty of the pound-keeper to make complaint as provided in the preceding section, against the unknown owner, describing the horses, cattle or fowl and there-upon the judge before whom such complaint shall be made shall issue a notice reciting such complaint, that the owner is unknown, a description of the horses, cattle or fowl impounded, together with a reference to the section of the ordinance violated, and giving notice of the time and place where a trial shall be had, that such unknown owner may appear and defend. The day named in such notice shall not be less than six nor more than twelve days from the time of issuing the same, and it shall be the duty of the pound-keeper making the complaint forthwith to post three copies of said notice, one at the pound where such horses, cattle or fowl are impounded one at the municipal court of said city, and one at the public bulletin board at the county clerk's office, and to return said notice, with the time and manner of posting, to said municipal court. Upon the return of the said notice, like proceedings shall be had as in the case of personal service or appearance. Nothing herein con-

tained shall affect the right of the accused to a trial by jury.

Subdivision (g) JUDGMENT AND ORDER — Upon the rendition of any judgment as herein provided, unless an appeal shall be taken and further proceedings stayed, the judge rendering the same shall issue to the pound-keeper where such horses, cattle or fowl are impounded, an order commanding him to make the amount of such judgment and costs, stating the same separately, and the names of the parties, and make due return thereof.

Subdivision (h) NOTICE AND SALE—Upon the receipt of such order the pound-keeper immediately shall post three notices, as provided in subdivision "f" stating that certain horses, cattle or fowls, were impounded, describing the same, and that judgment has been rendered and an order for such judgment and costs made, and that unless redeemed they will be sold at public auction for cash, to the highest bidder, at the public pound, describing the same, and on a certain day and hour. Said sale shall take place not less than three days after the posting of such notices, exclusive of Sundays, holidays and election days, and if such horses, cattle or fowl are not redeemed, the pound-keeper shall sell the

same in accordance with said notices. It shall be the duty of the pound-keeper receiving such an order as prescribed in subdivision "g" to return the same within twenty days from its date to the court issuing the same with an indorsement showing when and how the same was executed.

Subdivision (i) REDEMPTION—At any time before the sale of any horses, cattle or fowl impounded, the owner or owners thereof may redeem the same by paying to the pound-keeper the impounding fee and cost of sustenance as provided herein, and in case proceedings shall have been instituted before a judicial officer, by paying the cost of such proceeding and the amount of the judgment recovered, together with subsequently accrued costs of sustenance.

Subdivision (j) EXCESS ON SALE —When the proceeds of the sale of any horses, cattle or fowl shall exceed the amount of any judgment and costs, and the expenses of sustenance, such excess shall be paid to the city treasurer, and the owner or owners of such horses, cattle or fowl shall be entitled to a warrant on the city treasurer for such excess, upon presenting to the corporation counsel satisfactory evidence of his right thereto. If such excess shall not be

claimed within a year after it shall be deposited, the person otherwise entitled to the same shall forfeit all claim thereto.

Subdivision (k) DANGEROUS DOGS—No person shall suffer to run at large any dog of dangerous disposition; nor shall any person keep or suffer to be kept on the premises occupied by him any dog in the habit of howling or whining at night, or barking at, or in any manner annoying any person. No female dog in time of heat shall be allowed to run at large. Upon a second conviction for a violation of this subdivision it may be a part of the sentence that such dog immediately be killed; and this sentence shall be executed forthwith by the city pound-keeper, to be designated by the magistrate imposing the sentence, and any owner or keeper of any such dog who refuses to deliver up the same in compliance with said judgment, shall be liable to an additional fine therefor. Any person harboring a dog for two days prior to any violation hereof shall be held to be the owner of said dog.

NOTE—As to licensing and regulating dogs in cities of the second class see L. 1902, Ch. 294, published in full, Vol. I, Municipal Code, pp. 353-357.

Subdivision (l) INTERFERING WITH POUND-KEEPER—No person shall molest nor interfere in

any way with the city pound-keeper, nor any of his assistants, while engaged in carrying out the provisions of this section.

§ 36. As to quarries —

Subdivision (a) PERMIT NECESSARY—No person hereafter shall make an excavation upon any premises for the purpose of quarrying stone therefrom, or engage in or continue in the business of quarrying stone without a permit from the commissioner of public safety, which permit may be revoked at pleasure and shall not be transferrable.

Subdivision (b) APPLICATION FOR PERMIT—The application for such permit shall be in writing and signed by the person on whose behalf requested. It shall describe the property on which it is desired to conduct such quarry business, by metes and bounds, and shall state the nature of the interest of the petitioner in such property; and, if it is intended to remove stone from such property by blasting, such application shall be accompanied by the written consent of all persons owning or occupying property within five hundred feet in any direction from the exterior lot lines of the premises in question.

Subdivision (c) BOND—The commissioner of public safety in all cases, before granting any

such permit, may require a bond to be given by the applicant to the city of Rochester, with one or more sureties to be approved by said commissioner, in the penal sum of two thousand dollars, conditioned for the compliance by the proprietors of such quarry, their servants and agents, with any and all ordinances of the city of Rochester relating to the conduct, management and keeping of said quarry; and for the payment to the city of Rochester of all judgments, fines or penalties that may be recovered against the applicant for said permit, or any of his servants or agents, for a violation of any of the said ordinances; and further conditioned for the payment to said city of all costs and expenses incurred by the city at any time in filling in any excavations on said property, draining the same, or doing any other act or thing in or upon said premises, deemed necessary by the commissioner of public safety for the proper protection of the public health.

Subdivision (d) **BLASTS**—No blasts shall be set off in any stone quarry within one thousand feet of any public or parochial school during school hours.

Subdivision (e) **FILLING** — Every owner, occupant or lessee of any premises heretofore

used for a stone quarry, within ninety days from the time this ordinance takes effect, shall cause said quarry to be filled with earth even with the ground level of such premises as it existed before any excavations were made thereon.

Subdivision (f) DRAINING—EVERY owner, occupant or lessee of any premises heretofore or hereafter used for quarrying stone shall keep said premises drained and free from stagnant water, and shall not allow any water to accumulate or stand therein longer than twenty days at any time.

NOTE—See health ordinance, § 7, subdiv. c, p. 18, for provision requiring lots and excavations to be kept free from stagnant water:

Subdivision (g) REFILLING—Every owner occupant or lessee of any lands who shall hereafter quarry any stone therefrom or make any excavations for the purpose of quarrying stone, immediately thereafter, and as fast as said stone is quarried, shall cause all excavations to be filled with earth even with the ground level as it existed previous to the making of the excavation.

Subdivision (h) TAXES AND ASSESSMENTS—No stone hereafter shall be quarried or removed by any person from any stone quarry or other

premises on which there has accrued and remains due to the city of Rochester any local improvement assessment or general city tax, until after all said taxes or assessments shall have been paid in full; and the commissioner of public safety shall not grant a permit to any person to quarry stone, except upon production of the certificate or tax search of the city treasurer, showing that no taxes or local improvement assessments on said premises are due said city.

Subdivision (i) EXCAVATIONS FOR BUILDING—Nothing contained in this section shall be held to require a permit for, or to prevent the removal of, stone by blasting or otherwise from any premises whenever such removal is necessary in the course of excavation for any building in good faith intended to be immediately thereafter erected on said premises, or in the construction of any sewer or lot lateral, or the laying of any water or gas service pipes, or in the making, in good faith, of any other public or private construction.

§ 37. As to streets—

Subdivision (a) OBSTRUCTIONS—No person shall erect or suspend any sign or banner over a public street without the consent of the com-

missioner of public works, and no sign attached to a building adjoining a public street shall project more than two feet from said building or be less than nine feet above the sidewalk. Merchandise or obstructions of any kind, which shall extend more than two feet from the building shall not be placed upon or over the sidewalk upon Main street from Stillson street to the West avenue canal bridge or upon intersecting streets for a distance of two hundred feet from said portion of Main street; and within the said territory no merchandise or articles of human food shall be exposed on the sidewalk unless protected in glass showcases. Except as above set forth no person shall place, or suffer to remain, any box, barrel or other article upon any public street so as to obstruct the free passage of the public unless actually engaged in loading and unloading goods.

NOTE—Police power extends to keeping streets free from obstructions. McQuillin's Municipal Ordinances, § 458, and numerous cases there cited.

Subdivision (b) BUILDING MATERIALS IN STREETS—No person shall place any building materials upon any public street without a permit in writing from the commissioner of public works, which permit may be revoked without

notice. Such permit shall not be for a longer period than three months, nor authorize the obstruction of more than one-third of the sidewalk nor more than one-half of the carriage-way, nor the placing of materials nearer than two feet to any street railroad track. Any person to whom such permit is granted shall cause all said materials to be enclosed with guards sufficient to secure public safety, and at all times during the night shall keep lighted lamps upon said guards to give warning to all persons. All such building materials and rubbish arising therefrom shall be removed from any public street by the expiration of the time limit in the above mentioned permit, or upon the revocation of said permit.

Subdivision (c) INJURING STREETS— No person shall injure any pavement, sidewalk, crosswalk or sewer, or dig any area, sewer or other excavation in a public street, or remove any earth or stone therefrom without permission in writing from the commissioner of public works, and under such conditions as he may impose, and the said commissioner may order any sewer or excavation constructed contrary to the provisions of this subdivision to be filled up or altered at the expense of the owner.

Subdivision (d) EXCAVATIONS NEAR STREETS
—Any person who shall dig a cellar or other excavation adjacent to and within four feet of the line of any public street, shall erect barriers between said street and excavation sufficient to secure public safety, and at all times during the night shall keep lighted lamps upon said barriers in such a manner as to give warning of the presence of such excavation; and if within twenty-four hours after notice from the commissioner of public works to place such barriers and lights such notice be not complied with, then said commissioner may cause such barriers and lights to be placed at the expense of the person so in default.

Subdivision (e) STREET IMPROVEMENTS—
Whenever any public street is in process of construction or repair it shall be the duty of the person performing the work to place and maintain such sufficient guards about said construction as to secure public safety until said street is ready for use, and at all times during the night to keep lighted lamps, not more than twenty-five feet apart, upon said guards, so as to give warning to all persons of such construction; and no person shall ride or drive any vehicle or animal upon

any such street until the same is completed and open to the public use.

Subdivision (f) SIDEWALK CLEANING — Every person occupying the ground floor of any building, and the owner of any vacant building or lot, shall keep the sidewalks adjoining such building or lot free and clear from snow, ice, grass, weeds, rubbish or other obstructions. No such person shall suffer or permit any snow or ice to collect and remain on said sidewalks so as to impede, obstruct or render dangerous public travel later than nine o'clock in the forenoon of any day after the same shall have fallen or collected thereon, or for more than two hours after notice to remove such snow or ice from the commissioner of public works, or any person duly authorized by him. (*As amended Jan. 10, 1905*).

NOTE—Ordinance sustained requiring removal of snow on two hours' notice. Village of Carthage vs. Frederick, 122 N. Y. 268. The commissioner of public works may cause to be removed snow, ice or obstructions that have remained twelve hours and owner must pay. Old charter, § 218, as amended L. 1905, Ch. 686, § 21.

Subdivision (g) AWNINGS—Cloth awnings may be constructed in front of any store or building to project over the sidewalk not to exceed ten feet, provided such awnings be supported by an

iron framework securely attached to said building in such a manner as to be at all times safe and self-supporting, and provided that every part of such awnings be at least seven feet above the surface of the sidewalk. Every owner or occupant shall at all times keep the awnings in front of such buildings free from snow, ice, dirt or other obstructions. No person shall suspend from any awning over any sidewalk merchandise or articles of any kind. No wooden awnings hereafter shall be erected without the consent of the commissioner of public works. The owners of all wooden awnings shall construct and maintain conductor pipes, which shall convey all water from said awnings to the street gutter, and shall maintain said awnings in such a manner as to protect the sidewalk from leakage.

Awnings as a nuisance discussed—Hume vs. New York, 74 N. Y. 264; Farrell vs. New York, 22 N. Y. St. Rep. 469; Brinkman vs. Eisler, 40 N. Y. St. Rep. 865; Simis vs. Brookfield, 13 Misc. 569; Hoey vs. Gilroy, 129 N. Y. 132.

Subdivision (h) MOVING BUILDINGS IN STREETS—No building shall be moved upon or along any public street or place without permission in writing from the commissioner of public works, which consent shall specify the course of removal and may require a bond to the

city of Rochester first to be given, signed by the applicant and one responsible surety approved by said commissioner, conditioned that the applicant will, in all respects, comply with the terms and conditions of such permit, and indemnify the city against any danger or loss occasioned by reason of such removal.

§ 38. As to weights and measures—

Subdivision (a) SEALING NECESSARY —No person shall transact any business by weights or measures which have not been inspected and sealed by the clerk of weights and measures in the department of public works within six months previous to the transaction, and shall conform to the standards of the state of New York.

Subdivision (b) INSPECTION AND SEALING —It shall be the duty of said clerk to inspect at least once in every six months, and as much oftener as proper, all weights and measures used for the transaction of business, and to seal the same to conform to the standards of the state of New York. Such weights and measures may be inspected and sealed at the place where kept for use, and if found not to conform to the state standards they shall be made so to conform by

the owner forthwith upon the order of the said clerk, and any liquid and dry measures, or measures of extension which are found defective by the said sealer shall be destroyed forthwith by him. It shall be the duty of the said clerk to inspect or seal any weights or measures brought to him, at any reasonable time during the day by any person, and he shall keep a record of all weights and measures inspected or sealed by him, the name of the owner, the name and address of the person having the same inspected or sealed, and whether or not such weights and measures conform to said standards. No fees shall be charged or collected by said clerk for sealing weights and measures. No owner shall refuse to exhibit on demand, or refuse to allow said clerk to inspect and seal said weights and measures as herein directed, and no person shall interfere with said clerk while engaged in the discharge of his official duties.

Public scales for weighing coal must be inspected monthly—General City Law, § 153, published in Vol. I, Municipal Code, p. 350. As to appointment of sealer of weights and measures in cities of the second class, see White Charter, § 442, Municipal Code, Vol. I, p. 308.

§ 39. As to smoke from chimneys —

Subdivision (a) COLOR SCALE—For the purpose of regulating the emission of smoke

from chimneys, stacks, flues of open spaces within the city of Rochester and to determine by comparison the degree of darkness of smoke so emitted, a color scale shall be and the same is hereby adopted as follows:

A dead white surface of cardboard or other material not less than sixteen inches in length and in width shall be divided into squares by straight dead-black lines drawn at right angles to one another across said surface. Each of said lines shall be of a uniform width of one twenty-fourth of an inch and shall be spaced one-quarter of an inch from centers. The color of the above scale when viewed from a distance of not less than one hundred feet in the open air, shall be used, as a basis of comparison of the color of smoke in the city of Rochester.

Subdivision (b) **DARK SMOKE FORBIDDEN—**
It is forbidden and hereby declared to be unlawful to suffer or permit the escape of smoke from any fire not in motion or fire banked or in a state of rest or from any burning or active fire through a stationary stack, flue or chimney of a color darker than said scale, provided, however, that the provisions of this ordinance shall not apply to the escape of smoke from any stationary stack, flue or chimney for a period of not to

exceed five minutes whenever the successful operation and management of any fire necessarily requires such escape of smoke, but such escape of smoke shall not be permitted or allowed for such period of time more often than once in four consecutive hours.

Subdivision (c) LOCOMOTIVES AND BOATS—It is forbidden and declared to be unlawful within the city of Rochester to suffer or permit the escape of smoke of a degree of darkness in excess of said scale from any locomotive or canal steam craft standing with banked fires or engaged in shifting or moving within the city limits, or to suffer or permit the escape of smoke of a degree of darkness in excess of said scale for a period of more than ten minutes from any locomotive or canal steam craft whose fires may be in preparation for starting, but such escape of smoke shall not be permitted or allowed for such period of time more often than once in twenty-four consecutive hours, provided, however, that none of the provisions of this ordinance shall apply in the case of a locomotive or canal steam craft in transit through or across said city from some point outside of said city, or entering or departing therefrom if such locomotive or canal steam craft shall not stop within

said city for a period or periods amounting in the aggregate to more than five minutes.

Subdivision (d) **TIME EXCEPTED**—The provisions of this section shall not apply between the hours of 5 a. m., and 7.30 a. m.

Subdivision (e) **SPECIAL PENALTIES**—Any corporation or person or persons who shall violate any of the provisions of this section or shall suffer or permit any of the acts in this section forbidden or declared to be unlawful shall be subject to a penalty of twenty-five dollars for each offense, to be recovered in a civil action by the city of Rochester.

Subdivision (f) **ENFORCEMENT**—It is hereby made the duty of the commissioner of public safety to enforce the provisions of this section.

NOTE—The above § 39 as to smoke from chimneys was added to this ordinance by the common council July 11, 1905. (See common council proceedings 1905, p. 358). It takes effect June 1, 1906.

ARTICLE III

PENALTIES AND REPEALS

§ 40. **Penalties**—A violation of this ordinance shall be punishable by a fine not exceeding one hundred fifty dollars or by im-

prisonment not exceeding one hundred fifty days or by both such fine and imprisonment or by a penalty not less than five dollars nor more than five hundred dollars to be recovered by the city of Rochester in a civil action. (*As amended June 13, 1905, which amendment was made necessary by L 1905, Ch. 191, § 3*).

NOTE—The penalty for violation of provisions as to bicycles is limited to five dollars fine or in case of default in payment by imprisonment not exceeding one day for each dollar of such fine—L. 1899, Ch. 634. The violation of a penal ordinance of the city of Rochester is not a misdemeanor although the prosecution is a criminal proceeding—Old Charter, § 43, as amended L. 1905, Ch. 191. As to special penalty for violation of provisions as to smoke from chimneys see this ordinance, § 39, subdiv. (e).

§ 41. **Repeals**—All ordinances and parts of ordinances inconsistent herewith are hereby repealed. The following ordinances and all amendments thereto are hereby specifically repealed:

An ordinance relating to Automobiles, passed January 2, 1901.

An ordinance relating to Barbed Wire Fences, passed May 26, 1896.

An ordinance relating to Bicycles, passed July 18, 1899.

An ordinance relating to Fires, passed May 10, 1904.

An ordinance relating to Funeral Processions, passed March 13, 1900.

An ordinance relating to Measures and Scales, passed July 17, 1900.

An ordinance relating to Morgues and Undertaking Establishments, passed March 29, 1898.

An ordinance relating to Protection of the Fire Department, passed June 9, 1896.

An ordinance relating to Public Morality, passed May 11, 1897.

An ordinance relating to Public Pounds, passed May 11, 1897.

An ordinance relating to Public Safety and Good Order, passed May 11, 1897.

An ordinance relating to Quarries, passed April 1, 1904.

An ordinance relating to Streets, passed May 11, 1897.

An ordinance relating to Temporary Sales, passed March 1, 1898.

An ordinance relating to Weights and Measures, passed March 13, 1900.

§ 42. **When in effect**—This ordinance shall take effect immediately.

GENERAL NOTE—Many of the offences against public safety and good order prohibited by this ordinance are also covered by state law; for such provisions see indexes of the Penal Code and General Laws. For cases on public safety and good order arising under penal ordinances see McQuillin's Municipal Ordinances §§ 429-496; also Abbott's New York Cyclopaedic Digest under "Municipal Corporations," Vol. IX, pp. 801-1143.

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