§ 352 (286). **Equity will not ordinarily relieve against Valid Forfeitures.** — A forfeiture imposed by a municipal corporation, under legislative authority, for a violation of a valid by-law, and inflicted as a penalty for such violation, *cannot be relieved against in equity*, unless, perhaps, where peculiar circumstances furnish grounds for equitable interposition, the general doctrine being that equity may relieve against forfeitures declared by contract, but not against those expressly declared or authorized by statute.[1]

§ 353 (287). **Power to enforce by Imprisonment must be expressly given.** — In this country it is not unusual to provide, in the organic act of municipal corporations, that if fines for violation of by-laws or ordinances are not paid, *the offender may be committed to prison* for a limited period. And in respect to some offences public in their character, the power to imprison in the first instance is often conferred.[2] It is scarcely necessary to add that unless the authority be plainly given, it does not exist; and when given, before it can be exercised there must be a judicial ascertainment by a competent tribunal or magistrate of the guilt of the party.[3]

violate the ordinance forbidding hogs running at large, and the seizure, impounding, and sale (upon notice) of the animals to pay the fine, whether they belong to residents or non-residents. Kennedy *v.* Sowden, *supra*; s. p. Crosby *v.* Warren, 1 Rich. (S. C.) Law, 385 (1845), *Wardlaw*, J., dissenting; McKee *v.* McKee, 8 B. Mon. (Ky.) 433 (1848); see Kinder *v.* Gillespie, 63 Ill. 88 (1872). But it seems doubtful, upon the principles adopted in the construction of powers of this character, whether authority to impose fines and penalties extends any further than to the imposition of *pecuniary fines and penalties*. See Mayor of Mobile *v.* Yuille, 3 Ala. 137; White *v.* Tallman, 2 Dutch. (N. J.) 67 (1856). The power to forfeit, like the power to tax, should be given either expressly, or, at all events, by *necessary* implication. And it has been held that it cannot be implied from the power "to impose reasonable fines," and to cause "all such fines and all such forfeitures and penalties as may be incurred under the laws and ordinances of the corporation, to be assessed, levied, and collected." Cotter *v.* Doty, 5 Ohio, 395 (1832).

[1] Taylor *v.* Carondelet, 22 Mo. 105 (forfeiture clause in lease); Peachy *v.* Somerset, 1 Str. 447; Gorman *v.* Low, 2 Edw. Ch. 324; Keating *v.* Sparrow, 1 Ball & Beat. 367; State *v.* Railroad Co., 3 How. (U. S.) 534.

[2] Barter *v.* Commonwealth, 3 Pa. (Pen. & W.) 253 (1831); New Orleans *v.* Costello, 14 La. An. 37; Burlington *v.* Kellar, 18 Iowa, 59; London *v.* Wood, 12 Mod. 686; Bab *v.* Clerk, F. Moore, 411; Clarke's Case, 5 Co. 64; 1 Roll. Abr. 364; Com. Dig. By-Law, E. 1; Chilton *v.* Railway Co., 16 M. & W. 212; King *v.* Merchant Taylors' Co., 2 Lev. 200.

[3] Burnett, *In re*, 30 Ala. 461 (1857). Charter power to punish violations of ordinances "by fines, imprisonment, labor, or other penalty prescribed by ordinance" will authorize the city council to prescribe as punishment either fine or imprisonment (not both), and not even imprisonment as means of enforcing payment of a fine. Brieswick *v.* Brunswick, 51 Ga. 639 (1874); s. c. 21 Am. Rep. 240. Fines for the violation of ordinances, held, under special charter provisions, collectible by commitment of the persons, or by *fieri facias*. Huddleson *v.* Ruffin, 6 Ohio St. 604. The power to punish offenders by fine *or* imprisonment, conferred upon a

On whom Ordinances are binding, and who must notice them.

§ 354 (288). **Who bound.** — In England the by-laws of a municipal corporation bind not only the members, but, if they are general in their nature and purposes, and not limited to any particular class or description, but intended to extend to all persons coming within the local jurisdiction of the corporation, *they bind all*, whether members or strangers, and *all must take notice of them* at their peril. And by-laws made by a municipal corporation with respect to a liberty or franchise granted them, with local jurisdiction beyond the limits of the municipality, are as binding upon persons going into the liberty, as the by-laws of the city upon those who come within its walls.[1]

§ 355 (289). **Same subject.** — So, also, *in this country* it is settled that valid ordinances bind not only the inhabitants of the corporation, but also strangers or non-residents coming within its limits. These, for the time being, are regarded as inhabitants, and liable in the same manner for violations of ordinances.[2] So far is plain. But suppose

municipal corporation, does not include the authority to coerce the payment of a fine by imprisonment. Brieswick *v.* Brunswick, 51 Ga. 639 (1874). Where an ordinance provided that a convicted person should forfeit a sum "not exceeding five hundred dollars, and may be imprisoned not exceeding sixty days, or both," a sentence to pay a fine of one hundred dollars *or* perform sixty days' work on the public streets, was held to be void, the latter clause being unauthorized by the ordinance, and the whole sentence being uncertain and in the alternative. *Ex parte* Martini, 23 Fla. 343 (1887). Authority to enforce penalties for violations of ordinances by "*distress and sale*" of property must be expressly or plainly granted. White *v.* Tallman, 2 Dutch. (N. J.) 67 (1856); Bergen *v.* Clarkson, 1 Halst. (N. J.) 352. A law authorizing a municipal corporation to recover a fine for breach of a police regulation does not, without express provision therefor, authorize the arrest and criminal prosecution of the offender. State *v.* Ruff, 30 La. An. 497. And in England, likewise, such a power cannot be conferred by the crown, and can only exist by authority of parliament or a special custom. Clerk *v.* Tucket, 3 Lev. 281; s. c. 2 Vent. 183; Lee *v.* Wallis, 1 Kenyon, 295; Sayer, 263; Adley *v.* Reeves, 2 Maule & Sel. 60; Willc. 179; Glover, 311. Verbal order of police magistrate will not justify police officer in holding a person in custody for the non-payment of a fine imposed for the breach of a municipal ordinance. Board of Trustees *v.* Schroeder, 58 Illinois, 353 (1871).

[1] Willc. 105, 107; Glover, 289, 290; London *v.* Vanacre, 1 Ld. Raym. 498; Salk. 143; Pierce *v.* Bartrum, Cowp. 270; Fazakerly *v.* Wiltshire, 1 Stra. 462; Kirk *v.* Nowill, 1 Term R. 118; Butchers' Co. *v.* Morey, 1 H. Bl. 370. Do not bind beyond limits of authorized jurisdiction. See 3 Mod. 158; T. Jones, 144; 2 Brownl. 177; Hob. 211; Hutt. 6; 11 Rep. 53; Godb. 252. An ordinance passed in 1834, prohibiting the erection of "stables, &c., in the interior of the city of New Orleans, or any of its incorporated suburbs," held not to extend to the city of Lafayette, subsequently added, by act of the legislature, to the city of New Orleans. New Orleans *v.* Anderson, 9 La. An. 323 (1854).

[2] Heland *v.* Lowell, 3 Allen (Mass.), 407 (1862); Whitfield *v.* Longest, 6 Ire.

a person living without the limits of the corporation suffers his cattle or property to stray into it and violate its ordinances. Here two questions may arise: 1. Can such property, being *within* the corporation, be dealt with the same as if it belonged to an inhabitant of the corporation? It is held that it can.[1] 2. Can such *non-resident* owner be made amenable *personally* to a penalty to the corporation? In other words, has a corporation power, unless expressly conferred, to provide for collecting a penalty from a non-resident who suffers his property to violate an ordinance, but who himself was at the time without the corporate limits? This remains, perhaps, to be settled; though it is certain that ordinances will not be construed to extend to persons living without the corporation and not being within it, unless such an intention plainly appears.[2]

(Law) 268 (1846); approving Pierce *v.* Bartram, Cowp. 269. See also Buffalo *v.* Webster, 10 Wend. (N. Y.) 99; Comm'rs of Wilmington *v.* Roby, 8 Ire. (Law) 250; Comm'rs of Plymouth *v.* Pettijohn, 4 Dev. (Law) 591; Strauss *v.* Pontiac, 40 Ill. 301 (1866); City Council *v.* Pepper, 1 Rich. (S. C.) Law, 364 (1845); City Council *v.* King, 4 McCord (S. C.), 487; Marietta *v.* Fearing, 4 Ohio, 427 (1831); Dodge *v.* Gridley, 10 Ohio, 173; Horney *v.* Sloan, 1 Smith (Ind.), 136; Kennedy *v.* Sowden, 1 McMullan (S. C.), 323; Bott *v.* Pratt, 33 Minn. 323; Knoxville *v.* King, 7 Lea, 441. Taxation of non-residents using streets. *Post*, sec. 682, note.

[1] Whitfield *v.* Longest, 6 Ire. (Law) 268 (1846); Gosselink *v.* Campbell, 4 Iowa, 296, 300 (1856); Reed *v.* People, 1 Park. Cr. Rep. 481; Rose *v.* Hardie, 98 N. C. 44. *Supra*, sec. 348, note. The point was also ruled the same way in Spitler *v.* Young, 63 Mo. 42 (1876); but the ordinance was construed not to apply to a case where the hogs owned outside of the corporation escaped from a pen in consequence of a flood, over which the owner had no control, which washed the pen away, and where the owner was using diligence to reclaim them. *Wagner*, J., says, "While the hogs in this case were found in the streets, yet they were not there within the meaning and spirit of the ordinance, which was designed to prohibit hogs from running at large in the ordinary sense."

[2] Plymouth *v.* Pettijohn, 4 Dev. (Law) 591. Inability to punish non-resident owner criminally in respect to property within corporate limits, see Reed *v.* People, 1 Park. Cr. Rep. 481. Power "to make such prudential rules and regulations as may seem necessary for the better improving of the *common lands* of a town," &c., extends only to regulations as between those who have the right to enjoy them in common, but does not confer the power of imposing a penalty for *trespasses by strangers;* for such acts the town must pursue its common-law remedy. Foster *v.* Rhoads, 19 Johns. (N. Y.) 191 (1821). See, also, People *v.* Works, 7 Wend. (N. Y.) 486; Holladay *v.* Marsh, 3 Wend. (N. Y.) 142. City held not to have power to require a license tax from non-resident owners of wagons engaged in hauling into and out of the city for hire. St. Charles *v.* Nolle, 51 Mo. 122 (1872). See Index, *Vehicles.* Ordinances cannot have an *extra-territorial* effect, unless the power be plainly conferred upon the corporation. Strauss *v.* Pontiac (liquor ordinance), 40 Ill. 301 (1866); Gosselink *v.* Campbell, 4 Iowa, 296; Robb *v.* Indianapolis, 38 Ind. 49 (1871); Chicago Packing Co. *v.* Chicago, 88 Ill. 221 (1878). Whether a party *resides within the limits* embraced by an ordinance is a question of fact. Board *v.* Pooley, 11 La. An. 743; Police Jury *v.* Villaviabo, 12 La. An. 788; New Orleans *v.* Boudro, 14 La. An. 303.

§ 356 (290). **Notice.** — All persons upon whom ordinances are binding *are bound to take notice* of them.[1] But where a party is liable to a penalty if he does not do a given act upon notice, a newspaper notice is not sufficient, unless that mode is pointed out by the law, or general power is given to the corporation embracing within it the authority to prescribe the kind and manner of notice.[2]

Ordinances relating to the Licensing, Regulation, and Taxing of Amusements and Occupations, including the Sale of Intoxicating Liquors.

§ 357 (291). **Nature of License Power.** — Charters not unfrequently confer upon the corporation the power "to license and regulate" or to "license, regulate, and tax" certain avocations and employments, and to "tax and restrain" or "prohibit" exhibitions, shows, places of amusement, and the like; and unless there is some specific limitation on the authority of the legislature in this respect, such provisions are constitutional.[3] Where, by the charter of a city,

[1] Palmyra *v.* Morton (sidewalk ordinance), 25 Mo. 593 (1860); Buffalo *v.* Webster, 10 Wend. (N. Y.) 99 (1833). See Reed *v.* People, 1 Park. Cr. Rep. 481; City of London *v.* Vanacre, 12 Mod. 270, 272; Glover on Corp. 207, 290; Knoxville *v.* King, 7 Lea (Tenn.), 441 (citing text); Faribault *v.* Wilson, 34 Minn. 254 (as all persons within the city limits are bound to take notice of the ordinances, a complaint setting forth a violation of an ordinance need not recite it, — a reference to its number is sufficient). *Infra*, sec. 413. Where a city having an ordinance prohibiting *the storage of fertilizers* within the corporate limits, allowed, without objection or warning, a railroad company to erect expensive storehouses to accommodate its traffic in such merchandise, it was held that the city was *estopped* from asserting its ordinance against the company; and that the railroad, being bound to deliver its freight in the city, was not included in the terms of the ordinance. Mayor of Athens *v.* Georgia R. R., 72 Ga. 800. *As to estoppel* see also Atlanta *v.* Gate City Gas-Light Co., 71 Ga. 106; *post*, secs. 606, 803.

[2] Keckely *v.* Commissioners of Roads, 4 McCord (S. C.), 257 (1828).

[3] Mount Pleasant *v.* Clutch, 6 Iowa, 546 (1858). In Mobile *v.* Yuille, 3 Ala. 137 (1841), it was determined that there was nothing in the Constitution of the State which would invalidate a grant of power to a municipal corporation "to *license bakers*, and *regulate the weight and price of bread*, and to prohibit the baking, for sale, except by those licensed." Such a grant of power does not unlawfully interfere with the right of citizens to pursue their lawful occupations. In the City of Boston *v.* Schaffer, 9 Pick. (Mass.) 415 (1830), it was decided that it is competent for the legislature to grant a city or town power to require the payment of money as the condition of exercising particular employments, *e. g.* giving theatrical or other exhibitions. This is not in the nature of a *tax*, which must be general, but of an excise on special vocations. Approved, Cincinnati *v.* Bryson, 15 Ohio 625; New Orleans *v.* Turpin (auctioneers), 13 La. An. 56 (1858); Municipality *v.* Dubois (livery-stable keeper), 10 La. An. 56; Charity Hospital *v.* Stickney, 2 La. An. 550; Slaughter *v.* Commonwealth, 13 Gratt. (Va.) 767; Carroll *v.* Tuskaloosa, 12 Ala. 173; Merriam *v.* New Orleans, 14 La. An. 318; Wynne *v.* Wright, 1 Dev. & & B. (N. C.) Law, 19; Savannah *v.* Hartridge, 8 Ga. 23; Cincinnati *v.* Bryson, 15 Ohio, 625, dissenting opinion of *Burchard*, J.; Collins *v.* Louisville, 2 B.

the power to license a particular occupation within its limits is given to the common council, such power involves the necessity of determining with reasonable certainty both the extent and duration of the license and the sum to be paid therefor; and must be exercised by the common council, and cannot be delegated by it, in whole or in part, to any person or authority.[1] Concerning *useful trades and employments*, a distinction is to be observed between the power to "license" and the power to "tax." In such cases the former right, unless such appears to have been the legislative intent, does not give the authority to prohibit, or to use the license as a mode of taxation with a view to revenue, but a reasonable fee for the license and the labor attending its issue may be charged.[2] Respecting

Mon. (Ky.) 134; The Germania *v.* State, 7 Md. 1; Lucas *v.* Lott. Comm'rs, 11 Gill & Johns. (Md.) 506; Sears *v.* West, 1 Murph. (N. C.) 291; People *v.* Thurber, 13 Ill. 557; Savannah *v.* Charlton, 36 Ga. 460 (1867). Forbidding driving of carts without license. Who are cartmen? Brooklyn *v.* Breslin, 57 N. Y. 591 (1874); *post*, secs. 785, 791; East St. Louis *v.* Trustees, 102 Ill. 489; Wiggins Ferry Co. *v.* East St. Louis, 102 Ill. 560 (the Illinois Constitution of 1870 did not affect the power of the legislature in regard to conferring the right upon cities to require licenses); State *v.* Hayne, 4 S. C. 403; State *v.* Columbia, 6 S. C. 1; Charleston *v.* Oliver, 16 S. C. 47; United States Distilling Co. *v.* Chicago, 112 Ill. 19 (brewers and distillers); Information against Oliver, 21 S. C. 318; Van Hook *v.* Selma, 70 Ala. 361; People *v.* Mulholland, 82 N. Y. 324 (delivering milk from vehicles). A power to "levy a license tax" is discretionary and not mandatory. Under it a city may abstain from taxing any occupation. New Orleans *v.* Müle, 38 La. An. 826; see chapter on Taxation, *post*; *ante*, sec. 115; Kniper *v.* Louisville, 7 Bush (Ky.), 599.

The cases show some diversity of opinion as to the right to *tax particular employments* as distinguished from property; but the correct view, it is submitted, is this: Unless specially restrained by the Constitution, the legislature may provide for the taxing of any occupation or trade, and may confer this power upon municipal corporations. But such taxes are apt to be inequitable, and the principle not free from danger of great abuse. Hence ordinances of this character ought not to be sustained, unless the authority be expressly or otherwise unequivocally conferred. Newton *v.* Atchison, 31 Kan. 151 (quoting the foregoing with approval). In this case a license tax upon merchants, graduated according to their average stock on hand, was held valid, and not in any illegal sense double taxation. In Tulloss *v.* Sedan, 31 Kan. 165, the same court held a *license tax upon druggists*, which was much larger for those not having permits to sell liquors than for those having such permits, was not illegal or void.

[1] Darling *v.* St. Paul, 19 Minn. 389 (1872). Compare this case, however, with Decorah *v.* Dunstan, 38 Iowa, 96 (1874), in which it was held that where an incorporated town had the power to regulate and license auction sales, &c., and to pass all ordinances necessary to exercise that power, an ordinance authorizing the mayor to fix the amount of the license within a specified sum was held not to be invalid. The general doctrine on the subject of the *delegation of municipal powers* is elsewhere discussed; and the line drawn between duties of a ministerial and executive character which may be delegated, and legislative or discretionary powers which may not be delegated. An ordinance which required the recommendation of twelve citizens and taxpayers in the block where it was proposed to establish a *laundry*, before the authorities should issue a license therefor, held illegal. *In re* Quong Woo, 13 Fed. Rep. 229; *supra*, sec. 319, and note. *Ante*, sec. 96; *post*, secs. 716, 780.

[2] State *v.* Bean, 91 N. C. 554 (quoting

amusements, exhibitions, &c., the authority of the corporation under the power to license has been regarded as greater than when the same word is employed as to trades and occupations.[1] Words of

text, and holding that a power to license the carrying on of trades, &c., is a *police power*, and does not confer power to use the license as a mode of raising revenue). See also *Ex parte* Mirande, 73 Cal. 365; O'Maley *v.* Freeport, 96 Pa. St. 24; Vansant *v.* Harlem Stage Co., 59 Md. 330; Mühlenbrinck *v.* Commissioners, 42 N. J. L. 364. Compare Flanagan *v.* Plainfield, 44 N. J. L. 118; Clark *v.* New Brunswick, 43 N. J. L. 175.

A general incorporation act conferring power to license certain *enumerated* occupations is to be construed as if inhibiting the licensing of those not enumerated. Cairo *v.* Bross, 101 Ill. 475. Where a charter provided that licenses should be *proportioned to the amount of business*, an ordinance varying the amount according to the number of persons employed was held lawful. *Ex parte* Sisto Li Protti, 68 Cal. 635. One who transacts business both as a *wholesale* and *retail* merchant may be required to take out licenses in each capacity. New Orleans *v.* Koen, 38 La. An. 328.

[1] Ash *v.* People, 11 Mich. 347; *ante*, sec. 115; Youngblood *v.* Sexton (distinction between license and taxation), 32 Mich. 406 (1875); s. c. 20 Am. Rep. 654; St. Paul *v.* Traeger, 25 Minn. 248 (1878). Power "to exact license money" and "to regulate" the sale of liquors held not to confer power to *prohibit* the sale thereof. Sweet *v.* Wabash, 41 Ind. 7 (1872); Freeholders *v.* Barber, 2 Halst. (N. J.) 64; Carroll *v.* Tuskaloosa, 12 Ala. (N. S.) 173; Greensboro *v.* Mullins, 13 Ala. (N. S.) 341; Lucas *v.* Lott. Comm'rs, 11 Gill & Johns. (Md.) 506; City Council *v.* Ahrens, 4 Strob. (S. C.) 241; Kip *v.* Paterson, 2 Dutch. (N. J.) 298; Portland *v.* O'Neill, 1 Oreg. 218; Bennett *v.* Birmingham, 31 Pa. St. 15; Commonwealth *v.* Stodder, 2 Cush. (Mass.) 562; Day *v.* Green, 4 Cush. (Mass.) 433; Dunham *v.* Rochester, 5 Cow. (N. Y.) 462; Lawrenceburg *v.* Wuest, 16 Ind. 337; Cheny *v.* Shelbyville, 19 Ind. 84; Leavenworth *v.* Booth (construing words "license tax"), 15 Kan. 627 (1875); Welch *v.* Hotchkiss (building license fee of fifty cents sustained), 39 Conn. 140 (1872); s. c. 12 Am. Rep. 383; *post*, sec. 405, note. St. Paul *v.* Treager, 25 Minn. 248, approving text; Bennett *v.* People, 30 Ill. 389; East St. Louis *v.* Wehrung, 46 Ill. 392; Savannah *v.* Charlton, 36 Ga. 460; Darling *v.* St. Paul, 19 Minn. 389 (1872), citing text; *post*, chap. xix.

Power "to regulate the sale of meat," &c., held to authorize a city to require that a license shall be obtained for the selling of meat, &c. Kinsley *v.* Chicago, 124 Ill. 359 (1888).

Distinction between *taxation* and *police regulation* well stated by *Depue*, J., in State *v.* Hoboken, 33 N. J. L. 280 (1869); Commonwealth *v.* Markham, 7 Bush (Ky.), 486 (1870); State *v.* Cassidy, 22 Minn. 312; *post*, sec. 768; see, also, Kip *v.* Patterson, 2 Dutch. (N. J.) 298; Mayor *v.* Avenue Railroad Company, 32 N. Y. 261; 33 N. Y. 42, distinguished and questioned in Frankford and Phila. P. R. Co. *v.* Philadelphia, 58 Pa. St. 119 (1868); Johnson *v.* Philadelphia, 60 Pa. St. 445; Freeholders *v.* Barber, 2 Halst. (N. J.) 64. Difference between tax and a license to exercise particular callings upon making pecuniary compensation for the privilege. People *v.* Thurber, 13 Ill. 557; Mount Carmel *v.* Wabash Co., 50 Ill. 69; Kniper *v.* Louisville, 7 Bush (Ky.), 599. Smith *v.* City of Madison, 7 Ind. 86 (1855), so far as it holds that authority "to suppress and restrain" bowling saloons confers the power to license and *tax* them, cannot, as it seems to us, be sustained. Mayor, &c. *v.* Beasley, 1 Humph. (Tenn.) 240, holds that power in a charter to *regulate* and *restrain* tippling-houses did not confer the power to tax them. The word "restrain" (Emporia *v.* Volmer, 12 Kan. 622, 630 (1874) held not to be synonymous with the word "prohibit" or "suppress." Approving text. Frank, *In re*, 52 Cal. 606; Hudson, &c. *v.* Hoboken, 41 N. J. L. 71. A power "to regulate" victualling houses held to include the

this character, however, do not always have exactly the same meaning, and the intention of the legislature in using them must often be gathered from the whole charter and the general legislation of the State respecting the subject-matter.

§ 358 (292). **Same subject. Regulation of Occupations.** — In harmony with the foregoing principles, it has been held that, under authority "*to license and regulate*" draymen, &c., a municipal corporation may, by ordinance, require a license to be first taken out, and charge a reasonable sum for issuing the same and keeping the necessary record, but *cannot, by virtue of this authority, without more, levy a tax upon the occupation itself;* and, under the power to *regulate,* it may make proper police regulations as to the *mode* in which the employment shall be exercised.[1]

power to *license* them. St. Johnsbury *v.* Thompson, 59 Vt. 300.

One who sells his own goods at public auction, as well as one who sells another's, is an "auctioneer," allowing the common council of any municipality to require a license, &c. Goshen *v.* Kern, 63 Ind. 468. The power thus conferred on a common council is in the nature of a police regulation. *Ib.*

[1] Cincinnati *v.* Bryson, 15 Ohio, 625 (1846). As to correctness of application of the principle of law to the facts, *quære.* Consult, in connection with the above case, Mays *v.* Cincinnati, 1 Ohio St. 268 (1853); with which compare Cincinnati *v.* Buckingham, 10 Ohio, 261; and see cases cited *supra,* sec. 357; Mays *v.* Cincinnati, *supra,* cited by *Cornell,* J., in St. Paul *v.* Traeger, 25 Minn. 248 (1878); The Laundry License Case, 22 Fed. Rep. 701; Marmet *v.* State, 45 Ohio St. 63; Fort Smith *v.* Ayers, 43 Ark. 82; Russellville *v.* White, 41 Ark. 485. An act to regulate and license the keeping of *dogs* was regarded as an exercise of the police, and not the taxing power of the State, and not to be within the constitutional provision requiring *uniformity* of taxation. Carter *v.* Dow, 16 Wis. 298 (1862); Tenney *v.* Lenz, *Ib.* 566. In the case last cited, *Paine,* J., observes: "We cannot assent to the position that, if the sum required for a license exceeds the expense of issuing it, the act transcends the licensing power, and imposes a tax. By such a theory the police power would be shorn of all efficiency. . . . We have no doubt, therefore, that the legislature may, in regulating any matter that is a proper subject of the police power, impose such sums for licenses as will operate as partial restrictions upon the business, or upon the keeping of the particular kinds of property regulated." See, also, Fire Department *v.* Helfenstein, 16 Wis. 136. Special constitutional provisions in reference to taxation have been held to have no reference to license taxes. Leavenworth *v.* Booth, 15 Kan. 627, 635, 636 (1875); Anderson *v.* Kerns Drain. Co., 14 Ind. 201; Bright *v.* McCullough, 27 Ind. 223, 232; People *v.* Coleman, 4 Cal. 46.

The law recognizes property in dogs, and a city ordinance requiring the owner of such property to obtain a license to keep the same, and subjecting him to arrest, fine and imprisonment, for not procuring such license, is invalid. Washington *v.* Meigs, 1 McArthur, 53; Harrington *v.* Miles, 11 Kan. 480. See, on this general subject, State *v.* Cymis, 26 Ohio St. 400; Ward *v.* State, 48 Ala. 161; *post,* sec. 768; *ante,* sec. 141.

The legislature may, for police purposes, prescribe the limits of municipal bodies, enlarging or contracting them at pleasure, and give them power to pass ordinances to *prevent nuisances beyond their boundaries.* Thus a packing house which has been licensed by the town where it is located, but within one mile of the *corporate* limits of a city, does not exempt the same from an ordinance of that city requiring it to be licensed by that municipality. The person using the establishment is liable to be charged a license by both the town and city. Chicago Packing Co. *v.* Chicago, 88 Ill. 221.

In Ash *v.* People, 11 Mich. 347 (1863), it appeared that, by its charter, authority was given to a city to erect, establish, and regulate markets and market-places, and to *license* and regulate butchers and shop-keepers at any *other* place in the city, for the sale of meats, &c., and to authorize the mayor to grant such licenses and to prescribe the *sum* of money to be paid into the treasury of the city therefor. An ordinance prohibiting the keeping of meat-shops outside of the public markets without a license, and requiring the payment of a license fee of five dollars, was sustained, although the amount exceeded the expense of making and registering the license. The court denied that the fee demanded was a *tax,* and regarded it as but a reasonable compensation for the additional expense of municipal supervision over the business at the place licensed.

A *ferry license fee* of fifty dollars was held not to be a *tax,* within the meaning of the term, as used in the Constitution of *Michigan* and the charter of the city of Detroit. Chilvers *v.* People, 11 Mich. 43 (1862); *ante,* sec. 115. "The power to license and regulate carries with it the right to require the payment of a [reasonable] sum in consideration of the license." *Per Wright,* J., in State *v.* Herod, 29 Iowa, 123 (1870). Whenever a municipal corporation is authorized to make by-laws relative to a given subject, and to require of those who desire to do any act or transact any business pertaining thereto to obtain a license therefor, the reasonable cost of granting such licenses may be properly charged to the persons procuring them, although the power to do so is not expressly given in the charter. Welch *v.* Hotchkiss, 39 Conn. 140 (1872). Under a power to "license, tax, regulate, suppress, and prohibit *hawkers, peddlers, pawnbrokers,*" &c., a city may grant licenses imposing such conditions and burdens as it sees fit. Launder *v.* Chicago, 111 Ill. 291. In *Illinois* the legislature is not restricted to immoral or injurious occupations in authorizing a city to impose license fees, nor is a power to suppress any business necessary in order to warrant the exercise of a power to license. Braun *v.* Chicago, 110 Ill. 187; *post,* secs. 405, note, 768.

[1] Commonwealth *v.* Stodder, 2 Cush. (Mass.) 562, 572 (1848); distinguished from Boston *v.* Schaffer, 9 Pick. (Mass.) 415, as to licenses for theatrical exhibitions. Power to the city council of Charleston to make, *inter alia,* "such ordinances respecting streets, carriages, wagons, carts, drays, &c., as to them shall seem expedient and necessary," was held to authorize an ordinance requiring all persons who drive for hire any cart, dray, wagon, or omnibus, within the city, to take out a license, and to require the vehicle to be numbered, or on failure to do so to pay a fine. City Council *v.* Pepper, 1 Rich. (S. C.) Law, 364 (1845). A street-sprinkling cart is a "public vehicle" on which a license tax is properly imposed. St. Louis *v.* Woodruff, 4 Mo. App. 169. A similar ordinance, imposing annual charge on each car of a street-railway company, was sustained as a police regulation. Frankford Railway Company *v.* Philadelphia, 58 Pa. St. 119 (1868); S. P. Johnson *v.* Philadelphia, 69 Pa. St. 445; and Allerton *v.* Chicago, 6 Fed. Rep. 555.

§ 359 (293). **Same subject.** — So authority to a city to adopt rules and orders "for the *due regulation* of omnibuses, stages, &c.," was held not to authorize the adoption of an ordinance *requiring the payment of a tax or duty on each carriage licensed,* varying from one to twenty dollars, according to the different kinds of carriages, and the stands occupied. This was regarded as a direct tax upon the vehicle used, or its owner, and not necessary to secure the objects of the above grant of power to the city.[1] So where, under an act

authorizing the trustees of a village corporation to make ordinances "in relation to hucksters, and for the good government of the village," it was held that an ordinance was unauthorized which required that hucksters should, before exercising their employment, take a license, and be taxed a sum varying from five to thirty dollars.[1]

§ 360 (294). **Same subject.** — On the other hand, the power to "license, regulate, and restrain amusements," it was admitted or taken for granted, would authorize an ordinance taxing, or requiring exhibitors to pay a specific sum for the privilege, this being considered as a means of regulating and restraining them.[2] So a grant of power to a city or town to license exhibitions "on such terms

A municipal corporation may under its ordinary powers of local government pass ordinances requiring a street-railway company incorporated by legislature, and having its rails down and in use through the streets under legislative sanction, to make its tracks conform to the grade, to keep in repair the space between the rails, and to remove snow and the like. But it has no power to require such a company *so organized* to take out a license and pay license fee as a means of taxation, unless power is given to resort to licenses and license fees for revenue purposes. A provision in the charter, granting power "to license and regulate," does not authorize the exaction of license fees for revenue purposes. Power to license when specially given in a charter is nevertheless a police power. The exaction of license fees for revenue purposes is the exercise of the power of taxation. The distinction between the power to license as a police regulation and the same power as a revenue measure is of the utmost importance. If granted with a view to revenue, the amount of tax, if not limited by charter, is in the discretion and judgment of the authorities; if given as a police power, it must be exercised as a means of regulation only, and cannot be used as a source of revenue. North Hudson Railway Co. *v.* Hoboken, 41 N. J. L. 71; Mayor *v.* Avenue Railroad Co., 32 N. Y. 261. Power to license, tax, and regulate horse railroads, hackney carriages, &c., does not extend to taxation of *private vehicles* used by a merchant or manufacturer. St. Louis *v.* Grove, 46 Mo. 574 (1870). Nor does power to license, tax, and regulate authorize the grant of an *exclusive* right to run omnibuses within the limits of the city. Logan *v.* Pyne, 43 Iowa, 524 (1876); Snyder *v.* North Lawrence (hackney coach, what is), 8 Kan. 82 (1871).

[1] Dunham *v.* Rochester, 5 Cow. (N. Y.) 462, 466 (1826). See further, Index, *Markets*.

Under a charter authorizing the license of wagons, &c., and requiring owners and keepers of wagons, &c., *using them in the city*, to take out a license, all hucksters, gardeners, &c., who are not residents and taxpayers of other towns, may be compelled to take out a license. Frommer *v.* Richmond, 31 Gratt. 646. A city has no right to require that persons owning vehicles for hire within its limits and who have paid their city licenses shall obtain from the city, at a certain fixed and exorbitant price, the plates which an ordinance of the city has prescribed for the convenient identification of the vehicles. Such an exaction is another license in disguise, and therefore unconstitutional. Walker *v.* New Orleans, 31 La. An. 828.

[2] Hodges *v.* Mayor, 2 Humph. (Tenn.) 61. See also, Carter *v.* Dow, 16 Wis. 299; Tenney *v.* Lenz, *Ib.* 566. Speaking of this subject, Mr. Justice *Cooley* expresses it as his opinion that where the right to impose license fees to operate as a restriction upon the business or thing licensed can be fairly deduced from the taxing power conferred upon the corporation, it should be done, rather than to derive the right solely from the power to regulate. Const. Lim. 202, note.

and conditions as to it may seem just and reasonable," authorizes it to exact *money* for the license; it is not confined to regulating time and place, establishing police regulations, &c.[1]

§ 361 (295). **Right must be plainly conferred.** — Even the *right to license must be plainly conferred*, or it will not be held to exist. Thus, power to make "by-laws *relative to* hucksters, grocers, and victualling shops" does not authorize the corporation to exact a *license* from persons carrying on such business. Nor does the general power to pass prudential by-laws, not inconsistent with the laws of the State, confer the authority to demand a license.[2]

§ 362 (296). **Monopolies Invalid.** — The power to license and regulate a lawful and necessary business will not give the corporation the power to make contracts which *create or tend to create a monopoly*.[3]

[1] Boston *v.* Schaffer, 9 Pick. (Mass.) 415 (1830); distinguished from Commonwealth *v.* Stodder, 2 Cush. (Mass.) 562, 572 (1848).

[2] Dunham *v.* Rochester, 5 Cowen, (N.Y.) 462 (1826); Commonwealth *v.* Stodder, 2 Cush. (Mass) 562 (1848); Mays *v.* Cincinnati, 1 Ohio St. 268 (1853); Gale *v.* Kalamazoo (market-house contract), 23 Mich. 344 (1871); s. c. 9 Am. Rep. 80; St. Paul *v.* Traeger, 25 Minn. 248 (1878); St. Paul *v.* Stoltz, 33 Minn. 233 (ordinance requiring license to peddlers held void). By-laws requiring a *license*, which may be so heavy as to *amount to a prohibition*, were justly considered to be in restraint of trade, which the general law favors, and in this case were adjudged void, "both for want of jurisdiction" in the corporation to pass them, and for want of "conformity to the general law." 1 Ohio St. 268. Where the charter gave the corporation the power "to *license* bakers, and to prohibit sales of bread except by those licensed," the court doubted whether under this, aside from the taxing power of the corporation, an ordinance could be supported which required twenty dollars to be paid by the baker for a license, although it admitted that the corporation could require a fee for issuing and registering the license. Mayor, &c. of Mobile *v.* Yuille, 3 Ala. 137 (1841). Statutory conditions precedent must be complied with to make a license valid; and licenses are generally considered personal, ceasing with the life of the license, and not transferable without consent. Munsell *v.* Temple (grocery license), 3 Gilm. (8 Ill.) 96; Lewis *v.* United States, Morris (Iowa), 199; Lombard *v.* Cheever (ferry license), *Ib.* 473; Brunetti *v.* New Orleans, 9 La. 430. As to power to *revoke* licenses. Towns *v.* Tallahassee, 11 Fla. 130 (1866). "Junk shops," defined by O'Neall, C. J., "to be a place where odds and ends are purchased or sold," and cities are often empowered to exact a license from keepers thereof. City Council *v.* Goldsmith, 12 Rich. (S. C.) Law, 470 (1860). "Shows" defined: McKee *v.* Town Council, Rice (S. C.) Law, 24. *Licensed auctioneer* held not liable to the payment of a pawnbroker's license, under a city ordinance. Hunt *v.* Philadelphia, 35 Pa. St. 277.

[3] Chicago *v.* Rumpff, 45 Ill. 90 (1867). In this case, under a power granted to the city, in its charter, *to regulate and license the slaughtering of animals* within the corporate limits, the common council passed an ordinance, whereby a particular building was designated for the slaughtering of all animals intended for sale or consumption in the city, the owners of which were granted the *exclusive right*, for a specified period, to have all such animals slaughtered at their establishment, they to be paid a specific sum for the