

# THE CITY RECORD.

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## HEALTH DEPARTMENT.

HEALTH DEPARTMENT, No. 301 MOTT STREET,  
NEW YORK, December 11, 1876.

The Board met pursuant to notice.

The Attorney and Counsel presented an opinion upon the powers and duties conferred by law upon this and other departments in respect to danger to life in theatres and other places of public assembly.

### Resolutions.

Whereas, The recent calamity in a Brooklyn theatre has resulted in great loss of life; and  
Whereas, There is apparently no reason why a similar calamity should not occur at any time in this city; and  
Whereas, The responsibility of protecting from such a calamity appears to be divided between several departments of the city government; therefore

Resolved, That the Superintendent of Buildings, the Fire Commissioners, and the Police Commissioners be respectfully requested to meet with this Board to consider what measures will most speedily and effectively secure the safety of our citizens in theatres and other places of public assembly in case of panic from fire or any other cause.

Resolved, That the Secretary be directed to forward copies of this preamble and resolutions to the Superintendent of Buildings, the Fire Commissioners, and the Police Commissioners, with the request that they meet this Board at the Office of the Health Department, No. 301 Mott street, on Saturday, December 16, at 10:30 o'clock A. M., and that his Honor the Mayor be invited to be present.

### Leave of Absence.

To Inspector S. T. Morris, until December 14th.

By order of the Board.

EMMONS CLARK, Secretary.

HEALTH DEPARTMENT OF THE CITY OF NEW YORK,  
OFFICE OF THE ATTORNEY AND COUNSEL, 301 MOTT STREET,  
NEW YORK, December 9, 1876.

### To the Board of Health:

GENTLEMEN—Your resolution of December 8, 1876, instructed me to report "as to the responsibility of this Department in respect to dangers to human life in theatres and other places of public assembly, and whether the official duties and power in this particular are conferred by law upon other departments," and are referred to me resolutions inviting a joint meeting of the Board of Fire Commissioners and the Superintendent of Public Buildings, with the Board of Health, "to consider what measures will most speedily and effectively secure the safety of our citizens in theatres and places of public assembly in case of panic from fire or any other cause."

In obedience thereto I have the honor to report that by section 12 of chapter 74, Laws of 1866, by which law the Metropolitan Board of Health was created, with the powers and duties which have since devolved upon this Department, it was enacted, that "the powers of said Board shall be construed to include the ordering and enforcing in the same manner as the orders are to be enforced, the repairs of buildings, houses and other structures \* \* \* the prevention of accidents by which life or health may be endangered, etc." By chapter 335 of the Laws of 1873, section 82, "the Sanitary ordinance then or lately adopted by the existing Department of Health," was ordered to be conformed to article 11 of the said law, and to be called the Sanitary Code, and the Department was "authorized and empowered to add to such Sanitary Code from time to time "and to publish additional provisions for the security of life and health in the city of New York." By section 12 of chapter 757 of the Laws of 1873, "the authority, duty, and powers conferred and enjoined upon the Metropolitan Board of Health by chapter 74 of the Laws of 1866, and the several acts amendatory thereof, and by any other subsequent laws of the State, and upon the several officers and members of said Board not inconsistent with the provisions of this act" were "conferred upon, vested in, or enjoined upon and were to be exclusively exercised in the city of New York" by this Department, this Board of Health and its officers. By section 1 of chapter 636 of the Laws of 1874, "the Board of Health of the Health Department of the City of New York shall use all reasonable means for ascertaining the existence and cause of disease or peril to life or health, and for averting the same throughout the city." By section 4 of the Sanitary Code some of the places mentioned in your resolution are enumerated as subject to the ordinances of the Code, and section 21 of the Sanitary Code is as follows: "Sec. 21. That no person being the lessee, manager, conductor or owner of any theatre shall cause or permit or allow the same, or any part or appurtenance thereof, to be so far overcrowded, or inadequate, faulty, or insufficient in respect of strength, ingress or egress, cleanliness, ventilation, or in any other particular as that thereby, or by reason thereof, any individual peril, shall come or happen to, or be incurred or suffered by any person, being properly at or in any such theatre." Moreover the Board of Health has the authority and power to make special orders whenever "any building, premises, business, pursuit, matter or thing" within its jurisdiction, "is in condition or in effect dangerous to life or health." The Board of Fire Commissioners, under section 5 of chapter 742 of the Laws of 1871, have authority over "all lights used in theatres and all other places of public amusement," and over the means for communicating alarms and extinguishing fires for theatres and hotels, public schools, churches, public buildings and other public places. They are also, by section 10 of the said act, authorized to examine and enquire in, the origin, details and management of fires in said city. I do not observe any conflict of authority likely to arise between these two departments in respect to the subject-matter of these resolutions, under any of the laws affecting them. To the Superintendent of Buildings, under chapter 625 of the Laws of 1871, especially in sections 29, 30, and 31, and under chapter 547 of the Laws of 1874, there has been committed an authority in all buildings of public character already erected or hereafter to be built, "such as hotels, churches, etc. And of these buildings, the halls, doors, stairways, seats and aisles shall be so arranged as to facilitate egress in case of fire or accident, and to afford the requisite and proper accommodation for the public protection in such cases, and all aisles and passage-ways in said buildings devoted to purposes of amusement or instruction shall be kept free from camp stools, chairs, etc."

By section 30, of the Law of 1871, all plans of buildings shall be submitted to and approved by him. He has, also, by section 8, of the Law of 1874, and section 31 of the Law of 1871 above referred to "full power in passing upon any question relative to the mode, manner of construction, or materials to be used in the erection, alteration or repair of any building in the City of New York, where the same is not specially provided for herein, to make the same conform to the true intent, meaning, and spirit of the several provisions hereof, and shall also have discretionary power, upon application therefor, to modify or vary any of the several provisions of this Act, to meet the requirements of special cases, when the same do not conflict with the public safety, but no such deviation shall be permitted," etc., etc., except under such conditions as are therein described. It not infrequently happens that two Departments of the city government have, under the laws governing them respectively, duties and powers relating to the same subject matter, which may, therefore, come in some particulars under their concurrent jurisdiction. Thus in this instance, it would appear that both this Department, and the Department of Buildings, have duties and powers in the prevention of accidents from fire and for the security of life in theatres and places of public assembly in this city. A distinction may be drawn between them: that the powers and duties of the Department of Buildings relate more to the construction of the buildings in the manner and with the details prescribed in the laws cited. The powers and duties of the Board of Health, on the other hand, are more general, and embrace the inquiry into the

cause of peril, and the means of averting the same, as set forth in chapter 636 of the Laws of 1874, and the use of the authority and powers for the prevention of accidents, vested in them by the laws above referred to.

In other matters these Departments have and do constantly act upon each other's information, and together; and it is to be observed that wherever an exclusive authority, power, or duty is clearly to be vested in one Department of the city government in the statute, upon such subject the terms are used, which are imperative, and cannot be mistaken. Thus it will be found in all these laws the words "exclusive" power, discretion, authority, etc., are used in reference to some matters, while in others there is an obvious reference to the action of other officers. Further, it is to be observed that with regard to the subject-matter of these resolutions there are no specific, defined, and peremptory provisions of law, but in those governing the Department of Buildings particularly, the terms are general in so far as they relate to the provisions for "public protection" and public safety.

I am, therefore, of opinion that the Departments mentioned have each their respective duties to perform to secure the safety of the public in "theatres and other places of public assembly, in case of panic from fire or any other cause," and that the public interests will be greatly served, if they meet, as proposed, and act together.

All of which is respectfully submitted,

W. P. PRENTICE,  
Counsel to the Board of Health.

## POLICE DEPARTMENT.

The Board of Police met on the 8th day of December, 1876.

Present—Messrs. Smith, Erhardt, and Nichols, Commissioners.

Resolved, That Superintendent Walling be and is hereby granted leave of absence from Saturday, 9th, to Friday 15th inst.; and that Inspector Dilks be directed to act as Superintendent during such absence.

The Chairman of the Committee on Rules and Discipline reported the following leaves of absence granted, under Rule 564—approved:

December 5. Sergeant William J. Linden, First Precinct, one day.  
" 7. Patrolman Charles Kush, First District Court, two days.  
" 8. " Jerome Vermilye, First District Court, half day.  
" " Terrence Gallagher, Twenty-first Precinct, one day.  
" " John McCarthy, Sixth Precinct, two days.

### Parades approved.

Colored Knights Templar, December 6. Parade.  
Swabescher Saengerbund, December 7. Parade.  
Columbian Pleasure Club, December 7. Serenade.  
Waldek Lodge No. 108 O. D. H. S., December 6. Funeral.

On reading communication from Frederick Barnard, Assistant Superintendent of St. Luke's Hospital, it was

Resolved, That the Superintendent be directed to cause all cases of accidents occurring in the Nineteenth, Twentieth, and Twenty-second Precincts to be conveyed to St. Luke's Hospital; the expense of conveyance thereto to be defrayed by said hospital, in accordance with their proposition:

Resolved, That the "A. Goldstein Association" be granted permission to give a masked ball at Beethoven Hall, December 14, 1876, subject to the conditions of Rule 841.

An application of William Golden for appointment as Doorman, was ordered on file.

An application of ex-Patrolman B. F. Birmingham for reinstatement on the Police force, was ordered on file.

An application of Hugh Massey for reappointment as Patrolman, was ordered on file.

The following applications for promotion were referred to the Superintendent to cite for examination:

Roundsman Thomas J. Carter, Thirtieth Precinct.  
Patrolman William Webster, Twenty-ninth Precinct.

An application of Sergeant John R. Groo, Sixteenth Precinct, for transfer, was referred to the Committee on Rules and Discipline.

The following applications for detail were referred to the Committee on Rules and Discipline:

Patrolman Henry McArdle, Twenty-second Precinct.  
" Joseph Cottrell, Twenty-second Precinct.

Communication from James Crowley, Superintendent of Telegraph, asking that a Sergeant be detailed for telegraph duty at the stables of the Bureau of Street Cleaning, was referred to the Committee on Repairs and Supplies.

Communication from Captain Murray, Fourth Precinct, nominating Patrolman William Meakim and Patrolman Martin Conlin for special duty, was referred to the Committee on Rules and Discipline.

Resolved, That the Property Clerk be directed to return to Patrick Maloney the sum of money claimed by him, on his furnishing satisfactory evidence of ownership.

On reading communication from B. T. Babbitt, certifying that Patrolman Timothy Golden was on duty during the entire month of November, it was

Resolved, That the Treasurer be and is hereby directed to pay the salary of Patrolman Timothy Golden for the month of November last.

### Death Reported.

Patrolman Edward J. Kush, Mounted Squad, at 12:20 A. M., 5th inst.

Resolved, That the following-named persons be and are hereby appointed Patrolman, subject to re-examination by the Surgeons, and assigned to duty in the Precincts designated:

Precinct.		Precinct.	
Thomas J. Sullivan.....	5	Robert Walsh.....	19
Frank Gunn.....	14	Artemas W. Noble.....	11

Resolved, That James Logue be and is hereby appointed Doorman, and assigned to duty in the First Inspection District.

### Judgments—Dismissal.

Patrolman James McMahon, Mounted Squad.

### Fines Imposed.

Patrolman Patrick Kenneally, First Precinct, one-half day's pay.  
" Robert W. Foster, Fifth Precinct, ten days' pay.  
" John Rourke, Sixteenth Precinct, one day's pay.  
" Michael Ward, Nineteenth Precinct, one day's pay.  
" James Garity, Nineteenth Precinct, two days' pay.  
" John J. Kavanagh, Twenty-ninth Precinct, two days' pay.  
" James McElgunn, Thirty-first Precinct, four days' pay.  
" Matthew Hogan, Thirty-first Precinct, four days' pay.

### Reprimands.

Patrolman John Murphy, Eighth Precinct, by Inspector.  
" William Londrigan, Twenty-second Precinct, by Inspector.  
" Hugh Gilgan, Twenty-ninth Precinct, by Inspector.

### Complaints Dismissed.

Precinct.		Precinct.	
Patrolman John Mohr.....	7	Patrolman William Rynhart.....	22
" John McCabe.....	8	" John Hennessey.....	35

### Street Cleaning.

Resolved, That the following pay-rolls of the Bureau of Street Cleaning for the month of November, 1876, be ordered paid by the Treasurer— all voting aye:







ISAAC H. BAILEY,  
TOWNSEND COX,  
Commissioners.



