THE POWER OF MUNICIPAL CORPORATIONS TO PROTECT THE PUBLIC HEALTH AND SAFETY*

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REGULATIONS AFFECTING THE USE OF STREETS AND SIDEWALKS

Municipal regulation of streets and sidewalks is regularly authorized under state law. It must, however, survive in its particular manifestations and applications state constitutional provisions,[1] as well as the United States Constitution, particularly the latter's due process,[2] equal protection,[3] and commerce[4] clauses. There is the possibility, too, that state statutes may confer upon state commissions exclusive or paramount authority over certain particulars.[5] So, too, states may withdraw these powers from cities and confer them upon other bodies.[6] Many forms of conflict with state authority occur in this field.[7]

Subject to these above limitations, municipalities can control the speed of vehicles on their streets,[8] establish stop intersections,[9] create safety zones,[10] order the removal of obstructions,[11] and prohibit the erection of billboards likely to obstruct the

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1. Western Auto Transport v. City of Cheyenne, 57 Wyo. 351, 120 P.2d 590 (1942); Good Humor Corp. v. City of New York, 290 N.Y. 312, 49 N.E.2d 153 (1943); Goldstein v. City of Hamtramck, 227 Mich. 263, 198 N.W. 962 (1924). Delegation of power to administrative officials without adequate guides will invalidate traffic ordinances. Compare: City of Shreveport v. Herndon, 159 La. 113, 105 So. 244 (1925); City of Chicago v. Mariotto, 332 Ill. 44, 163 N.E. 369 (1928); City of Cleveland v. Gustafson, 24 Ohio St. 607, 180 N.E. 59 (1932).
2. Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939).
3. Railway Express v. New York, 336 U.S. 106 (1949).
4. Sprout v. City of South Bend, 277 U.S. 163 (1928).
5. Notes, 20 M.S.B.J. 216 (1941), 1 VAND. L. REV. 464 (1948).
6. *In re* Delaware River Joint Commn., 342 Pa. 119, 19 A.2d 278 (1941).
7. Harshaw v. Kansas City Public Service Co., 154 Kan. 481, 119 P.2d 459 (1941); Pipoly v. Benson, 20 Cal.2d 366, 125 P.2d 482 (1942); Schneiderman v. Sesanstein, 121 Ohio St. 80, 167 N.E. 158 (1929).
8. Winters v. Bisaillon, 152 Ore. 578, 54 P.2d 1169 (1936). At least in the absence of conflict with state law. Harshaw v. Kansas City Public Service Co., 154 Kan. 481, 119 P.2d 459 (1941).
9. Pipoly v. Benson, 20 Cal.2d 366, 125 P.2d 482 (1942); City of Chicago v. Marriotto, 332 Ill. 44, 163 N.E. 369 (1928).
10. City of Cleveland v. Gustafson, 124 Ohio St. 607, 180 N.E. 59 (1932).
11. Shuck v. Borough of Ligonier, 343 Pa. 265, 22 A.2d 735 (1941).

vision of, or constitute unreasonable distraction to, drivers.[12] Municipal corporations can inspect vehicles using their streets,[13] and often license them.[14] Although cities have sometimes been sustained in completely excluding from the streets certain kinds of vehicles,[15] courts are often unwilling to sustain complete bans, by prohibitive licensing or otherwise, upon vehicles useful in trade and commerce.[16]

Ordinances prescribing time limits on parking are valid,[17] and parking in certain locations may be completely prohibited.[18] Cars parked in violation of ordinances may be impounded by municipal authorities,[19] and the payment of pound fees thereupon de-

12. Churchhill & Tait v. Rafferty, 32 P.I. 580 (1918), *app. dism.* 248 U.S. 591; Kelbro v. Myrick, 113 Vt. 64, 30 A.2d 527 (1943); General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 193 N.E. 799 (1935); Perlmutter v. Greene, 259 N.Y. 327, 182 N.E. 5 (1932); Fifth Ave. Coach Co. v. City of New York, 194 N.Y. 19, 86 N.E. 824 (1909); Stringham v. Salt Lake City, 201 P.2d 758 (Utah 1949); Hav-a-tampa Cigar Co. v. Johnson, 149 Fla. 148, 5 So.2d 433 (1942); Wilson, *Billboards and the Right to be Seen from the Highway*, 30 GEO. L. REV. 723, 743 (1941); Proffitt, *Public Aesthetics and the Billboard*, 16 CORNELL L.Q. 151 (1931); Notes, 29 MICH. L. REV. 381 (1930), 36 MICH. L. REV. 667 (1937).

13. And reasonable inspection fees will be upheld. Mayer v. Ames, 133 Ohio St. 458, 14 N.E.2d 617 (1938), *cert. denied*, 305 U.S. 621, noted in 7 GEO. WASH. L. REV. 262 (1938); City of Evanston v. Wazau, 364 Ill. 198, 4 N.E.2d 78 (1936). *Contra:* Davenport v. Blackmur, 186 So. 321 (Miss. 1939).

14. And the license fees can generally be sufficient to cover costs of construction, maintenance and policing. Firestone v. City of Cambridge, 113 Ohio St. 57, 148 N.E. 470 (1925). See also cases cited *infra* in notes 26, 33 and 34.

15. Hadfield v. Lundin, 98 Wash. 657, 168 Pac. 516 (1917) (jitneys); Red Star Motor Drivers Assn. v. City of Detroit, 244 Mich. 480, 221 N.W. 622 (1928), noted in 27 MICH. L. REV. 528 (1929) (jitneys); City of Canton v. Van Voorhis, 61 Ohio App. 419, 22 N.E.2d 651 (1939) (private garbage carriers), noted in 38 MICH. L. REV. 1334 (1940); Commonwealth v. Dunham, 191 Pa. 73, 43 Atl. 34 (1899) (peddlers).

16. Gurland v. Town of Kearney, 128 N.J.L. 22, 24 A.2d 210 (1942) (ice cream vendors); Good Humor Corp. v. City of New York, 290 N.Y. 312, 49 N.E.2d 153 (1943) (same); Bogue v. Bennett, 156 Ind. 478, 60 N.E. 143 (1901) (traction engines.)

17. People v. Rubin, 284 N.Y. 392, 31 N.E.2d 501 (1940); People v. Garland, 193 N.Y. Misc. 664 (N.Y. Mag. Ct. 1948); Chicago v. McKinley, 344 Ill. 297, 176 N.E. 261 (1931); State v. Sweeney, 90 N.H. 127, 5 A.2d 41 (1939).

18. Thompson v. City of Reidsville, 203 N.C. 502, 166 S.E. 389 (1932); England v. Twp. Committee of Milburn, 122 N.J.L. 462, 5 A.2d 782 (1939); Hoynen v. Wurstner, 63 N.E.2d 229 (Ohio 1945); see notes, 72 A.L.R. 229 (1931), 108 A.L.R. 1152 (1937), 130 A.L.R. 316 (1941). *But see* Haggenjos v. City of Chicago, 336 Ill. 573, 168 N.E. 661 (1929).

19. McLaurine v. City of Birmingham, 247 Ala. 414, 24 So.2d 755 (1946); Hughes v. City of Pheonix, 64 Ariz. 331, 170 P.2d 297 (1946). See note, 163 A.L.R. 926 (1946).

manded.[20] Municipalities are regularly upheld in installing parking meters,[21] and even in purchasing and maintaining off-the-street parking facilities.[22] Theoretically, parking meters installed under a regulatory police power cannot produce revenue grossly or regularly in excess of expenses, but it is the rare case that has invalidated a parking meter ordinance therefor.[23]

It is generally said that there is no right to use city streets for purpose of private gain,[24] and such use can be subjected to extensive municipal regulation and, at times, even prohibition. So it has been held that municipalities can completely ban from the streets jitneys or cabs,[25] and licensing of such vehicles is everywhere sustained.[26] Cities are also upheld in limiting the number of cabs,[27] and in regulating their solicitation practices,[28] stands and parking,[29] load limits,[30] indemnity insurance coverage,[31] and fares.[32]

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20. Steiner v. City of New Orleans, 173 La. 275, 136 So. 596 (1931). And note City of Chicago v. Crane, 319 Ill. App. 623, 49 N.E.2d 802 (1943); upholding an ordinance making a prima facie case against an owner whose car was parked at a fire hydrant.

21. Wm. Laubach & Sons v. City of Easton, 347 Pa. 542, 32 A.2d 881 (1943); Grimes, *The Legality of Parking Meter Ordinances and the Permissible Use of Parking Meter Funds*, 35 CALIF. L. REV. 235 (1946). Notes, 29 VA. L. REV. 617 (1943), 18 IND. L.J. 324 (1935), 37 KY. L.J. 91 (1948), see Notes, 108 A.L.R. 1142 (1937), 130 A.L.R. 316 (1941). Parking meters can be purchased under conditional sales contracts according to Sherman v. City of Picker, 204 P.2d 535 (Okla. 1949). The delegation of authority to an official to determine location will not invalidate parking meter ordinances. State *ex rel.* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936).

22. Miller v. City of Georgetown, 301 Ky. 241, 191 S.W.2d 403 (1945); City of Whittier v. Dixon, 24 Cal.2d 664, 151 P.2d 5 (1944). *Compare* City of Cleveland v. Ruple, 130 Ohio St. 465, 200 N.E. 507 (1936).

23. Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940); City of Birmingham v. Hood-McPherson Realty Co., 233 Ala. 352, 172 So. 114 (1937), *overruled* in City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673 (1948).

24. McCraney v. City of Leeds, 241 Ala. 198, 1 So.2d 894 (1941).

25. People's Taxicab Co. v. City of Wichita, 140 Kan. 129, 34 P.2d 545 (1934), and cases cited therein; City of New Orleans v. Badie. 146 La. 550, 83 So. 826 (1920). *Contra:* Jitney Bus Assn. v. Wilkes-Barre, 256 Pa. 462, 100 Atl. 954 (1917).

26. Desser v. City of Wichita, 96 Kan. 820, 153 Pac. 1194 (1916); Wichita v. Home Cab Co., 141 Kan. 697, 42 P.2d 972 (1935); Morley v. Wilson, 261 Mass. 269, 159 N.E. 41 (1927); G. I. Veterans' Cab Assn. v. Yellow Cab Co., 65 A.2d 173 (Md. 1949).

27. Desser v. City of Wichita, 96 Kan. 820, 153 Pac. 1194 (1916).

28. Lowe v. City Council of Augusta, 45 F. Supp. 143 (S.D. Ga. 1942), *affd.* as Derrick v. City Council of Augusta, 138 F.2d 507 (5th Cir. 1943), *cert. denied,* 321 U.S. 777 (1944).

29. City of New Orleans v. Calamari, 150 La. 737, 91 So. 172 (1922); Sullivan v. Police Commrs. of Boston, 304 Mass. 113, 23 N.E.2d 106 (1939).

Busses operating solely within the city can be licensed,[33] and there is even authority for municipal licensing of inter-urban and interstate busses.[34] Regulation as to routes,[35] stops,[36] and indemnity insurance coverage[37] will almost certainly be sustained if reasonable and not in conflict with state authority.[38] Rather frequently occupation of the field by the state prevents municipal regulation in this matter.[39] If the busses operate interstate, unreasonable license fees will be invalidated under the Commerce Clause of the United States Constitution.[40] Similarly, state constitutions are frequently deemed violated in the case of inter-urban busses by fees unreasonable in amount or discriminatory against out-of-town lines.[41]

Hawkers and peddlers using the city streets are subject to licensing and regulation.[42] However, here as elsewhere, local

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Exclusive stands can be granted. McFall v. St. Louis, 232 Mo. 716, 135 S.W. 51 (1911). See Note, 33 L.R.A.(n.s.) 471 (1911).

30. Lowe v. City Council of Augusta, 45 F. Supp. 143 (S.D. Ga. 1942).

31. Hadfield v. Lundin, 98 Wash. 657, 168 Pac. 516 (1917); Melconian v. City of Grand Rapids, 218 Mich. 397, 188 N.W. 521 (1922). See Note, 95 A.L.R. 1224 (1935).

32. Parsons v. City of Galveston, 53 S.W.2d 160 (Tex. 1932); Clem v. City of LaGrange, 169 Ga. 51, 149 S.E. 638 (1929).

33. State v. Palmer, 212 Minn. 388, 3 N.W.2d 666 (1942).

34. Star Transportation Co. v. Mason City, 195 Iowa 930, 192 N.W. 873 (1923); Sylvania Busses v. City of Toledo, 118 Ohio St. 187, 160 N.E. 674 (1928); State v. Palmer, *supra* note 33. *Cf.* McDonald v. Paragould, 120 Ark. 226, 179 S.W. 335 (1915).

35. Murphy v. City of Toledo, 108 Ohio St. 342, 140 N.E. 626 (1923); Star Highway Motorbus Co. v. City of Lansing, 238 Mich. 146, 213 N.W. 79 (1927).

36. Village of Perrysburg v. Ridgway, 108 Ohio St. 245, 140 N.E. 595 (1923); Star Highway Motorbus Co. v. City of Lansing, 238 Mich. 146, 213 N.W. 79 (1927).

37. Star Highway Motorbus Co. v. City of Lansing, 238 Mich. 146, 213 N.W. 79 (1927).

38. Clem v. City of La Grange, 169 Ga. 51, 149 S.E. 638 (1929) holding reasonable and valid many bus regulations; Pennjersey Rapid Transit Co. v. City of Camden, 6 N.J. Misc. 813, 142 Atl. 821 (Sup. Ct. 1928) holding unreasonable a prohibition upon double-deck busses.

39. Nelsonville v. Ramsey, 113 Ohio St. 217, 148 N.E. 694 (1925); Chicago Motor Coach Co. v. City of Chicago, 337 Ill. 200, 169 N.E. 22 (1929). See Note, 66 A.L.R. 847 (1930).

40. Central Greyhound Lines v. Mealey, 334 U.S. 653 (1948). See Notes, 56 A.L.R. 1056 (1928), 81 A.L.R. 415 (1932), 87 A.L.R. 735 (1933).

41. McDonald v. Paragould, 120 Ark. 226, 179 S.W. 335 (1915); City of Lincoln v. Dehner, 268 Ill. 175, 108 N.E. 991 (1915).

42. Kansas City v. Overton, 68 Kan. 560, 75 Pac. 549 (1904); Dooley v. City of Cleveland, 175 Tenn. 439, 135 S.W.2d 649 (1940); City of Chicago v. Rhine, 363 Ill. 619, 2 N.E.2d 905 (1936). Notes, 2 U. FLA. L. REV. 440 (1949), 28 NEB. L. REV. 289 (1949).

ordinances are invalidated because of unreasonable fees[43] or discrimination against non-residents.[44]

Trucks operating in or passing through cities can be regulated by municipalities in many ways.[45] Although the United States Supreme Court has sustained New York's City's ordinance banning advertising on the sides of trucks not owned by the advertiser,[46] a similar Chicago ordinance has been annulled under the state constitution by the Illinois Court.[47] The Commerce Clause results in the invaliadtion of unreasonable license fees upon interstate truckers,[48] but the courts are not agreed on whether inter-city trucks can be required to seek municipal licenses or franchises.[49] Nor are they agreed on whether municipalities can require licenses and fees of out-of-town firms delivering in the city, when the ordinances do not apply to local distributors.[50]

Subject to earlier mentioned limitations, municipalities have been able to regulate railroads passing through the community as to such things as speed[51] and safety precautions at crossings.[52]

Oftentimes municipal power over streets extends to licensing

43. Iowa City v. Glassman, 155 Iowa 671, 136 N.W. 899 (1912).

44. Goldstein v. City of Hamtramck, 227 Mich. 263, 198 N.W. 962 (1924).

45. Ferguson Coal Co. v. Thompson, 343 Ill. 20, 174 N.E. 896 (1931); Kenosha Auto Transport v. Cheyenne, 55 Wyo. 298, 100 P.2d 109 (1940); Wilbur v. City of Newton, 301 Mass. 97, 16 N.E.2d 86 (1938). *Compare* Sumner County v. Interurban Transportation Co., 141 Tenn. 493, 213 S.W. 412 (1919). And note People v. Marcello, 25 N.Y.S.2d 533 (N.Y. Mag. Ct. 1941) to the effect that a village may not prohibit trucks from using a state highway through the village.

46. Railway Express v. City of New York, 336 U.S. 106 (1949), noted in 24 (N.Y.U.L.Q. REV. 620 (1949).

47. Chicago Park District v. Canfield, 382 Ill. 218, 47 N.E.2d 61 (1943).

48. Ingels v. Morf, 300 U. S. 290 (1937), noted in 23 VA. L. REV. 842 (1937). For fee held reasonable see People v. Madden, 9 N.Y.S.2d 64, 169 Misc. 745 (N.Y. Mag. Ct. 1939).

49. Dent v. Oregon City, 106 Ore. 122, 211 Pac. 909 (1923) (denying power of municipality to require franchise); Western Auto Transport v. City of Cheyenne, 57 Wyo. 351, 120 P.2d 590 (1942) (denying power to require license, and collecting cases both ways); People v. Marcello, 25 N.Y.S.2d 533 (N.Y. Mag. Ct. 1941) (denying power).

50. General Baking Co. v. City of Belleville, 384 Ill. 459, 51 N.E.2d 546 (1943) (upholding where local bakeries inspected under other ordinances); Sanford v. City of Clanton, 31 Ala. App. 53, 15 So.2d 303 (1943) (upholding); Linen Service Corp. of Texas v. City of Abilene, 169 S.W.2d 497 (Tex. 1943) (denying).

51. Erb. v. Morasch, 177 U.S. 584 (1900); Nashville Ry. v. White, 278 U.S. 456 (1929).

52. State v. Jersey City, 29 N.J.L. (5 Dutch) 170 (1861); Buffalo & Niagara Falls Rr. Co. v. Buffalo, 5 Hill 209 (1843); Great Western Rr. Co. v. Decatur, 33 Ill. 381 (1864).

and regulating street railways, light, telephone and water utilities using the streets,[53] and even to setting rates.[54] However, such power is often vested in state commissions.[55]

Cities can require permits for parades and processions in the streets, even as to those claiming dispensation because of the First Amendment to the United States Constitution.[56] Municipalities can punish those who use sound trucks in a loud and raucous manner.[57] Those who interfere with street traffic by speech, assembly or the distribution of literature, are constitutionally subject to municipal control.[58]

Courts generally acknowledge a common law right of ingress and egress in owners whose property abuts city streets.[59] This usually permits the construction of a driveway so long as it does not materially interfere with the use of the walk by pedestrians or create a traffic hazard.[60] Nevertheless, cities have often been sustained in prohibiting such owners from cutting curbs into streets and across boulevards,[61] and it is frequently

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53. Village of Jonesville v. Telephone Co., 155 Mich. 86 (1908); City of Wilson v. Weber, 101 Kan. 425, 166 Pac. 512 (1917); Michigan Telephone Co. v. City of St. Joseph, 121 Mich. 502 (1899); Omaha and Council Bluffs St. Ry. v. City of Omaha, 114 Neb. 483, 208 N.W. 123 (1926); State v. Gish, 168 Iowa 70, 150 N.W. 37 (1917); Philadelphia Electric Co. v. City of Philadelphia, 301 Pa. 291, 152 Atl. 23 (1930); Village of Heyworth v. Central Illinois Elec. & Gas Co., 378 Ill. 506, 39 N.E.2d 26 (1942), *cert. denied*, 316 U. S. 670; City of New Rochelle v. Burke, 43 N.E.2d 463, 288 N.Y. 906 (1942). On the power to oust upon expiration of the franchise, see note, 30 ILL. B.J. 254 (1942).

54. City of Kalamazoo v. Kalamazoo Circuit Judge, 200 Mich. 146, 166 N.W. 998 (1918).

55. Chicago Motor Coach Co. v. City of Chicago, 337 Ill. 200, 169 N.E. 22 (1929); North Star Line v. City of Grand Rapids, 259 Mich. 654, 244 N.W. 192 (1932).

56. Cox v. New Hampshire, 312 U.S. 569 (1941), noted in 21 B.U.L. REV. 540 (1941). So, too, for the use of parkways. People v. Hass, 299 N.Y. 681, 87 N.E.2d 68, *app. dism. per curiam*, 338 U.S. 803 (1949).

57. Kovacs v. Cooper, 336 U.S. 77 (1949), noted in 47 MICH. L. REV. 1007 (1949). Compare Saia v. New York, 334 U.S. 558 (1948), noted in 47 MICH. L. REV. 111 (1948) invalidating a prior restraint upon sound trucks.

58. Jones v. City of Moultrie, 196 Ga. 526, 27 S.E.2d 39 (1943); Stephens v. Stickel, 146 Fla. 104, 200 So. 396 (1941); Hannan v. City of Haverhill, 120 F.2d 87 (1st Cir. 1941), *cert. denied*, 314 U.S. 641 (1941).

59. Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1944); City of Norman v. Safeway Stores, 193 Okla. 534, 145 P.2d 765 (1944); McGowan v. City of Burns, 172 Ore. 63, 137 P.2d 994 (1943); Bacich v. Board of Control, 23 Cal.2d 343, 144 P.2d 818 (1944); Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940). Note, 41 YALE L.J. 221 (1931).

60. See cases cited in note 59.

61. State *ex rel.* Copland v. City of Toledo, 75 Ohio App. 378, 62 N.E.2d 256 (1945); Breinig v. Allegheny County, 332 Pa. 474, 2 A.2d 842 (1939);

said that an abutting owner's rights are subordinate to any reasonable municipal regulation necessary to facilitate general travel.[62] Courts similarly recognize an abutting owner's right of view,[63] but this will not prevent municipal regulation of advertising on the owner's building, at least of products not sold therein.[64] Although temporary obstructions necessary to building construction have been condoned, [65] courts will deny abutting owners any right to unreasonably clutter sidewalks or obstruct streets in front of their premises.[66] Municipal regulations of signs hanging over the walk or street have been upheld,[67] as have limitations upon awnings[68] and sidewalk obstructions.[69] A ban upon the projection of voices irritating to pedestrians has also been upheld.[70] Courts are not agreed as to the validity of municipal ordinances imposing upon abutting owners the cost of sprinkling the streets,[71] nor do they always uphold ordinances casting upon abutting owners the obligation of clearing snow and ice from sidewalks.[72]

Collier v. City of Memphis, 180 Tenn. 509, 176 S.W.2d 818 (1944); City of Fort Smith v. Van Zandt, 197 Ark. 91, 122 S.W.2d 187 (1939); City of Elmhurst v. Buettgen, 394 Ill. 248, 68 N.E.2d 278 (1946); Alexander Co. v. City of Owatonna, 222 Minn. 312, 24 N.W.2d 244 (1946), noted in 31 MINN. L. REV. 292 (1946).

62. Reining v. N.Y., L. & W. Rr. Co., 128 N.Y. 157, 28 N.E. 640 (1891); Rigney v. N.Y.C. & H. Rr. Co., 217 N.Y. 31, 111 N.E. 226 (1916). Note also People v. Dmytro, 280 Mich. 82, 273 N.W. 40 (1937) sustaining a prohibition on curb service.

63. Yale v. City of New Haven, 104 Conn. 610, 134 Atl. 268 (1926); Kelbro v. Myrick, 113 Vt. 64, 30 A.2d 527 (1943).

64. Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A.2d 177 (1944); Kelbro v. Myrick, 113 Vt. 64, 30 A.2d 527 (1943). Terry, *The Constitutionality of Statutes forbidding Advertising Signs on Property*, 24 YALE L.J. 1 (1914).

65. Mallory v. Griffey, 85 Pa. 275 (1877); Piollet v. Simmers, 106 Pa. 95 (1884).

66. McWhorter v. Dahl Chevrolet Co., 229 Mo. App. 1090, 88 S.W.2d 240 (1936); Miller v. Town of Seaford, 22 Del. Ch. 159 (1937).

67. City of Birmingham v. Holt, 239 Ala. 248, 194 So. 538 (1940); Woodward Avenue Corp. v. Wolff, 312 Mich. 352, 20 N.W.2d 217 (1945); Shields v. Chevrolet Truck Co., 195 S.C. 437, 12 S.E.2d 19 (1941).

68. Laura Vincent Co. v. City of Selma, 43 Cal. App.2d 473, 111 P.2d 17 (1941).

69. Miller v. Town of Seaford, 22 Del. Ch. 159, 194 Atl. 37 (1937).

70. People v. Caponigri, 169 Misc. 9, 6 N.Y.S.2d 577 (N.Y. Mag. Ct. 1938).

71. Compare City of Kalamazoo v. Crawford, 154 Mich. 58, 117 N.W. 572 (1908) or City of Owensboro v. Sweeney, 129 Ky. 607, 111 S.W. 364 (1908) with City of Lafayette v. Tanner, 149 La. 430, 89 So. 314 (1921) or City of Roswell v. Bateman, 20 N.M. 77, 146 Pac. 950 (1915).

72. Compare City of Chicago v. O'Brien, 111 Ill. 532 (1884) or State v. Jackman, 69 N.H. 318, 41 Atl. 347 (1898) with Village of Carthage v.

Cities have been sustained in treating sidewalk newsstands as nuisances.[73] Reasonable municipal regulation of sidewalk photographers is permissible,[74] although prohibitory fees are apt to be voided.[75] A city can prohibit the "pull-in" of pedestrains by zealous merchants.[76] Control over sidewalk congestion has been held to justify a prohibition on parking lot operators from vending goods unless such business is conducted in a permanent building.[77] Sidewalk vending ordinances are generally upheld,[78] and it is only occasionally that a sidewalk trade regulation will be ruled unreasonable and invalid.[79] On the other hand, courts will not permit cities to grant or lease sidewalks space for private business if the adventure will materially interfere with the public's pedestrian use.[80]

A municipality cannot ban at all times and places the distribution of religious, economic or political literature,[81] nor can it permit a public official to censor what will be distributed.[82] Reasonable registration and identification ordinances, however, are probably constitutional even as applied to such distributors.[83] Municipalities can prohibit violent picketing and even peaceful picketing if it is carried on in a context of violence,[84] or at a location removed from the immediate area of the industrial

Frederick, 122 N.Y. 268, 25 N.E. 480 (1890) or Kansas City v. Holmes, 274 Mo. 159, 202 S.W. 392 (1918).

73. Cowin v. City of Waterloo, 237 Iowa 202, 21 N.W.2d 705 (1946).

74. Pittsford v. Los Angeles, 50 Cal. App.2d 25, 122 P.2d 535 (1942).

75. City of Racine v. Weyhe, 241 Wis. 133, 5 N.W.2d 747 (1942), noted in 27 MARQ. L. REV. 105 (1943).

76. People v. Realmoto, 294 N.Y. 45, 60 N.E.2d 201 (1945). Compare McKay Jewelers v. Bowron, 19 Cal.2d 595, 122 P.2d 543 (1942).

77. People v. Litvin, 312 Mich. 57, 19 N.W.2d 485 (1945).

78. Hindin v. Samuel, 158 Pa. Super. 539, 45 A.2d 370 (1946).

79. *In re* Thornburg, 55 Ohio App. 229, 9 N.E.2d 516 (1936); McKay Jewelers v. Bowron, 19 Cal.2d 595, 122 P.2d 543 (1942).

80. Chapman v. City of Lincoln, 84 Neb. 534, 121 N.W. 596 (1909). See Note, 25 L.R.A.(n.s.) 400 (1910).

81. Marsh v. Alabama, 326 U.S. 501 (1946), noted in 46 COL. L. REV. 547 (1946); Tucker v. Texas, 326 U.S. 517 (1946), noted in 34 GEO. L.J. 244 (1946); Martin v. City of Struthers, 319 U.S. 141 (1943), noted in 28 MINN. L. REV. 133 (1944); Murdock v. Pennsylvania, 319 U.S. 105 (1943), noted in 22 TEX. L. REV. 230 (1944); Jamison v. Texas, 318 U.S. 413 (1943); Largent v. Texas, 318 U.S. 418 (1943).

82. Cantwell v. Connecticut, 310 U.S. 296 (1940); Lovell v. Griffin, 303 U.S. 444 (1938).

83. City of Manchester v. Leiby, 117 F.2d 661 (1st Cir. 1941), *cert. denied* 313 U.S. 562 (1941); Gospel Army v. Los Angeles, 331 U.S. 543 (1947); Rescue Army v. Los Angeles, 331 U.S. 549 (1947).

84. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941).

dispute.[85] And cities can at this writing even ban peaceful picketing at the locus of the industrial dispute if the objective is for a purpose unlawful or contrary to public policy.[86]

According to *Valentine v. Chrestensen*[87] a municipality can completely prohibit the distribution of commercial matter. A number of state courts have upheld the Green River type of ordinance declaring solicitation and peddling without invitation a nuisance and punishing the same,[88] although a sizable number of state courts have ruled this type ordinance violative of state constitutions.[89] The Commerce Clause will hold municipal regulation of solicitors for out-of-state concerns to very narrow limits.[90] And state courts apply a reasonable test in passing upon regulations of distributors and solicitors, upholding the great majority so long as they are not discriminatory against out-of-town merchants.[91] Reasonable license fees are sustained.[92]

Street crossing ordinances are regularly upheld,[93] so long as they are not in conflict with state vehicle codes.[94] Of interest is a

85. Carpenters and Joiners Union v. Ritters Cafe, 315 U.S. 722 (1942).

86. Giboney v. Empire Storage and Ice Co., 336 U.S. 490 (1949); Building Service Employees Intl. Union v. Gazzam, 339 U.S. 532 (1950); Hughes v. California, 339 U.S. 460 (1950); Intl. Brotherhood of Teamsters v. Hanke, 339 U.S. 470 (1950).

87. 316 U.S. 52 (1942), noted in 26 MINN. L. REV. 895 (1942).

88. Town of Green River v. Fuller Brush Co. (10th Cir. 1933), 65 F.2d 112; Town of Green River v. Bungor, 50 Wyo. 52, 58 P.2d 456 (1936), *appeal dism.*, 300 U.S. 638, *rehearing denied*, 300 U.S. 688 (1937); San Francisco Shopping News v. South San Francisco, 69 F.2d 879 (9th Cir. 1934); City of Alexandria v. Jones, 216 La. 923, 45 So.2d 79 (1950). See Note, 88 A.L.R. 183 (1934).

89. Rhyne, Burton & Murphy, *Municipal Regulation of Peddlers, Solicitors and Itinerant Merchants*, (Nat. Inst. of Mun. Law Officers, Report No. 118, 1947); McIntyre and Rhyne, *Municipal Legislative Barriers to a Free Market*, 8 LAW & CONTEMP. PROB. 359 (1941); Note, *Municipal control of peddlers, solicitors and distributors*, 22 TULANE L. REV. 284 (1947); Note, *Prohibitions of house-to-house convassing by municipalities*. 31 KY. L.J. 291 (1943).

90. Nippert v. Richmond, 327 U.S. 416 (1946); Real Silk Hosiery Mills v. Portland, 268 U.S. 325 (1925).

91. Ordinances prohibiting all itinerant peddlers on the streets are apt to be deemed unreasonable as unrelated to public health and safety, and invalid as a denial of due process. Good Humor Corp. v. City of New York, 290 N.Y. 312, 49 N.E.2d 153 (1943). Discrimination against non-residents will frequently invalidate an ordinance. Goldstein v. City of Hamtramck, 227 Mich. 263, 198 N.W. 962 (1924); Muhlenbrinck v. Long Branch Commrs., 42 N.J.L. 364 (1880).

92. Town of Sumner v. Ward, 126 Wash. 75, 217 Pac. 502 (1923); Jewel Tea Co. v. City of Troy, 80 F.2d 366 (7th Cir. 1935).

93. Thorpe v. Bamberger R. Co., 107 Utah 265, 153 P.2d 541 (1944); People v. Ausen, 105 P.2d 321, 40 Cal. App.2d Supp. 831 (1940).

94. Pipoly v. Benson, 20 Cal.2d 366, 125 P.2d 482 (1942).

judicially approved Portland, Oregon ordinance to the effect that "between the hours of one and five a. m. it shall be unlawful for any person to roam or be upon any street, alley or public place without having and disclosing a lawful purpose."[95] Generally speaking, municipal efforts to protect pedestrian safety will be sustained.

FIRE PREVENTION

Municipalities may regulate extensively activities constituting likely fire hazards, such as dry cleaners,[96] laundries,[97] lumber yards,[98] coal yards,[99] auto paint shops,[100] producers of gas[101] and oil,[102] oil storage depots,[103] and gas stations.[104]

Buildings constructed of certain materials may be excluded from particular areas of the community.[105] One of the reasons recognized by the judiciary in sustaining municipal billboard regulation is the fire hazard occasioned by their collection of papers and trash.[106] The amount of combustible or inflammable materials that may be assembled within a city may be limited.[107] Buildings used by large numbers of the public, such as thea-

95. City of Portland v. Goodwin, 187 Ore. 403, 210 P.2d 577 (1949), noted in 63 HARV. L. REV. 1060 (1950).

96. Klever Shampay Karpet Kleaners v. City of Chicago, 323 Ill. 369, 154 N.E. 121 (1926); Mildner v. Cincinnati, 8 Ohio N.P. (N.S.) 339 (1909).

97. *In re* Yick Wo, 68 Cal. 294, 9 Pac. 139 (1885); Ruban v. City of Chicago, 330 Ill. 97, 161 N.E. 133 (1928); Soon Hing v. Crowley, 113 U.S. 703 (1885); Barbier v. Connolly, 113 U.S. 27 (1885). As elsewhere, arbitrary denial of licenses is unconsitutional. Yick Wo v. Hopkins, 118 U.S. 356 (1886).

98. City of Chicago v. Churchill Cabinet Co., 379 Ill. 351, 40 N.E.2d 518 (1942).

99. Crerar Clinch Coal Co. v. City of Chicago, 341 Ill. 471, 173 N.E. 484 (1930).

100. City of Revere v. Blaustein, 320 Mass. 81, 67 N.E.2d 665 (1946).

101. Dobbins v. Los Angeles, 139 Cal. 179, 72 Pac. 970 (1903).

102. Amis v. Bryan Petrol Corp., 185 Okla. 206, 90 P.2d 936 (1939).

103. Union Oil Co. v. City of Portland, 198 Fed. 441 (D. Ore. 1912).

104. Shuford v. Town of Waynesville, 214 N.C. 135, 198 S.E. 585 (1938).

105. Patterson v. Johnson, 214 Ill. 481, 73 N.E. 761 (1905); State v. Johnson, 114 N.C. 846, 19 S.E. 599 (1894); City of Roanoke v. Bolling, 101 Va. 182, 43 S.E. 343 (1903); Micks v. Mason, 145 Mich. 212, 108 N.W. 707 (1906). See Notes, 26 A.L.R. 1219 (1923), 56 A.L.R. 878 (1928).

106. St. Louis Poster Adv. Co. v. St. Louis, 249 U.S. 269 (1919); Rochester v. West, 164 N.Y. 510, 58 N.E. 673 (1900); General Outdoor Adv. Co. v. City of Indianapolis, 202 Ind. 85, 172 N.E. 309 (1930).

107. Clark v. South Bend, 85 Ind. 276 (1882); Davenport v. Richmond, 81 Va. 636 (1886); Standard Oil Co. v. City of Danville, 199 Ill. 50, 64 N.E. 1110 (1902).

ters,[108] factories,[109] hotels[110] and rooming houses[111] are subject to continual inspection and regulation, as are trailer camps and trailers.[112]

CONTROL OF ODORS, NOISES, SMOKE AND DIRT

Municipalities may keep out of the community, or parts thereof, or at least regulate extensively, industries emitting noxious odors such as slaughterhouses,[113] sewage disposal plants,[114] piggeries, [115] horse and mule markets,[116] livery stables,[117] gas works,[118] and brick burning concerns.[119]

Similarly, cities may exclude or regulate activities characterized by undue noise, such as rock crushers,[120] garages,[121] dog kennels,[122] dance halls, [123] and establishments using juke boxes.[124]

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108. Hollywood Theater Corp. v. City of Indianapolis, 218 Ind. 556, 34 N.E.2d 28 (1941).

109. People *ex rel.* Adamson v. Miller, 100 Misc. 302, 165 N. Y. Supp. 790 (Sup. Ct. 1917).

110. Daniels v. City of Portland, 124 Ore. 677, 265 Pac. 790 (1928).

111. City of Chicago v. Washingtonian Homes of Chicago, 289 Ill. 206, 124 N.E. 416 (1919) and cases cited therein; Queenside Hills Realty Co. v. Saxe, 328 U.S. 80 (1946). See Notes, 6 A.L.R. 1584 (1920), 66 A.L.R. 1591 (1930).

112. Loose v. City of Battle Creek, 309 Mich. 1, 14 N.W.2d 554 (1944); Lower Merion Twp. v. Gallup, 158 Pa. Super. 572, 46 A.2d 35 (1946), *app. dism.* 329 U.S. 669, noted in 45 MICH. L. REV. 225 (1946). See Note, 115 A.L.R. 1400 (1938).

113. City of Albany v. Newhof, 230 App. Div. 687, 246 N.Y. Supp. 100 (1930); *Ex parte* Heilbron, 65 Cal. 609, 4 Pac. 648 (1884); Beiling v. City of Evansville, 144 Ind. 644, 42 N.E. 621 (1896). See Notes, 27 A.L.R. 329 (1923), 46 A.L.R. 1486 (1927).

114. *Cf.* Jeakins v. City of El Dorado, 143 Kan. 206, 53 P.2d 798 (1936).

115. Ryder v. Board of Health of City of Lexington, 273 Mass. 177, 173 N.E. 580 (1930).

116. *Cf.* Winbigler v. Clift, 102 Kan. 858, 172 Pac. 537 (1918).

117. Reinman v. Little Rock, 237 U.S. 171 (1915).

118. Dobbins v. City of Los Angeles, 139 Cal. 179, 72 Pac. 970 (1903).

119. Fogarty v. Junction City Press Brick Co., 50 Kan. 478, 31 Pac. 1052 (1893). See Note, 141 A.L.R. 285 (1942).

120. *Cf.* Gilbert v. Davidson Construction Co., 110 Kan. 298, 203 Pac. 1113 (1922).

121. People v. Ericsson, 263 Ill. 368, 105 N.E. 315 (1915); People v. Village of Oak Park, 266 Ill. 365, 107 N.E. 636 (1915); McIntosh v. Johnson, 211 N. Y. 265, 105 N.E. 414 (1914).

122. Sentell v. New Orleans & C.R. Co., 166 U.S. 698 (1897); City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653 (1940); Miller v. City of Arcadia, 121 Cal. App. 660, 9 P.2d 587 (1932); City of Birmingham v. West, 236 Ala. 434, 183 So. 421 (1938), *cert. denied* 306 U.S. 662 (1939). *Cf.* Claesgens v. Animal Rescue League, 173 Minn. 61, 216 N.W. 535 (1927). Other animals may also be kept out of the municipality: Ryder v. Board of Health of Lexington, 273 Mass. 177, 173 N.E. 580 (1930) (hogs); Wiseman v. Close, 183 N.Y. Supp. 353 (Sup. Ct. 1920) (hogs); Brown v. Klein, 133 N.J.L. 533, 45 A.2d 319 (1946) (hogs); In re Mathews, 191 Cal. 35, 214 Pac. 981 (1923) (goats); Ward v. Town of Darlington, 183 S.C. 263,

Industries can be banned or extensively regulated when they cause excessive smoke, soot and dust.[125] And municipal anti-smoke ordinances are regularly upheld.[126] Because of the possibility of littering the public ways the distribution of commercial matter can be banned.[127]

It should be noted that in this area extraterritorial regulation by municipalities is frequently authorized and upheld.[128]

MILK CONTROL

Municipal corporations generally have the power to regulate conditions under which milk and dairy products[129] are made available to the community. Accordingly, cities can license, regulate and inspect producers[130] and distributors.[131] They can inspect dairy products sold within the city, regardless of their

190 S.E. 826 (1937) (cows); *Ex parte Valterza*, 37 Cal. App.2d 682, 100 P.2d 337 (1940) (rabbits and poultry). So also pigeons, Kraushaar v. Zion, 188 Misc. 851, 63 N.Y.S.2d 359 (1946), and bees, *Ex parte* Ellis, 11 Cal.2d 571, 81 P.2d 911 (1938). Generally, see Notes 32 A.L.R. 1372 (1924), 40 A.L.R. 566 (1926), 81 A.L.R. 1207 (1932).

123. Assman v. Masters, 151 Kan. 281, 98 P.2d 419 (1940).

124. Miller v. City of Memphis, 181 Tenn. 15, 178 S.W.2d 382 (1944); Adams v. City of New Kensington, 357 Pa. 557, 55 A.2d 392 (1947).

125. Hadacheck v. Sebastian, 239 U.S. 394, (1915); Soon Hing v. Crowley, 113 U.S. 703 (1885). See Notes, 32 L.R.A.(n.s.) 554 (1911), 6 A.L.R. 1575 (1920).

126. Department of Health of City of New York v. Ebling Brewing Co., 78 N.Y. Supp. 11 (N.Y. Munic. Ct. 1902); Ballentine v. Nester, 350 Mo. 58, 164 S.W.2d 378 (1942); St. Paul v. Haugbro, 93 Minn. 59, 100 N.W. 470 (1904). Municipalities can forbid the burning of certain coals, 58 A.L.R. 1229 (1929), and even forbid the introduction of these coals into the city. Ballentine v. Nester, *supra*.

127. Sieroty v. City of Huntington Park, 111 Cal. App. 377, 295 Pac. 564 (1931); Valentine v. Chrestensen, 316 U.S. 52 (1942); San Francisco Shopping News v. City of South San Francisco, 69 F.2d 879 (10th Cir. 1934), *cert. denied*, 293 U.S. 606 (1934).

128. State v. Rice, 158 N.C. 635, 74 S.E. 582 (1912); Chicago Packing and Provision Co. v. City of Chicago, 88 Ill. 221 (1878). See Note, 50 A.L.R. 1017 (1927).

129. The municipal power over milk customarily extends to such items as ice cream, Wright v. Richmond County Department of Health, 182 Ga. 651, 186 S.E. 815 (1936); Simco Sales Service v. Brackin, 344 Pa. 628, 26 A.2d 323 (1942); and chocolate milk, Anderson v. City of Tampa, 121 Fla. 670, 164 So. 546 (1936).

130. Fischer v. City of St. Louis, 194 U.S. 361 (1904); Hill v. Fetherolf, 236 Pa. 70, 84 Atl. 677 (1912); Lang's Creamery v. City of Niagara Falls, 224 App. Div. 483, 231 N.Y.S. 368 (1928); Village of North College Hill v. Woebkenberg, 59 Ohio App. 458, 18 N.E.2d 614 (1939).

131. City of Newport v. Hiland Dairy Co., 291 Ky. 561, 164 S.W.2d 818 (1947); Stracquadanio v. Department of Health of City of New York, 285 N.Y. 93, 32 N.E.2d 806 (1941), noted in 16 ST. JOHN'S L. REV. 124 (1941); Prescott v. City of Borger, 158 S.W.2d 578 (Tex. 1942); Dean Milk Co. v. City of Aurora, 404 Ill. 331, 88 N.E.2d 827 (1949); Kansas

origin.[132] Cities have frequently been sustained in inspecting, outside the city limits, the herds[133] and dairying facilities[134] of concerns serving the urban market. Municipalities have also been upheld in regulating the temperature at which milk is transported into the city.[135]

Conflict with state law will invalidate municipal milk ordinances and, accordingly, cities cannot ordinarily ban the sale of milk approved by state health authorities.[136] However, state regulations of the milk industry does not preclude all municipal complementation.[137] The attempts of municipalities to erect economic trade walls around the city and prevent the introduction of milk from outside will regularly be invalidated as beyond municipal power,[138] as an unconstitutional denial of equal pro-

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City v. Henre, 96 Kan. 794, 153 Pac. 548 (1915). The ordinance cannot vest an arbitrary discretion in the licenser. City of Rockford v. Hey, 366 Ill. 526, 9 N.E.2d 317 (1937). The license can be revoked upon proof of unfitness, Prawdzik v. City of Grand Rapids, 313 Mich. 376, 21 N.W.2d 168 (1946), and customarily revocation can be effectuated summarily, without notice or hearing. State *ex rel.* Nowotny v. City of Milwaukee, 140 Wis. 38, 121 N.W. 658 (1909); People *ex rel.* Lodes v. Department of Health of City of New York, 189 N.Y. 187, 82 N.E. 187 (1907); Leach v. Coleman, 188 S.W.2d 220 (Tex. 1945). A reasonable license fee may be charged but the amount can not grossly exceed the cost of administering the regulation, unless it is an exercise of a granted power to tax. Coleman v. City of Little Rock, 191 Ark. 844, 88 S.W.2d 58 (1936); Pure Milk Producers and Distributors Assn. v. Morton, 276 Ky. 736, 125 S.W.2d 216 (1939); Stephens v. Oklahoma City, 150 Okla. 199, 1 P.2d 367 (1931).

132. Norfolk v. Flynn, 101 Va. 473, 44 S.E. 717 (1903).

133. State v. Nelson, 66 Minn. 166, 68 N.W. 1066 (1896); Norfolk v. Flynn, 101 Va. 473, 44 S.E. 717 (1903); Carpenter v. Little Rock, 101 Ark. 238, 142 S.W. 162 (1911).

134. Stephens v. Oklahoma City, 150 Okla. 199, 1 P.2d 367 (1931); Koy v. City of Chicago, 263 Ill. 122, 104 N.E. 1104 (1915); Korth v. City of Portland, 123 Ore. 180, 261 Pac. 895 (1927). However, municipalities have no extraterritorial jurisdiction here unless expressly or impliedly conferred. City of Rockford v. Hey, 366 Ill. 526, 9 N.E.2d 317 (1937); Higgins v. City of Galesburg, 401 Ill. 87, 81 N.E.2d 520 (1948); Dean Milk Co. v. City of Waukegan, 403 Ill. 597, 87 N.E.2d 751 (1949), noted in [1950] LAW FORUM 142. Note. 44 ILL. L. REV. 241 (1949).

135. City of Chicago v. Chicago & N.W. Ry., 275 Ill. 30, 113 N.E. 849 (1916).

136. Meridian v. Sippy, 54 Cal. App.2d 214, 128 P.2d 884 (1942); State *ex rel.* Knese v. Kinsey, 314 Mo. 80, 282 S.W. 437 (1926); Shelton v. City of Shelton, 111 Conn. 433, 150 Atl. 811 (1930); Prescott v. City of Borger, 158 S.W.2d 578 (Tex. 1942).

137. Dorssom v. City of Atchison, 155 Kan. 225, 124 P.2d 475 (1942); Natural Milk Producers Assn. v. City of San Francisco, 20 Cal. App.2d 101, 124 P.2d 25 (1942); Witt v. Klimm, 97 Cal. App. 131, 274 Pac. 1039 (1929).

138. Higgins v. City of Galesburg, 401 Ill. 87, 81 N.E.2d 520 (1948); Dean Milk Co. v. Waukegan, 403 Ill. 597, 87 N.E.2d 751 (1949), noted in [1950] LAW FORUM 142.

tection,[139] or as an unconstitutional direct burden on interstate commerce.[140] The due process test of reasonableness must, of course, be satisfied by all municipal milk ordinances.[141]

FOOD AND BEVERAGE CONTROL

To safeguard the health of the community a municipal corporation can license,[142] regulate and inspect slaughterhouses,[143] bakeries, [144] manufacturers and purveyors of candy,[145] soft drinks,[146] ice,[147] meat markets,[148] groceries,[149] restaurants,[150]

139. LaFranchi v. City of Santa Rosa, 8 Cal.2d 331, 65 P.2d 1301 (1937); Prescott v. City of Borger, 158 S.W.2d 578 (Tex. 1942); Higgins v. City of Galesburg, 401 Ill. 87, 81 N.E.2d 520 (1948); Van Gammeren v. Fresno, 51 Cal.App.2d 235, 124 P.2d 621 (1942); Dean Milk Co. v. City of Aurora, 404 Ill. 331, 88 N.E.2d 827 (1949); State v. Minneapolis, 190 Minn. 138, 251 N.W. 121 (1933); Whitney v. Watson, 85 N.H. 238, 157 Atl. 78 (1931). *Compare:* Lang's Creamery v. City of Niagara Falls, 224 App. Div. 483, 231 N.Y. Supp. 368 (1928); Witt v. Klimm, 97 Cal.App. 131, 274 Pac. 1039 (1929).

140. Dean Milk Co. v. City of Madison, 71 S. Ct. 295 (1951); Miller v. Williams, 12 F. Supp. 236 (D. Md. 1935).

141. Fieldcrest Dairies v. City of Chicago, 122 F.2d 132 (7th Cir. 1941), noted in 30 ILL. B.J. 257 (1942) holding invalid an ordinance prohibiting delivery of milk in anything but bottles. Courts also announce rather frequently that the power to regulate is not the power to prohibit. Good Humor Milk Corp. v. City of New York, 200 N.Y. 312, 49 N.E.2d 153 (1942).

142. The power to license generally flows from the power to regulate. Fees must be reasonable. Cases collected in Note, 117 A.L.R. 1319 (1938). Ordinances permitting arbitrary revocation will usually be void. State *ex rel.* Makris v. Superior Court, 113 Wash. 296, 193 Pac. 845 (1920).

143. Wichita Falls v. Roberson, 283 S.W. 870 (Tex. 1926); City of Albany v. Newhof, 246 N.Y.S. 100, 230 App. Div. 687 (1930); Moore v. Greensboro, 191 N.C. 592, 132 S.E. 565 (1926). See Notes, 27 A.L.R. 329 (1923), 46 A.L.R. 1486 (1927). Municipalities have been sustained in inspecting out-of-town slaughterhouses providing meat for sale within the city. City of Oakland v. Brock, 8 Cal.2d 639, 67 P.2d 344 (1937).

144. Ward Bakeries v. City of Chicago, 340 Ill. 212, 172 N.E. 171 (1930); Jay Burns Baking Co. v. Bryan, 264 U.S. 504 (1924); City of Chicago v. Drogasawacz, 256 Ill. 34, 99 N.E. 869 (1912). However, closing hour ordinances allegedly necessary to facilitate inspection are frequently invalidated. Skaggs v. City of Oakland, 6 Cal.2d 222, 57 P.2d 478 (1936); McCulley v. City of Wichita, 151 Kan. 214, 98 P.2d 192 (1940).

145. Crackerjack Co. v. City of Chicago, 330 Ill. 320, 161 N.E. 479 (1928); People v. Greenberg, 134 App. Div. 599, 119 N.Y.S. 325 (1909); State *ex rel.* Bacigalupo v. O'Conner, 115 Minn. 339, 132 N.W. 303 (1911).

146. City of Chicago v. Chicago Beverage Co., 372 Ill. 33, 22 N.E.2d 708 (1939); Miller v. City of Niagara Falls, 202 N.Y. Supp. 549 (Sup. Ct. 1924). Compare George v. City of Portland, 114 Ore. 418, 235 Pac. 681 (1925).

147. City of El Paso v. Jackson, 59 S.W.2d 822 (Tex. Comm. App. 1933).

148. *Ex parte* Lowenthal, 92 Cal. App. 200, 267 Pac. 886 (1928); Trigg v. Dixon, 96 Ark. 199, 131 S.W. 695 (1910); Kinsley v. City of Chicago, 124 Ill. 359, 16 N.E. 260 (1888); *Ex parte* Banta, 25 Cal. App.2d 622, 78 P.2l 243 (1938); Cronin v. City of New York, 82 N.Y. 318 (1880). Here, and throughout this area, ordinances passed under regulatory

wholesalers and warehousers of foodstuffs,[151] and vehicular distributors of the above.[152] Reasonable inspection fees will ordinarily be upheld.[153] However, ordinances passed under regulatory powers will be invalid if they require fees and contain no provisions for regulation or inspection.[154] Unless the license fee is an exercise of an authorized municipal power of raising revenue,

> the authority of a municipality is limited to such a charge for a license as will bear some reasonable relation to the additional burdens imposed upon the municipality by the business or occupation licensed and the necessary expense involved in police supervision.[155]

Municipalities can provide by ordinance against the sale of impure, unwholesome or adulterated foods,[156] and food unfit for human consumption can be summarily seized and destroyed.[157]

Vendors of alcoholic beverages can be licensed[158] and regulated by municipalities[159] unless the sale thereof has been forbidden

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powers will fail if they contain requirements for fees without provision for regulation or inspection. Herb Bros. v. City of Alton, 264 Ill. 628, 106 N.E. 434 (1914).

149. Ritter v. City of Pontiac, 276 Mich. 416, 267 N.W. 641 (1936); American Grocery Co. v. New Brunswick, 126 N.J.L. 367, 19 A.2d (Ct. Err. & App. 1941).

150. City of Chicago v. R & X Restaurant, 369 Ill. 65, 15 N.E.2d 725 (1938); Nance v. Mayflower Tavern, 106 Utah 517, 150 P.2d 773 (1944). See Note, 52 A.L.R. 669 (1928).

151. City of Chicago v. Arbuckle Bros., 344 Ill. 597, 176 N.E. 761 (1931); Cranston v. Department of Health of City of New York, 6 N.Y.S.2d 275, 168 Misc. 749 (Sup. Ct. 1938).

152. Keig Stevens Baking Co. v. City of Savanna, 380 Ill. 303, 44 N.E.2d 23 (1942); American Baking Co. v. City of Wilmington, 370 Ill. 400, 19 N.E.2d 172 (1925); New Jersey Good Humor v. Board of Commissioners of Bradley Beach, 124 N.J.L. 162, 11 A.2d 113 (1940).

153. City of Dayton v. Jacobs, 120 Ohio St. 225, 165 N.E. 844 (1929).

154. Herb Bros. v. City of Alton, 264 Ill. 628, 106 N.E. 434 (1914).

155. Ward Baking Co. v. City of Chicago, 340 Ill. 212, 172 N.E. 171, 172 (1930). See Note, 117 A.L.R. 1319 (1938).

156. City of Chicago v. Union Ice Cream Mfg. Co., 252 Ill. 311, 96 N.E. 872 (1912).

157. North American Cold Storage Co. v. City of Chicago, 211 U.S. 306 (1908).

158. *Ex parte* Sikes, 102 Ala. 173, 15 So. 522 (1894). Note, 21 R. Mt. L. Rev. 209 (1948).

159. State *ex rel.* Hewlett v. Womach, 355 Mo. 486, 196 S.W.2d 809 (1946); Mutchall v. City of Kalamazoo, 323 Mich. 215, 35 N.W.2d 245 (1948); Nelson v. State *ex rel.* Gross, 157 Fla. 417, 26 So.2d 60 (1946); Cowan v. City of St. Petersburg, 149 Fla. 470, 6 So.2d 269 (1942); City of Hoboken v. Greiner, 68 N.J.L. 592, 53 Atl. 693 (1902); Foster v. Police Commissioners, 102 Cal. 483, 37 Pac. 763 (1894). See Waukesha v. Stathas, 255 Wis. 76, 37 N.W.2d 846 (1949) for the dilemma of Wisconsin cities in punishing any crime.

by the state or there has been occupation of the field by state authority.[160] Here municipal corporations have frequently been granted statutory authority to project their regulations beyond city limits.[161]

Occasionally food and beverage ordinances are invalidated because of discrimination against out-of-town merchants,[162] and unreasonable classifications.[163] Under the Commerce Clause federal occupation of the field will invalidate these, as well as other, municipal ordinances.[164]

The keeping of food matter,[165] its collection, transportation and disposition[166] are subjects on which extensive municipal regulation is possible. The collection of garbage by private concerns may be forbidden.[167] Reasonable charges for collection may be levied by cities,[168] or, if it chooses, a municipality may confer a monopoly upon a single concern.[169]

SANITATION AND HEALTH

To protect the public health and safety municipal authorities can abate public nuisances, summarily if necessary.[170] The courts

160. Sparger v. Harris, 191 Okla. 583, 131 P.2d 1011 (1942).

161. People v. Raims, 20 Colo. 489, 39 Pac. 341 (1895).

162. *Ex parte* Irish, 122 Kan. 33, 250 Pac. 1056 (1926); Muhlenbrinck v. Long Branch Commrs., 42 N.J.L. 364 (1880).

163. McCulley v. City of Wichita, 151 Kan. 214, 98 P.2d 192 (1940).

164. Quaker Oats Co. v. City of New York, 295 N.Y. 527, 68 N.E.2d 593 (1946).

165. City of Grand Rapids v. DeVries, 123 Mich. 570, 82 N.W. 269 (1900); Grand Rapids Board of Health v. Vink, 184 Mich. 688, 151 N.W. 672 (1915). *Cf.* Donovan v. Town of New London, 132 Misc. 860, 231 N.Y. Supp. 82 (Sup. Ct. 1928).

166. Geurin v. Little Rock, 203 Ark. 103, 155 S.W.2d 719 (1941); Wheeler v. Boston, 233 Mass. 275, 123 N.E. 684 (1919); O'Neal v. Harrison, 99 Kan. 339, 150 Pac. 551 (1915); Gardner v. Dallas, 81 F.2d 425 (5th Cir. 1936), *cert. denied,* 298 U.S. 668 (1936).

167. City of Canton v. Van Voorhis, 61 Ohio App. 419, 22 N.E.2d 651 (1939), *app. dism.* 135 Ohio St. 319, 20 N.E.2d 720 (1940), noted in 38 MICH. L. REV. 1334 (1940); *Ex parte* Zhizhuzza, 147 Cal. 328, 81 Pac. 955 (1905); *Ex parte London,* 73 Tex. Cr. 208, 163 S.W. 968 (1913).

168. People *ex rel.* Chicago Title & Trust Co. v. Village of Glencoe, 372 Ill. 280, 23 N.E.2d 697 (1939); Glass v. City of Fresno, 17 Cal. App.2d 555, 62 P.2d 765 (1937).

169. Gardner v. Michigan, 199 U.S. 325 (1905); State v. Lovelace, 118 Wash. 50, 203 Pac. 28 (1921); State v. Orr, 68 Conn. 101, 35 Atl. 770 (1896); City of Grand Rapids v. De Vries, 123 Mich. 570, 82 N.W. 269 (1900). Generally, See Notes 27 L.R.A. 540 (1895), 21 L.R.A.(n.s.) 830 (1909), 15 A.L.R. 287 (1921), 72 A.L.R. 520 (1931), 135 A.L.R. 1305 (1941).

170. Reinman v. Little Rock, 237 U.S. 171 (1915); City of St. Louis v. Galt, 179 Mo. 8, 77 S.W. 876 (1903); City of Rochester v. Macauley-Fien Milling Co., 199 N.Y. 207, 92 N.E. 641 (1910); New York Trap Rock Corp. v. Town of Clarkston, 299 N.Y. 77, 85 N.E.2d 873 (1949).

recognize some power to impose by ordinance the label of nuisance upon things not considered common law nuisances,[171] but a municipality cannot by ordiance declare and suppress something as a nuisance when it is not one in fact.[172]

Cities can protect their water supply from pollution.[173] Plumbers can be licensed,[174] used plumbing fixtures can be inspected before sale,[175] and the regulation of plumbing facilities is generally sustained.[176]

Sanitary facilities in multiple dwellings, such as hotels and tenement houses,[177] and in public buildings,[178] are subject to inspection and regulation. So, too, are conditions in trailer camps.[179] However, private dwellings can ordinarily be invaded only where necessary to abate a public nuisance or where the general health of the city will likely be endangered by the occupant's failure to observe proper sanitary measures.[180]

Municipalities can ban from the city activities and trades apt

171. Hadacheck v. Sebastian, 239 U.S. 394 (1915); Sioux City v. Simmons Hardware Co., 151 Iowa 334, 129 N.W. 978 (1911); City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096, 184 N.W. 823, *rehearing denied*, 193 Iowa 1256, 188 N.W. 921 (1921); Hislop v. Rodgers, 54 Ariz. 101, 92 P.2d 527 (1939); City of Miami Beach v. Texas Co., 141 Fla. 616, 194 So. 368 (1940). "It is a rule that a municipal corporation has no power to treat a thing as a nuisance which cannot be one; but it is equally settled that it has the power to treat as a nuisance a thing that, from its character, location, and surroundings, may become such." Nash v. District of Columbia, 28 App. Cas. (D.C.) 598, 601 (1907).

172. City of Mt. Sterling v. Donaldson Baking Co., 287 Ky. 781, 155 S.W.2d 237 (1941); Potashnik v. City of Sikeston, 351 Mo. 505, 173 S.W.2d 96 (1943); Crossman v. City of Galveston, 112 Tex. 303, 247 S.W. 810 (1923); City of Milwaukee v. Milbrew, 240 Wis. 527, 3 N.W.2d 386 (1942).

173. Salt Lake City v. Young, 45 Utah 349, 145 Pac. 1047 (1915); State v. Finney, 65 Idaho 630, 150 P.2d 130 (1944); City of New Rochelle v. Burke, 288 N.Y. 406, 43 N.E.2d 463 (1942).

174. Arbitrary action here, as elsewhere, is invalid. Seignous v. Rice, 273 N.Y. 44, 6 N.E.2d 91 (1936).

175. Montgomery v. Oklahoma City, 195 Okla. 312, 157 P.2d 454 (1945).

176. Kleinhein v. Bentley, 98 Kan. 431, 157 Pac. 1190 (1916); Lavender v. City of Tuscaloosa, 29 Ala. 502, 198 So. 459 (1940); Comm. v. Leswing, 135 Pa. Super. 485, 5 A.2d 809 (1939).

177. Tenement House Department v. Moeschen, 179 N.Y. 325, 72 N.E. 231 (1904); Keiper v. City of Louisville, 152 Ky. 691, 154 S.W. 18 (1913); Hubbell v. Higgins, 148 Iowa 36, 126 N.W. 914 (1910); Daniels v. City of Portland, 124 Ore. 677, 265 Pac. 790 (1928).

178. People v. Dushkin, 276 Mich. 643, 268 N.W. 765 (1936).

179. Miller v. Quigg, 87 Fla. 462, 100 So. 270 (1924); Cody v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939), *app. dism.* 309 U.S. 620. Notes, 5 DETROIT L. REV. 200 (1941), 45 MICH. L. REV. 225 (1946).

180. District of Columbia v. Little, 339 U.S. 1 (1950), noted in 17 U. CHI. L. REV. 735 (1950).

to imperil the public health,[181] and other occupations, such as barbering, which may spread disease are subject to inspection and considerable regulation.[182] Municipal corporations are frequently clothed with authority to extraterritorially enforce their sanitary and health ordinances.[183]

PUBLIC MORALITY

There is authority to sustain municipal punishment of gambling, even though the state has penalized the same activity,[184] although such authority has also been denied.[185] Fortune telling may accordingly be forbidden by municipalities.[186] If forms of gambling are not made criminal by state law, cities may license and regulate such things as dog races,[187] pinball and marble machines,[188] and other forms of chance.[189] Of course, if the form of gambling has been outlawed by state action municipal licensing will fail.[190]

Extensive regulation of pool and billiard rooms is regularly upheld,[191] and frequently complete bans are sustained.[192] Dance

181. Laurel Hill Cemetery v. City of San Francisco, 216 U.S. 358 (1910); City of Little Rock v. Smith, 204 Ark. 692, 163 S.W.2d 705 (1942).

182. Grisbord v. City of Philadelphia, 148 Pa. Super. 91, 24 A.2d 646 (1942). Occupation of the field by the state is possible. Trimble v. City of Topeka, 147 Kan. 111, 75 P.2d 241 (1938).

183. White v. City of Decatur, 225 Ala. 646, 144 So. 873 (1932); State v. Rice, 158 N.C. 635, 74 S.E. 582 (1912). *Cf.* St. Bernard Poultry Farm v. City of Aurora, 98 Colo. 158, 54 P.2d 684 (1936).

184. Hunter v. Mayor and Council of Teaneck, 128 N.J.L. 164, 24 A.2d 553 (1942).

185. *In re* Portnoy, 21 Cal.2d 237, 131 P.2d 1 (1942).

186. Turner v. Kansas City, 354 Mo. 835, 191 S.W.2d 612 (1945); Taylor v. Municipal Court of Los Angeles, certiorari to the Supreme Court of California denied, 338 U.S. 871 (1949).

187. Town of Hallandale v. Brownard County Kennel Club, 153 Fla. 302, 14 So.2d 397 (1943).

188. *Ex parte* Lawrence, 55 Cal. App.2d 491, 131 P.2d 27 (1942); Savoy Vending Co. v. Valentine, 178 Misc. 1, 33 N.Y.S.2d 324 (Sup. Ct. 1942); Silfen v. City of Chicago, 299 Ill. App. 117, 19 N.E.2d 640 (1939); Sternall v. Strand, 76 Cal. App.2d 432, 172 P.2d 921 (1946); Hunter v. Mayor and Council of Teaneck Twp., 128 N.J.L. 164, 24 A.2d 553 (1942).

189. People v. Hess, 85 Mich. 128, 48 N.W. 181 (1891). See Note, 39 A.L.R. 1035 (1925).

190. State *ex rel.* Sergi v. City of Youngstown, 68 Ohio App. 254, 40 N.E.2d 477 (1941).

191. Murphy v. California, 225 U.S. 623 (1912); Clarke v. Deckebach, 274 U.S. 392 (1927); Johnson v. City of Lawrence, 120 Kan. 65, 241 Pac. 1083 (1926). Occasional ordinances are deemed unreasonable and invalidated. Craig v. Mayor and Aldermen of Gallatin, 168 Tenn. 413, 79 S.W.2d 553 (1935) (ordering closing from 6 p.m. to 7 a.m.).

192. State *ex rel.* Baylor v. City of Hinton, 109 W. Va. 653, 155 S.E.

halls are similarly subject to inspection and regulation.[193] Municipalities may adopt rules prohibiting vulgar, obscene and indecent exhibitions.[194] Disorderly houses can, of course, be banned.[195] Plays[196] and motion pictures[197] may be censored, and theater licenses can be revoked for performances shocking to the morality of the community.[198] The utterance of language characterized as blasphemous, profane, and obscene can be punished.[199] In the absence of conflict with state law ordinances forbidding Sunday business have been sustained.[200]

THE PUBLIC PURSE

Municipalities have rather extensive powers to protect the community against fraud and deception. Cities are sustained in licensing and regulating pawn brokers,[201] second-hand

912 (1930). Generally, See Notes, 20 A.L.R. 1482 (1922), 29 A.L.R. 41 (1924), 53 A.L.R. 149 (1928), 72 A.L.R. 1339 (1931).

193. Bungalow Amusement Co. v. City of Seattle, 148 Wash. 485, 269 Pac. 1043 (1928). See also Mallach v. City of Mt. Morris, 287 Mich. 666, 284 N.W. 600 (1939). Prohibitions are frequently sustained. Francis v. Town of Falkville, 24 Ala. App. 478, 136 So. 866 (1931), *but see* Town of Jonesville v. Boyd, 161 La. 278, 108 So. 481 (1926).

194. People v. O'Gorman, 274 N.Y. 284, 8 N.E.2d 862 (1937); Brooks v. City of Birmingham, 32 F.2d 274 (N.D. Ala. 1929); City of Grand Rapids v. Bateman, 93 Mich. 135, 53 N.W. 6 (1892); Bonserk Theater Corp. v. Moss, 34 N.Y.S.2d 541 (Sup. Ct. 1942).

195. City of Chicago v. Clark, 359 Ill. 374, 194 N.E. 537 (1935); People v. Hanrahan, 75 Mich. 611, 42 N.W. 1124 (1889). People v. Pennock, 294 Mich. 578, 293 N.W. 759 (1940) sustains another municipal protection of public morals.

196. City of Chicago v. Kirkland, 79 F.2d 963 (7th Cir. 1936).

197. Thayer Amusement Co. v. Moulton, 63 R.I. 182, 7 A.2d 682 (1939). *Cf.* Schuman v. Pickert, 277 Mich. 225, 269 N.W. 152 (1936). Comment, 49 YALE L.J. 87 (1939). Note, 39 COL. L. REV. 1383 (1939). See Note, 126 A.L.R. 1363 (1940).

198. Bonserk Theater Corp. v. Moss, 34 N.Y.S.2d 541 (Sup. Ct. 1942). *Cf.* Holly Holding Co. v. Moss, 270 N.Y. 621, 1 N.E.2d 359 (1936) to the effect that the city could not revoke a theater license for violating statute relating to immoral stage entertainments in absence of a conviction for violating the statute relating to immoral plays and exhibitions. The revocation is, of course, subject to judicial review and cannot be effected arbitrarily by municipal authorities. Fox Amusement Co. v. McClellan, 62 Misc. 100, 114 N.Y. Supp. 594 (Sup. Ct. 1909).

199. Oney v. Oklahoma City, 120 F.2d 861 (10th Cir. 1941); *Cf.* Lamere v. City of Chicago, 391 Ill. 552, 63 N.E.2d 863 (1945).

200. City of Mt. Vernon v. Julian, 369 Ill. 447 17 N.E.2d 52 (1938); City of Harlan v. Scott, 290 Ky. 585, 162 S.W.2d 8 (1943); People v. DeRose, 230 Mich. 180, 203 N.W. 95 (1925). See Notes, 29 A.L.R. 397 (1924), 37 A.L.R. 575 (1925).

201. Medias v. City of Indianapolis, 216 Ind. 155, 23 N.E.2d 590 (1939); Solof v. City of Chattanooga, 180 Tenn. 296, 174 S.W.2d 471 (1943); City of Wichita v. Wolkow, 110 Kan. 114, 202 Pac. 632 (1921); Provident Loan Co. v. Denver, 64 Colo. 400, 172 Pac. 10 (1918); See Note, 125 A.L.R. 598 (1940).

stores,[202] second-hand car dealers,[203] auctioneers, [204] ticket brokers,[205] and automatic vending machines.[206] Municipalities have been upheld in prescribing the weight and quality of such things as bread[207] and coal,[208] as well as the capacity of milk containers.[209] Unless over-ridden by state law, cities have been able to regulate charges of small loan companies[210] and money changers.[211] Municipal attempts to fix prices for commodities and services have generally been condemned as beyond civic power,[212] although courts have been receptive to municipal ordinances making illegel the sale of rationed articles above ceiling prices.[213] Except in a few home rule states[214] the legislative power to fix rates for utilities is denied to municipalities,[215] al-

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202. City of Grand Rapids v. Braudy, 105 Mich. 670, 64 N.W. 29 (1895); Sherman, Clay & Co. v. Brown, 142 Wash. 37, 252 Pac. 131 (1927).

203. Chaiet v. East Orange, 136 N.J.L. 375, 56 A.2d 599 (1948).

204. Saigh v. Common Council of City of Petosky, 251 Mich. 77, 231 N.W. 107 (1930); Holsman v. Thomas, 112 Ohio St. 397, 147 N.E. 750 (1924); *but see* Webber v. City of Scottsbluff, 141 Neb. 363, 3 N.W.2d 635 (1942) invalidating an ordinance requiring auctioneers to file an inventory fifteen days before sale. Generally, see Notes 31 A.L.R. 299 (1924), 39 A.L.R. 773 (1925), 46 A.L.R. 157 (1927), 52 A.L.R. 491 (1928).

205. Kelly-Sullivan v. Moss, 22 N.Y.S.2d 491, 174 Misc. 1098, *affd.* 24 N.Y.S.2d 984, 260 App. Div. 921 (1940).

206. Larson v. City of Rockford, 371 Ill. 441, 21 N.E.2d 396 (1931). The possibility of cigarettes getting into the hands of minors justifies extensive regulation of cigarette vending machines. Illinois Cigarette Service Co. v. City of Chicago, 89 F.2d 610 (7th Cir. 1937), State v. Crabtree Co., 218 Minn. 36, 15 N.W.2d 98 (1944).

207. People v. Wagner, 86 Mich. 594 49 N.W. 609 (1891); City of Chicago v. Schmidinger, 243 Ill. 167, 90 N.E. 369 (1909).

208. City of St. Louis v. Triangle Fuel Supply Co., 193 S.W.2d 914 (Mo. App. 1946); Phillipsburg Supply Co. v. Morrison, 27 North. 271 (Pa. Com. Pl. 1940). Note City of Chicago v. Cuda, 403 Ill. 381, 86 N.E.2d 192 (1949) denying extraterritorial effect to municipal coal regulatory ordinance.

209. City of Chicago v. Bowman Dairy, 234 Ill. 294, 84 N.E. 913 (1908).

210. Ray v. City and County of Denver, 109 Colo. 74, 121 P.2d 886 (1942).

211. Arnold v. City of Chicago, 387 Ill. 532, 56 N.E.2d 795 (1944).

212. City of Mobile v. Rouse, 27 Ala. App. 344, 173 So. 254 (1937); *Ex parte* Herrick, 25 Cal. App.2d 751, 77 P.2d 262 (1938). *Contra:* Anthony v. City of Atlanta, 66 Ga. App. 504, 18 S.E.2d 81 (1942).

213. People v. Sell, 310 Mich. 305, 17 N.W.2d 193 (1945); City of Cleveland v. Piskora, 145 Ohio St. 144, 60 N.E.2d 919 (1944); People v. Lewis, 295 N.Y. 42, 64 N.E.2d 702 (1946).

214. City of New York v. Interborough Rapid Transit Co., 257 N.Y. 20, 177 N.E. 295 (1930); Eldridge v. Ft. Worth Transit Co., 136 S.W.2d 955 (Tex. 1940).

215. City of Detroit v. Public Utilities Comm., 288 Mich. 367, 286 N.W. 368 (1939); City of Louisville v. Louisville Ry. Co., (8th Cir. 1930), 39 F.2d 822; Lynchburg Traction and Light Co. v. City of Lynchburg, 16 F.2d 763 (4th Cir. 1927).

though generally courts admit municipal power to set rates by contract or franchise. Municipal power to control deceptive advertising is generally recognized.[216]

TRADE REGULATION GENERALLY

It should always be borne in mind that municipalities having strictly limited powers must find express or necessarily implied power to regulate any aspect of trade or business.[217]

Although courts frequently announce that ". . . if a business sought to be regulated does not tend to injure the public health, public morals or interfere with the general welfare it is not a subject for the exercise of the police power,"[218] it is universally recognized that if a business, e.g. a junkyard, is apt to become a nuisance it can be regulated extensively,[219] and even be excluded from parts of the community.[220]

In general the power to regulate a trade embraces the power to require a license.[221] Accordingly, municipalities have regularly been sustained in licensing many forms of trade, business and professions such as merchants,[222] manufactories, [223] utilities,[224] lawyers,[225] amusement parks,[226] and boarding houses.[227] And

216. City of Springfield v. Hurst, 144 Ohio St. 49, 57 N.E.2d 425 (1944); City of St. Louis v. Southcombe, 320 Mo. 865, 8 S.W.2d 1001 (1928); *Cf.* Ritholz v. City of Detroit, 308 Mich. 258, 13 N.W.2d 283 (1944).

217. Condon v. Village of Forest Park, 278 Ill. 218, 115 N.E. 825 (1917): power to regulate and license amusement places held not to authorize license of golf course; Bullman v. City of Chicago, 367 Ill. 217, 10 N.E.2d 961, 1937): power to license junk dealers does not authorize licensing of car dealers who accepted in trade and stored used tires.

218. City of Chicago v. R & X Restaurant, 369 Ill. 65, 15 N.E.2d 725 (1938). See also Jewell Tea Co. v. City of Geneva, 137 Neb. 768, 291 N.W. 664 (1940).

219. Lerner v. City of Delavan, 203 Wis. 32, 233 N.W. 608 (1930); Gospel Army v. Los Angeles, 27 Cal.2d 232, 163 P.2d 704 (1945), *app. dism.* 331 U.S. 543 (1947). See Note, 30 A.L.R. 1427 (1924).

220. Town of Grundy Center v. Marion, 231 Iowa 425, 1 N.W.2d 677 (1942); Knack v. Velick Scrap Iron Co., 219 Mich. 573, 189 N.W. 54 (1922). Compare Vermont Salvage Corp. v. Village of St. Johnsburg, 114 Vt. 341, 34 A.2d 188 (1943).

221. Gundling v. City of Chicago, 176 Ill. 340, 52 N.E. 44 (1898).

222. Van Hook v. City of Selma, 70 Ala. 361 (1881).

223. La Crosse Rendering Works v. City of La Crosse, 231 Wis. 438, 285 N.W. 393 (1939). *Cf.* Barnard & Miller v. City of Chicago, 316 Ill. 519, 147 N. E. 384 (1925). See note, 124 A.L.R. 523 (1939).

224. Seaboard Airline RR. v. City of Raleigh, 242 U.S. 15 (1916).

225. Davis v. Ogden City, 215 P.2d 616 (Utah 1950).

226. Eastwood Amusement Park v. Stark, 325 Mich. 60, 38 N.W.2d 77 (1949). So also bowling alleys. See Note, 20 A.L.R. 1482 (1922).

227. Edwards v. Los Angeles, 48 Cal. App.2d 62, 119 P.2d 370 (1941).

even graduated license fees on chains are generally upheld.[228] License fees must be reasonable, however, and cannot grossly exceed the cost of policing the trade or activity,[229] unless the fee is authorized as an expression of municipal tax power.[230] Courts customarily rebel at municipal attempts to prohibit lawful trades through the licensing technique.[231] Licensing ordinances will be invalidated when the standard of revocation is so vague as to permit an official to cancel "for good and satisfactory reasons."[232] There is always the possibility that municipal licensing of trades and occupations will fail because of conflict with state law.[233]

The ability of municipalities to set closing hours for businesses and trades has been sustained in some cases,[234] but denied in the majority of decisions.[235] All municipal regulatory ordinances must be reasonable to survive.[236] And there is a discernible judicial inclination to invalidate trade regulations if they appear to have been passed primarily to benefit a group of business concerns at the expense of competitors.[237]

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228. Safeway Stores v. City of Portland, 149 Ore. 581, 42 P.2d 162 (1935). Notes, Fulton, *Anti-chain store legislation*, 30 MICH. L. REV. 274 (1931), 33 MICH. L. REV. 970 (1934), See Notes, 73 A.L.R. 1481 (1932), 85 A.L.R. 736 (1934), 112 A.L.R. 305 (1938).

229. Matheny v. City of Hutchinson, 154 Kan. 681, 121 P.2d 227 (1942); Hill v. City of Eureka, 35 Cal. App.2d 154, 94 P.2d 1025 (1939). Courts are inclined to uphold larger fees when the activity is one "illegal in tendency." Notes, *Limitations on the Power to License*, 27 MARQ. L. REV. 105 (1943). See Notes, 14 L.R.A.(n.s.) 788 (1908), 20 A.L.R. 1482 (1922), 29 A.L.R. (1924), 53 A.L.R. 149 (1927), 72 A.L.R. 1339 (1931).

230. McKay v. City of Wichita, 135 Kan. 678, 11 P.2d 733 (1932).

231. Good Humor Corp. v. City of New York, 200 N.Y. 312, 49 N.E.2d 153 (1942); New Jersey Good Humor Inc. v. Board of Commrs. of Borough of Bradley Beach, 124 N.J.L. 162, 11 A.2d 113 (1940).

232. Eastwood Amusement Park v. Stark, 325 Mich. 60, 38 N.W.2d 77 (1949).

233. Trimble v. City of Topeka, 147 Kan. 111, 75 P.2d 241 (1938); Jackson v. City of Sylacauga, 25 Ala. 244, 144 So. 125 (1932).

234. Solof v. City of Chattanooga, 180 Tenn. 296, 174 S.W.2d 471 (1943) (pawnshop); Justesen's Food Stores v. City of Tulare, 12 Cal.2d 324, 84 P.2d 140 (1937) (grocery).

235. Chaives v. City of Atlanta, 164 Ga. 755, 139 S.E. 559 (1927) (barber shop); Cowan v. City of Buffalo, 247 App. Div. 591, 288 N.Y. Supp. 239 (1945) (market); Olds v. Klotz, 131 Ohio St. 447, 3 N.E.2d 371 (1936) (grocery); Deese v. City of Lodi, 21 Cal. App.2d 631, 69 P.2d 1005 (1937) (grocery); City of Cincinnati v. Correll, 141 Ohio St. 535, 49 N.E.2d 412 (1943) (barber shop); Crawford's Clothes v. City of Newark, 131 N.J.L. 97, 35 A.2d 38 (1944) (clothing store); McCulley v. City of Wichita, 151 Kan. 214, 98 P.2d 192 (1940) (grocery).

236. People v. Armstrong, 73 Mich. 288, 41 N.W. 275 (1889); City of Chicago v. Gunning, 214 Ill. 628, 73, 73 N.E. 1035 (1905).

237. S.S. Kresge, Co. v. Couzens, 290 Mich. 185, 287 N.W. 427

Notwithstanding some thought that municipalities cannot punish for crimes,[238] and some further opinion that municipal punishment is invalid when the same act is penalized by state statute,[239] municipal corporations should be permitted to punish as crimes violations of trade regulatory ordinances contrary to the safety and good order of the local community.[240]

CONCLUSION

Home rule cities, as well as those municipalities depending upon legislative grants of power, usually have adequate legislative authority to protect the public health, safety, morality and general welfare. Generally speaking, municipal ordinances will be valid if they are reasonable and have a reasonable relationship to one of the aforementioned legitimate ends. The commerce, equal protection, and due process clauses of the United States Constitution are ever-present limitations upon the exercise of admitted municipal powers. Furthermore, municipal corporations in protecting the community health, safety, morality and general welfare must ever be on guard against conflict with state law or state occupation of the field. As in the past the satisfactory accomplishment of the municipal law job will depend upon the awareness and ingenuity of municipal legislatures, plus increasing understanding and sympathy to novel municipal solutions by state high courts often staffed with jurists from non-urban areas.

(1939); Dean Milk Co. v. City of Chicago, 385 Ill. 565, 53 N.E.2d 612 (1944). See also Ricca v. Board of Commrs. of Town of Belleville, 1 N.J. Super. 139, 62 A.2d 746 (App.Div. 1948).

238. State *ex rel.* Keefe v. Schmiege, 251 Wis. 79, 28 N.W.2d 345 (1947); City of Waukesha v. Stathas, 255 Wis. 76, 37 N.W.2d 846 (1949).

239. Hood v. Von Glahn, 88 Ga. 405 (1892); People v. Hanrahan, 75 Mich. 611, 42 N.W. 1124 (1889). See Note, 147 A.L.R. 566 (1943).

240. Note, 96 U. of PA. L. REV. 582 (1948).

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