

## **Session XIV. 1860 (November 1860 to January 1861)**

### **1. The Trespass of Cattle Ordinance 1860**

Whereas an Ordinance was enacted by the Lieutenant-Governor and Legislative Council of New Zealand, Session VII., No. 17, entitled "An Ordinance to Repeal the Cattle Trespass Ordinance, and the Cattle trespass Amendment Ordinance, and to Provide for the Summary Recovery of Compensation for Damage done by Cattle Trespassing:" And Whereas an Ordinance was enacted by the Lieutenant-Governor and Legislative Council of New Zealand, Session VIII., No. 6, entitled "An Ordinance to Authorize and Regulate the Impounding of Cattle:" And Whereas an Ordinance was enacted by the Lieutenant-Governor and Legislative Council of the Province of New Munster, Session I., No. 3, entitled "An Ordinance to Prevent Entire Horses, and certain other Animals from being suffered to Stray or Run at Large:" And Whereas an Ordinance was passed by the Superintendent and Provincial Council of the Province of Canterbury, entitled "The Trespass of Cattle Ordinance, Session II., No. 7;" and Whereas such Ordinance was amended by an Ordinance passed by the Superintendent and Provincial Council of the Province of Canterbury, entitled "The Trespass of Cattle Amendment Ordinance, Session X., No. 4:" And Whereas such amended Ordinance was further amended by an Ordinance passed by the Superintendent and Provincial Council of the Province of Canterbury, entitled "The Trespass of Cattle Amendment Ordinance, Session XI., No. 10:" And Whereas it is expedient that the above recited Ordinances should, so far as they relate to the Province of Canterbury, be repealed, and that the several provisions therein contained should be amended, and should be consolidated into One Ordinance:

Be it therefore enacted, by the Superintendent of the Province of Canterbury, with the advice and consent of the Provincial Council thereof, as follows:

### **1 Former Laws repealed.**

All the above recited Ordinances (except in so far as any provision therein contained shall repeal any former Laws and Ordinances) and all Proclamations and Notices issued in pursuance of the authority thereof, shall be, and the same are hereby repealed within the Province of Canterbury.

### **2. Interpretation of terms.**

In the interpretation of this Ordinance the word " Cattle" unless otherwise specially defined shall be deemed to include all horned and neat cattle horses mules asses sheep goats and swine of all ages and of either sex and the words "Owner of Cattle " shall be taken to mean the person having the lawful charge control and management of such cattle and the term " Sufficient Fence " shall be taken to mean any fence of the several kinds described in the Schedule A to this Ordinance the smallest part in which shall be of not less dimensions than those set forth in the same Schedule The term " Fenced Land " shall mean land enclosed by a sufficient fence within the meaning of this Ordinance and the term, " Ordinary Damages " shall be deemed to be the amount or damages in every case respectively according to the scale set forth in the Schedule B to this Ordinance and the words " Special Damages " shall be deemed to be the amount of actual damage to the occupier which it shall be proved to the satisfaction of the Cour has been caused by, the trespass of any cattle and the word "Residence" of the Owner of any Cattle shall be taken to mean the nearest known residence or homestead in use by the owner of such Cattle and the word " Occupier" of any land shall be taken to mean the person having the use or occupation of such land or holding a license from the Crown for the depasturing of Cattle thereupon or the Agent Bailiff or Servant of any such person

### **3. Damages recoverable only under this Ordinance, and within thirty days of trespass.**

From and after the passing of this Ordinance no cattle shall be impounded, and no proceedings shall be taken in any matter relating to the trespass of cattle, or the recovery of damages arising therefrom, in any Court of Summary Jurisdiction within the Province, except only under the authority and in accordance with the provisions of this Ordinance: Provided that nothing herein contained shall be taken to prevent the impounding of cattle under the provisions of an Ordinance enacted by the Governor-in-Chief and Legislative Council of New Zealand, Session X., No. 1, entitled "An Ordinance to Regulate the Occupation of Waste Lands of the Crown in the Province of New Ulster," and of a like Ordinance, Session XI., No. 10, entitled "An Ordinance to Amend the Crown Lands Ordinance, No. 1, Session X., and to extend the operation thereof to the Islands of New Zealand:" Provided also, that no damages shall be recovered in any action for trespass by cattle, unless the information shall have been laid within thirty days after such trespass.

#### **4. Cattle trespassing in towns.**

If any cattle shall be found wandering at large within the limits of any town, the Owner thereof shall be liable to a fine of not more than Five Shillings; and it shall be lawful for any one thereupon to impound such cattle; and if such cattle shall do any damage to any property within the limits of such town, the person suffering such damage may recover from the Owner of such cattle in the manner hereinafter provided, either "ordinary damages," or "special damages," as he shall think fit to sue for.

#### **5. Cattle trespassing may be detained or driven to residence of owner.**

If any cattle shall be found trespassing upon land enclosed within a sufficient fence without the limits of a town, the Occupier of such land may thereupon impound the same, and may recover from the Owner of such cattle, in the manner hereinafter provided, either "ordinary damages," or "special damages," as he shall think fit to sue for.

#### **6. Cattle trespassing on unenclosed lands without towns.**

If any cattle shall be found trespassing between the hours of sunset and sunrise upon land not enclosed within a sufficient fence without the limits of a town, the Occupier of such land may recover ordinary damages from the Owner of such cattle, according to the scale set forth in Schedule C to this Ordinance; and if such trespass shall occur between the hours of sunrise and sunset, then such Occupier shall be entitled to recover damages to the extent of one-third of the said respective sums before mentioned; but if such Occupier as aforesaid shall not have enclosed such land by a sufficient fence within six months of the date at which he shall first have cultivated the same, he shall not be entitled to recover for any such trespass a greater sum than that recoverable for trespass between the hours of sunrise and sunset: Provided always, that the amount of such damages recoverable under this Section shall in no case exceed the sum of Five Pounds.

#### **7. Cattle trespassing may be detained or driven to residence of owner.**

If any cattle shall be found trespassing without the limits of a town upon any land it shall be lawful for the occupier of such land or of the pasturage thereof thereupon to take such cattle and either to drive them to the residence of the owner or to detain them on his own land at some convenient place and immediately thereupon to give notice of such detention at the residence of the owner thereof and if the cattle so detained shall not be removed within twelve hours after the service of such notice it shall be lawful for the person detaining the same to drive them to the residence of the owner or to the nearest Public Pound as he shall think fit but if the owner of such cattle shall be unknown to such occupier it shall be lawful for him to detain such cattle on his own land as aforesaid and if such cattle shall not be removed within twelve hours it shall be lawful for such occupier to drive the same to the nearest Public Pound and such occupier shall be entitled to recover from the owner of such cattle ordinary

damages and charges for driving the same and for giving notice of the detention of the same according to the scale respectively set forth in Schedule C this Ordinance Provided also that such occupier if claiming ordinary damages may demand the payment of such ordinary damages before restitution of such cattle within the period of twelve hours aforesaid but if such occupier shall claim special damages then such cattle shall not be detained if application be made by the owner for their restitution

**8. Entire animals wandering at large.**

If any bull entire horse ass or mule shall be found wandering at large on land not being in the lawful occupation of the owner of such animal or upon any street thoroughfare highway or other public place it shall be lawful for any person thereupon to impound the same and the owner thereof shall be further liable to a penalty of not less than Two Pounds and not more than Five Pounds.

**9. Ordinary damages to be recovered in a summary way.**

Any person entitled to claim ordinary damages for any trespass done by cattle not having impounded such cattle may recover such damages in the ordinary course of law and if he shall have impounded such cattle such damages shall be paid to him by the Poundkeeper as hereinafter provided.

**10. Special damages to be recovered in a summary way.**

If any person shall be entitled to claim special damages on account of any trespass done by cattle, he may recover the same before any two Justices of the Peace in a summary way.

**11. Superintendent to cause Public Pounds to be erected.**

It shall be lawful for the Superintendent to cause Public Pounds to be erected and maintained within the Province and from time to time abolish or remove the same and all such pounds shall be situate immediately adjoining some public highway and a notification of every such establishment abolition or removal of a Public Pound shall appear in the Government Gazette of the Province setting forth fully the situation of such Pound or the situation to which it is removed as the case may be together with the day being not less than ten clear days after the issue of such Gazette from and after which such establishment abolition or removal shall take effect.

**12. Superintendent to appoint Poundkeepers.**

It shall be lawful for the Superintendent by writing under his hand to appoint fit and proper persons to be Poundkeepers and from time to time to remove the same and to appoint others in their stead and every such appointment or removal shall take effect from the day upon which the same shall be notified in the public Gazette of the Province.

**13. Poundkeepers to give security.**

Every Poundkeeper shall give security for the due performance of the duties of his office by bond to the amount of Fifty Pounds by himself and two sureties bring substantial householders of the Province.

**14. Poundkeepers to keep Pound in repair, &c.**

It shall be the duty of the Poundkeeper to keep the Pound under his charge clean and in good order and the fences thereof in proper repair and every day or part of a day not being less than six hours during which any cattle shall be in the Pound to supply such cattle with a sufficient quantity of wholesome food and water and for every offence either by wilful act or by neglect against the provisions of this clause the Poundkeeper shall be liable to a penalty not exceeding Five Pounds and not less than One Pound.

**15. Poundkeeper to receive fees and charges for food.**

It shall be lawful for the Poundkeeper to demand and receive from the owner of any cattle impounded all such fees and charges as are set forth in the Schedule D to this Ordinance on account of the several services therein described and the Poundkeeper shall until the Superintendent shall notify his intention to hand over the control of the Pound to the Road Board or Municipality within the jurisdiction of which any Pound may be situate account for all such fees and charges to the Provincial Treasurer or to any Sub-Treasurer as the Superintendent may from time to time direct once in every quarter on the first days of January April July and October respectively and all such fees and charges shall be first applied in payment of the salary or remuneration of the Poundkeeper and any surplus after the payment of such salary or remuneration shall be paid to the public account of the Province.

**16. Poundkeepers to keep board of Pound-fees and charges displayed.**

The Poundkeeper shall erect and maintain in some conspicuous part of the Pound under his charge a white board having painted thereon in legible black letters a table of all the fees and charges which he is authorised by this Ordinance to demand and receive and if he shall fail to maintain the same or permit any false statement to appear thereon he shall be liable to a fine of Five Shillings for every day during which any false statement shall appear thereon.

**17. Penalties for over-charging, &c., by Poundkeeper.**

If any Poundkeeper shall demand or take any greater sum for any act or service than he is hereby authorised to demand and take or shall fail duly to account for the fees and charges received by him in the manner hereinbefore provided such Poundkeeper shall be liable to a penalty not exceeding Five Pounds nor less than One Pound for every such offence.

**18. Poundkeeper to keep Pound-book.**

The Poundkeeper shall keep at or near the Pound a copy of this Ordinance and also a Pound-book in the form set forth in Schedule E to this Ordinance and he

shall enter into such book every particular required to be entered therein according to the said form and all such entries shall be made at the time the acts were done to which they refer respectively and every entry respecting the time of impounding any cattle and the cause for which they were impounded and the amount of damages claimed shall be entered in the presence of the person impounding such cattle and shall be signed by such person and the Pound keeper shall produce the copy of this Ordinance; and the Pound-book and all orders and other papers relating to the impounding of any cattle at all reasonable times to any person desiring to inspect the same and may demand and receive the sum of Sixpence for every such inspection and the Poundkeeper shall if required grant certified extracts from such books and papers and may demand and receive the sum of sixpence for every such inspection and the Poundkeeper shall if required grant certified extracts from such books and papers and may demand and receive the sum of One Shilling for every such extract not comprising more than one hundred words and for every subsequent number of words not exceeding one hundred the sum of Sixpence.

**19. Penalties for not producing Pound-book, &c.**

If the Poundkeeper shall neglect or refuse to produce a copy of this Ordinance or the Pound-book or of any paper in his possession relating to the impounding of any cattle or shall refuse to permit any one having first tendered the charge hereby authorised to be demanded to make such inspection as aforesaid or shall refuse to furnish extracts from such books or papers as hereinbefore provided or if he shall have neglected to make any entry in the Pound-book which he is hereby required to make he shall for every such offence or default be liable to a penalty not exceeding Twenty Shillings and if such Poundkeeper shall wilfully delay making such entry or shall knowingly make any false entry in the Pound-book or shall wrongfully erase or destroy any previous entry therein he shall be liable for every such offence to a penalty not exceeding Ten Pounds.

**20. Cattle impounded in charge of Poundkeeper.**

All cattle impounded shall be in the lawful custody of the Poundkeeper and if any loss or damage shall occur to such cattle through the wilful act or neglect of the Poundkeeper or his servants the owner thereof may recover compensation for the same in a summary way and the Poundkeeper shall not release such cattle from the Pound unless upon the payment of all lawful fees charges and damages which he is herein entitled to demand or receive and except upon the written authority of the person impounding the same together with such lawful fees and charges and it shall be his duty immediately upon such payment or upon such authority together with such payment as aforesaid to release and deliver up such cattle and if the Poundkeeper shall at any time release cattle from the Pound except as herein provided or refuse to deliver up and release such cattle as he is lawfully required so to do he shall be liable to a penalty not exceeding Five Pounds.

**21. Poundkeeper to receive damages and charges for driving, &c.**

If the person impounding any cattle shall state to the Poundkeeper that he claims "ordinary damages" or "charges for driving cattle" or "charges for giving notice of the detention of cattle" as set forth in Schedules B and C respectively hereto annexed in satisfaction of the trespass for which such cattle are impounded and shall state the amount of such damages or charges and shall certify to the same in the Pound-book the Poundkeeper shall demand and he is hereby empowered to demand and receive such amount in addition to all other lawful fees and charges from the person taking delivery of such cattle and the Poundkeeper shall pay over such amount on demand to the person having claimed the same.

**22. Poundkeeper to give notice to Owner of cattle.**

If any impounded cattle shall not be claimed within twenty-four hours after such impounding the Poundkeeper shall immediately send notice in writing to the owner thereof together with an extract from the Pound-book containing all the particulars of the impounding of such cattle and the amount of "ordinary damages" claimed if any and shall further state the day upon which such cattle will be sold if not sooner released and such notice shall be delivered personally to the Owner or shall be given to some adult person at his usual place of abode. Provided that if such owner shall live at a greater distance than five miles from the Pound such notice shall be given to any one being his known agent living within such distance and if neither the owner nor his agent shall be living within such distance or if the owner shall not be known to the Poundkeeper then the Poundkeeper shall post such notice at the Pounds and at some other place of public resort in the neighbourhood and shall advertise the same in the public newspapers of the nearest town and shall cause such advertisement to appear in every issue of such newspapers until the day of sale of such cattle provided that if such cattle shall consist of sheep goats or swine and be not more than two in number it shall not be necessary to give any other notice of such impounding than by posting such notice as aforesaid on the Pound and at some other place of public resort in the neighbourhood and for giving such notices the Poundkeeper shall be entitled to receive the fees set forth in Schedule F hereto annexed together with the full cost of inserting such advertisements in the newspapers.

**23. Cattle not released to be sold by auction.**

If any impounded cattle shall not be released from the Pound within seven clear days after notice shall have been served as aforesaid or within twenty-one clear days after such notice shall have been posted as aforesaid the Poundkeeper may apply to any Justice of the Peace for an order for the sale of such cattle And if such Justice of the Peace shall be satisfied by inspection of the Pound-book and by the evidence upon oath of the Poundkeeper and by such other evidence as he may require that the provisions of this Ordinance have been complied with such Justice may give an order in writing for the sale of such cattle and if such Justice shall find that the terms of this Ordinance have not been complied with and if delay in the sale of the cattle shall have been occasioned by any neglect of

the Poundkeeper the Poundkeeper shall bear all the costs arising from such delay.

**24. Time, &c., of sale of cattle.**

All sales of impounded cattle shall take place at the Pound and shall commence at the hour of noon and each animal shall be put up in separate lot and shall be sold to the highest bidder (provided that any ducklings may be put up in the same lot with the mother thereof) and the Poundkeeper notwithstanding he shall not be duly licensed is hereby empowered to act as an Auctioneer at such sale Provided that it shall not be lawful for the Poundkeeper or the person impounding such cattle or the Justice making the order for the sale thereof either directly or indirectly to purchase any animal at such sale And every purchase made by such persons shall be absolutely null and void and the persons offending against the provisions of this clause shall be liable to a penalty of Five pounds over and above the restitution of the animal or animals so purchased.

**25. Justices may order sale of cattle sooner.**

Provided that it shall appear to any two Justices of the Peace upon the evidence of the Poundkeeper and upon such other evidence as such Justices may require that the proceeds of the sale of any cattle impounded may not be sufficient to satisfy the lawful fees and charges due to the Poundkeeper if such cattle shall be maintained in the Pound until the day of sale as hereinbefore provided it shall be lawful for such Justices to order such sale to take place upon any day they shall think fit earlier than the day of sale hereinbefore directed.

**26. Poundkeeper to receive price of cattle sold.**

The Poundkeeper shall receive the price of all impounded Cattle sold as herein provided immediately after the sale thereof and shall apply the same - first in the payment of all lawful fees and charges, due to himself and secondly in payment of the damages "charges for driving cattle" and "charges for giving notice of the detention of cattle" (if any) claimed by the person impounding the cattle and he shall pay the residue to the owner of such cattle or to his Agent upon the same being demand and if no such demand shall be made within thirty days after such sale he shall pay over such residue to the Provincial Treasurer and the receipt of the Provincial Treasurer shall be a legal discharge to the Poundkeeper for the amount named therein and if such sum of money shall not be claimed within two years from the date of the receipt thereof by the Provincial Treasurer it shall be lawful for the Superintendent by warrant under his hand to direct the same to be applied to the Public uses of the Province and to the support of the Government thereof.

**27. Remedy against illegal impounding.**

If any cattle shall have been illegally impounded the owner thereof shall be entitled to recover from the person impounding the same full compensation for all the loss and damage which he may have suffered thereby.

**28. Penalties for rescue or commission of Pound breach.**

If any person shall rescue or attempt to rescue any cattle which shall have been lawfully seized for the purpose of being impounded or shall break down injure or destroy any Pound legally erected whether any cattle shall be impounded therein or not or shall commit any Pound breach or, rescue whereby any cattle of any description shall escape or be enlarged from any such Pound every such person shall upon conviction of such offence to be liable to a penalty not exceeding Twenty Pounds.

**29. Maximum Penalties.**

No penalty to be imposed in any one conviction under the provisions of this Ordinance shall exceed the sum of One Hundred Pounds.

**30. Recoverable summarily.**

All fines and penalties imposed under the authority of this Ordinance may be recoverable on conviction of the parties charged before any two Justices of the Peace.

**31. Present Pounds and Poundkeepers continued.**

Until further proceedings in that behalf in pursuance of this Ordinance as hereinbefore provided the Public Pounds at present by law established shall be taken and deemed to be Public Pounds and the Poundkeepers thereof to be Poundkeepers within the meaning and under the authority of this Ordinance.

**32. Title.**

This Ordinance shall be entitled and may be cited as the "Trespass of Cattle Ordinance, Session XIV., No. 1."

**Schedule A.**

List of Towns to which this Ordinance refers.

The town of Christchurch, as set forth in the Map of the Chief Surveyor of the Province of Canterbury, including the town reserves.

The town of Lyttelton, as set forth in the Map of the Chief Surveyor of the said Province.

The town of Akaroa, set forth in the Proclamation of the Superintendent of the said Province, bearing date 1st May, 1856.

The town of Kaiapoi, as set forth in the Schedule to "The Kaiapoi Town Ordinance, Session VII, No. 7."

## **Schedule B.**

1. A post and rail fence, at least three feet six inches in height, of substantial materials, firmly erected, of not less than two rails, with no greater distance between the rails at any one point than one foot nine inches, and the posts not more than eight feet six inches asunder.
2. A substantial upright paling, at least three feet six inches in height.
3. A substantial wire fence, at least four feet in height, having not less than four wires tightly stretched, and kept of a white colour, and the posts of which are not further than twelve from each other.
4. A substantial iron hurdle, at least four feet in height, and kept of a white colour.
5. A bank or wall of substantial materials, at least four feet in height, of which the slope is not more than one foot from the perpendicular on the outer side thereof.
6. A close and sufficient live fence, at least four feet in height.
7. Any combination of fences of the above kind, at least four feet in height.
8. A ditch five feet broad, with a bank or any fence or combination of fences of the above sorts on the further side thereof, the top of which shall be at least five feet six inches from the bottom of the ditch, and two feet six inches above the level of the ground; and where the slope of the bank on the ditch side thereof is not more than one in three, and the slope of the ditch not more than one in two.

### **Notes.**

*The sections concerning Arbitrators have been removed from the Cattle Trespass Ordinance which was disallowed. [Session XII.] This involved Sections 9, in respect of damages set by arbitration, and sections 11 to 18.*

## **2. The Municipal Council Ordinance 1860.**

Whereas an Ordinance was passed by the Lieutenant-Governor of New Munster, with the advice and consent of the Legislative Council thereof, Session I., No. 7, entitled "An Ordinance to Authorize the Levying and Collecting Rates for the Making and Repairing of Roads, Streets, &c., in any Town in the Province of New

Munster:" And whereas it is expedient that the said Ordinance be repealed and other provisions made for the management of the streets and the sewerage and drainage of towns and populous places within the Province of Canterbury, and for the preservation of the health of the Inhabitants thereof:

Be it therefore enacted by the Superintendent of the said Province, by and with the advice and consent of the Provincial Council thereof, as follows:

**1. Former Laws repealed.**

The said recited Ordinance, so far as regards the Province of Canterbury, shall be, and the same is hereby repealed.

**2. What may be constituted Municipal districts.**

Any town now existing in the Province of Canterbury, or any town which shall hereafter be proclaimed by the Superintendent, and which shall contain a population of Householders not less than two hundred, may, subject to the provisions of this Ordinance, be constituted a Municipal district as hereinafter mentioned.

**3. On Petition of one Hundred Householders, unopposed, &c., Superintendent to declare the district a Municipality and define boundaries.**

It shall be lawful for the Superintendent, with the advice of the Executive Council, on the receipt of a Petition signed by not less than the one hundred Householders resident within any such town, praying that such town may be declared a Municipal district under this Ordinance, to cause the substance and prayer of such Petition to be published in the Government Gazette; and if no counter Petition signed by an equal or greater number of Householders resident within such locality shall have been delivered at the office of the Provincial Secretary within one month from the date of such publication) the Superintendent, with the advice aforesaid, may, if he think fit, declare, by Proclamation, such town a Municipal district, by a name to be mentioned in such Proclamation, and also may define the limits and boundaries of such Municipal district, and such limits and boundaries at any time thereafter in the same manner may vary and alter, but so as in no case, save as hereinafter mentioned, to include within the liits or boundaries of such Municipal district an area of more than three square miles; and upon the publication of any such Proclamation in the Government Gazette, such locality, so defined, shall be deemed and taken to be a Municipal district within the meaning of this Ordinance.

**4. Such Municipality to be governed by a Town Council, &c.**

Every Municipal district to be constituted as aforesaid, shall be governed by a Council consisting of nine Members.

**5. To be a Corporation.**

The Council every Municipal district, constituted as aforesaid, To be a Corporation. shall be and is hereby created a Body Corporate under such name

and style as the Superintendent shall, in such Proclamation as aforesaid, direct, and as such, shall have perpetual succession and shall have and use a common seal, and shall be capable in Law of suing and being sued and of purchasing and holding land and tenements, situate within the limits of such district, for the use of the Inhabitants thereof, and of making and entering into such aontracts as may be necessary for the exercise of its corporate functions, and such powers shall be exercised by and in the name of the Council of every such district. Provided that no such Council shall exercise any other power of a Corporation save and except such as are granted by this Ordinance.

**6. Public Meetings to be called for the election of the Council.**

After the constitution of any Municipal district as aforesaid, it shall be lawful for any ten or more persons who shall have signed the Petition for the constitution thereof, to convene a public meeting of the Householders and of others who shall be entitled to vote in the election of Members of the Provincial Council for the district, and at such meeting proceed, in manner hereafter provided, to the election of the Members of such Municipal Council.

**7. Meeting to be convened by publication.**

Every such meeting shall be convened by public notice, to be inserted in two consecutive numbers of the Government Gazette and of the Newspapers published in the towns of Christchurch and Lyttelton, copies of such notice being affixed at the place where such meeting is intended to be held, and in some conspicuous part of one or more other places of public resort within the limits of the district, and every such notice shall state the time and place of holding such meeting, the object and purposes for which such meeting is called, and shall be signed by the person convening the same. And every such meeting shall be held not less than fourteen nor more than thirty clear days from the date of the first publication.

**8. Superintendent to appoint a Chairman.**

It shall be lawful for the Superintendent, with the advice aforesaid, to appoint some fit and proper person to preside as Chairman at any meeting to be convened as hereinbefore provided, and at all adjournments thereof; and such person shall attend at the hour and place fixed in the notice for convening the said meeting, and shall preside thereat.

**9. Election of Assessors.**

At the time mentioned in such notice, the persons who shall be present at such meeting and who shall be entitled to vote as aforesaid, shall, in the first place, proeed to the election, as and in manner they may deem expedient, of two persons from among themselves to act as Assessors, and to assist the Chairman as hereinafter provided, and such Chairman shall decide all points of form and order, and shall be assisted by the Assessors, when elected, in taking the votes as hereinafter provided.

#### **10. Qualifications.**

No person shall be capable of being nominated or elected a member of any Municipal Council under the authority of this Ordinance who shall not have been a resident within the district for the space of six months prior to his nomination, and whose name shall not appear on the Electoral Roll for the district for the time being.

#### **11. Objections to vote. Time for voting. Return of votes.**

On any poll to be taken, it shall be competent for any person claiming to be qualified to vote, to object to another person tendering his vote, and before he has voted, on the ground that such person was not a Landholder within such district, or a Householder resident within the limits of such district, for the space of six months as aforesaid; and upon such objection being made, it shall be lawful for the Chairman and Assessors to investigate the grounds of such objection, and by examination of the persons objected to and objecting, and any other persons or by any other evidence, to satisfy themselves as to the validity of such objection. And the decision of the said Chairman and Assessors, or the majority of them, shall be final and conclusive in reference to any disputed vote, and such Chairman and Assessors, or the majority of them, shall, at such election, make such arrangements for appointing proper persons to record the votes of Electors, the place where such votes are to be recorded, and the mode of voting, whether viva voce or by voting-paper and otherwise, for the due and equitable management of the election as to them shall seem most desirable. The voting to commence at 10 o'clock a.m., and close at 4 o'clock on the same day; and such Chairman and Assessors shall forthwith, after the termination of every such poll, make out a list showing the number of votes given thereat, and the manner in which the same shall have been given, and the result thereof, and shall publish the same at the place whereat the poll was taken, and the said Chairman and Assessors shall report, in writing, to the Superintendent, the names and occupations of the persons so elected, and the same shall be published in the Government Gazette of the Province.

#### **12. Chairman of Council to be elected.**

So soon after the election of the Members of the Council as conveniently may be, such Members shall elect from amongst themselves some one to be the Chairman of such Council; and the person so elected shall continue to be the Chairman until after the annual election of Members as hereinafter provided, when such Chairman shall retire from office, but shall, if a Member of such Council, be eligible to be re-elected.

#### **13. Four Members to retire in rotation, but to be re-eligible.**

At the first annual meeting which shall be held after the election of the Council under this Ordinance, four Members shall retire (to be decided by ballot at a meeting of the Council to be held not less than thirty days previously, and four duly qualified persons shall be for elected in manner before provided to fill up the vacancies. At the second annual meeting the five Members who were elected

two years previously shall retire, and five qualified persons shall be elected to fill their places and so on, every Member retiring, from office at the expiration of two years from the date of election. Any Member retiring as aforesaid shall, if duly qualified, be eligible for re-election.

**14. Meeting to be held for re-election. Place and time of election. Manner of nomination. Manner and time of polling. Declaration of poll.**

At least twenty-one days previous to the expiration of the year from the date of the last election of Members of the Council, the Chairman shall, by public notice, to be inserted in two consecutive numbers of one or more Newspapers published within the Province, and also by affixing, a copy of such notice in some conspicuous part of one or more places of public resort within the said Municipal district, call a public meeting of the Ratepayers as hereinafter mentioned, of such district, for the purpose of electing Members to serve in the place of those who shall retire by rotation from such Council as hereinbefore provided; and such notice shall state the names of the Members so retiring, and the place and time of holding such meeting, and the time shall be at noon of some day within one week of the expiration of the year from the date of the last election; and at such meeting, of Ratepayers the Chairman of the Council for the time being shall preside, and shall call upon any Candidate for the office of Municipal Councillor to present himself, and if there be not more Candidates than vacancies, such Chairman shall declare such Candidates duly elected, or if there be more Candidates than vacancies, such Chairman shall call for a show of hands for each Candidate, and shall decide in whose favour such show of hands was exhibited, and the person or persons in whose favour the show of hands shall have been decided, shall thereupon be declared to be the Member or Members of the Municipal Council accordingly, unless any Candidate or four Ratepayers shall demand a poll, in which case such Chairman shall proceed on the next day (not being Sunday, Good Friday, or Christmas Day) to hold a poll, and to cause the votes of the Ratepayers to be recorded, and shall open such poll at ten o'clock in the morning, and close it at four o'clock in the afternoon of the same day, and such Chairman shall have power and authority to take such steps as may be necessary for the duly carrying out such election, and shall, as soon as practicable after the closing of such poll, declare the numbers each candidate respectively polled, and the names of the Candidate or Candidates who shall have been elected.

**15. Occasional vacancies: how to be filled up.**

If at anytime, by reason of death, absence beyond four months from the district, resignation, bankruptcy, insolvency, or legal incapacity of any Member, the Members of the Council shall be reduced below six, the Council shall elect, at a public meeting to be convened for the purpose, and by show of hands, a number of duly qualified persons equal to the vacancies, and every person so elected shall hold office only until the time at which the person in room of whom he may have been elected would regularly have gone out of office: Provided that every

notice of such meeting shall be given at least twenty-one days previous to the holding of such election.

**16. List of persons liable to be rated to be made out, such Roll may be amended and added to.**

Every Municipal Council shall forthwith, after the election of the Chairman, cause to be collected the names and residences of every person who, under this Ordinance, may be liable to be rated as hereinafter mentioned, in consideration of any house or land occupied or held by such persons within the boundaries of the Municipal district of such Council, and shall cause a List thereof to be made, a copy or copies thereof to be publicly exhibited on some conspicuous part of one or more places of public resort within the said district, together with a notice of the time when, and place where the Municipal Council will attend to hear any objections that may be made to such List; and at the time and place so named, being some convenient locality within the boundaries of such Municipal district, such Council shall attend, enquire into, hear and determine any such objections, and the decision of such Council shall be final and conclusive in regard to any or every objection made against such List; and the said List, when thus settled and revised, shall be transcribed into a book, to be called the Ratepayers' Roll, and shall be lodged with the books and papers of such Municipal Council; and if at any time after the completion of such Ratepayers' Roll any person not being liable to be placed on such Roll at the time of its completion shall thereafter become liable to be rated for or on account of any house or land occupied or held within such district, it shall be competent for such person to apply to the Municipal Council to have his name inserted in such Ratepayers' Roll, and if it shall appear to the satisfaction of such Council that such person was not at the time of the compiling or making, the Ratepayers' Roll as aforesaid liable to be rated, but has since become so, and has, in fact, for the space of six months previous to such application been so liable, such Council shall cause the name of such Applicant to be placed on the Ratepayers' Roll.

**17. Quorum of five. Chairman to preside.**

Five Members of the Council shall form a quorum, and the act of such quorum shall have the same force and effect, and shall be considered as the act of the whole Municipal Council, and the Chairman of such Council, whenever present, shall preside, and if he be not present, then the Members in attendance shall choose, as and in manner they may deem expedient, some other Member of the Council to preside, and in case of an equality of votes at any such meeting, the Chairman, besides his own vote, shall have a casting vote.

**18. Appointment of Officers. Power to fix salaries and defray expenses out of rates.**

The Municipal Council shall appoint such Officers, not being Members of the said Council, as may be necessary for carrying into execution the various powers and duties vested in them by this Ordinance, with such salaries and emoluments as may seem requisite, and may dismiss or suspend, and appoint others in their

places, and may reduce or increase such salaries and emoluments in such manner and at such times as such Council shall see fit, and shall pay and defray out of the rates, tolls, dues, or other funds at the disposal of such Municipal Council, such, salaries or emoluments, and such expenses as may necessarily have been incurred in the due execution of their office as Members of the said Council, also all necessary sums expended by such Municipal Council in or about the election of any Members of such Council, and also of any public meeting called by such Council, as well as their necessary expenses incurred for the duly carrying out of the first election of Members of the said Council.

**19. Power to make By-laws.**

It shall be competent for the Council of any Municipal district to make By-laws for the regulation of their own proceedings, the collection of their rates, the prevention and extinguishing of fires, the suppression of nuisances and houses of ill-fame, compelling Residents to keep their premises free from offensive or unwholesome matters, the regulation and licensing of Porters, Watermen, Lightermen, public Carriers, Carters, and Waterdrawers, the regulation of markets, market dues, fairs, and sale, the preservation of public decency and public health, the restraining noisome and offensive trades, and the general good rule and good government of such Municipal district: Provided always, that no By-laws or Regulations so made, shall be deemed to interfere with any Ordinance of the Superintendent and Provincial Council.

**20. To have care and management of roads, public works, sanitary arrangements.**

Every such Council shall have the care and management of the public roads, streets, squares, paths, wharves, jetties, piers, bridges, and thoroughfares, and all streams, watercourses, drains, ponds, ditches, and the like, not being private property, within such district, and shall adopt such means as may seem to them desirable for the preservation of the health of the public, the care and maintenance of the destitute poor and sick, the securing the necessary supply of water for domestic or sanitary purposes, and shall and may form, cleanse, repair, and maintain in effectual operation the sewers and drains of the district, and shall and may make such Regulations for the lighting of such district as shall to such Council seem fit, subject to the provisions hereinafter contained.

**21. Expenses of repairs, &c., to be defrayed by general rate.**

The expenses of maintaining and repairing the streets, and of cleansing, repairing, and maintaining in effective operation the sewers and drains of the district, of the payment of Officers employed, and the expenses incurred on account of, or inuring to the common benefit of the town or district, shall be defrayed by a general rate, and be called " The General Municipal District Rate."

**22. New works of local nature to be paid for by special rate, inclusive of public funds voted.**

The expenses of making any street, or making any new, or altering, improving, closing, or destroying any old sewer or drain, or effecting any other local work or improvement of a permanent nature for the benefit of the district, shall be defrayed by a special rate or rates, to be called "The Special Municipal District Rates," of such amount as will be sufficient to discharge the amount of such expenses, and interest thereon, within such period, not exceeding five years, as the Council shall in such case determine: Provided always, that in all cases in which any Sum or Sums of money shall have been or may be granted by the Superintendent and Provincial Council for or on account of any special work within the said district, the same shall be carried to account for such work, and the special rate or rates shall be levied for the balance only, if any, of such expenses aforesaid.

**23. Rates, how to be assessed, and their limitation.**

The rates shall be assessed upon the net annual value of all buildings, tenements, or, that is to say, of rent at which the same might reasonably be expected to let from year to year: Provided that no such "general" rate or rates shall in any one year exceed the sum of one shilling in the pound of such annual value; or, in the case of a "special" rate, shall not exceed for a like period the sum of two shillings in the pound of such annual value.

**24. Rates, by whom to be paid.**

The rate, whether "general" or "special," shall be paid by the Tenant or Occupier of the land or premises; or in case there be no Tenant, or Occupier, by the Proprietor thereof: Provided that it shall not be lawful for any Council to impose or levy any rate whatsoever on any land or premises belonging to and in the occupation of her Majesty or the Provincial Government, or any land or building reserved for public purposes or uses, or any places set apart for public worship.

**25. Notice of rate to be given in Court, and List of Persons Liable.**

**Objections, how to be heard.**

Previously to levying any rate, the Council shall cause a written or printed Statement to be posted in some conspicuous place within the district, setting forth the amount of rate to be levied, with a List of the names of the persons liable for the payment thereof, with the sum payable by each of such persons, and the property in respect whereof the same shall be payable, and to such Statement shall subjoin a notice that all objections thereto will be heard and determined by the Council, at a time and place to be in such notice mentioned, such time being not less than fourteen days from the date of such notice; and the Council shall hear and determine such objections accordingly .

**26. Collectors of Rates.**

The Council shall appoint a fit person or persons to collect the rates, and shall take security from every Collector for the due execution of his office, which

security shall be to the amount of the sum likely to be in the hands of the Collector at any one time, and shall be by bond or otherwise as the Council may determine.

**27. Rates, how recoverable.**

All rates shall be recoverable at the suit of any Collector by summary proceedings.

**28. By-laws subject to the approval of the Superintendent.**

No By-law, Rate, or Assessment shall have any force or effect until the Superintendent, with the advice of his Executive Council, shall, under his hand, have signified his assent thereto: and when such By-law, rate, or assessment shall have been assented to, the Superintendent shall cause publicity to be given thereto by Proclamation in the Government Gazette of the Province.

**29. Penalties, how to be imposed and recovered. Council to have no power over public works of the Province.**

Each By-law, so to be made as aforesaid by any such Council shall state some maximum penalty, not exceeding forty shillings, for any neglect or breach thereof, and such penalty shall be recoverable in a summary way. Nothing herein contained shall authorize the interference by any Municipal Council with any public road, market, wharf, aqueduct, or any other public work, place, or building of what description soever not erected, formed, or constructed by such Municipal Council, that may be excepted from the jurisdiction of such Municipal Council, by any Proclamation made or to be made by the Superintendent, or respecting which provision shall have been or shall be made by any Ordinance of the Provincial Council.

**30. Property in certain cases to vest in the Council.**

All main or public sewers and drains within the town, whether existing at the time when the Council shall be constituted, or made at any time thereafter, and all materials thereof, and for making and repairing streets, and of works in progress of every description, or brought upon or near to any works in progress for the purpose of being used thereon, shall vest in, and belong to, and be under the management and control of such Council; neither shall anything herein contained be construed to authorize the Council contrary to, or inconsistently with any private right to use, injure, or interfere with any sewers or other works made or used for the purpose of draining, preserving, improving or irrigating land, or to use, injure, or interfere with any watercourse, stream, or river in which the Occupier or Owner of any lands, mills, or machinery shall have a right or vested interest, without consent, in writing, being first obtained.

**31. Notice to be given of intended works and alterations.**

Twenty-eight days at least before fixing the level of any street which shall not have been hitherto levelled, and before making any sewer where none was before, or altering the level or course, or abandoning or stopping any sewer, the

Council shall give notice of its intention to perform any such work by posting a printed or written notice on a conspicuous place at each end of every such street through or in which such work is to be undertaken; in which notice shall be set forth the name or situation of the street intended to be levelled, and the names of the places through or near which it is intended that the new sewer shall pass, or the existing sewer be altered or stopped up, and also the places of the beginning and the end thereof, and shall refer to plans of such intended work, name or place where such plans may be seen, and a time when and place where all persons interested in such intended work may be heard thereupon.

**32. Plans to be prepared.**

Before giving notice of its intention to construct any work of which by this Ordinance it is required to give notice, the Council shall cause a plan and section of the intended work to be made on a scale not less for a horizontal plan than one inch to one hundred and ninety-eight feet, and for a vertical section not less than one inch to ten feet: and in case of a sewer, shewing the depth of such sewer below the surface of the ground, which plans shall be deposited in the office of the Council, or some other convenient place, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time from which such notice is required to be given.

**33. Consideration of objections. Compensation: how to be regulated.**

The Council shall meet at the time and place mentioned in the notice, to consider, in the presence of its Surveyor, any objections made against such intended work; and all persons interested therein, or likely to be aggrieved thereby, shall be entitled to be heard before the Council at such meeting, and thereupon the Council may, in its discretion, grant compensation for, abandon, or make such alterations in the intended work as it may judge fit: and no such work to which any objection is made at such meeting shall be executed unless the Surveyor of the Council, after the person making such objection or his Agent has been heard, shall certify that the work, in his judgment, ought to be executed: Provided always, that if the persons whose property may be affected by such decision shall object to the amount awarded by the Council in compensation for the injury he may sustain, he shall be entitled to demand that the damage shall be assessed in accordance with the provisions of "The Diversion of Roads Ordinance, Section XI., No. 3."

**34. Power of entry on to private lands for purposes of drainage or sewerage.**

The Council shall, from time to time, subject to the restrictions herein contained as to the notice to be given and the plans and estimates to be prepared, cause to be made such main drain and other sewers as shall be necessary for the effectual drainage of the town, and also all such reservoirs, sluices, engines, and other works as shall be necessary for cleansing such sewer; and, if needful, carry such sewers through and across all underground cellars and vaults under any of the streets, doing as little damage as may be, and making full compensation for

any damage done; and if, for completing any of the aforesaid works, it be found necessary to carry them into or through any enclosed lands, the Council may carry the same in and through such lands accordingly, making full compensation to the Owners or Occupiers of any enclosed land. It may also cause such sewers to communicate with and empty themselves into the sea, or any public stream or river beyond the limits of the town, or cause the refuse of such sewers to be conveyed by a proper channel to the most convenient site for its collection and sale, for agricultural or other purposes, as may be deemed most expedient, but so that the same shall in no case become a nuisance: Provided always, that in making any such drain and other sewers, or in repairing, re-constructing, or enlarging the same, or any existing drains or sewers, the contents at present carried into any existing outlet shall not be diverted therefrom to the prejudice of any actual existing legal right.

**35. Alteration of sewers. Cases of want of drainage.**

The Council shall from time to time repair, and as it sees fit enlarge, alter, arch over, or otherwise improve all or any of the sewers vested in it. It may demolish or discontinue any sewer which may appear to it to have become useless, provided it be so done as not to create a nuisance. In any case in which it may appear to the satisfaction of the Council that the levels of any town are not sufficiently removed above high-water mark, or where there may not be convenient access to the sea, or to any river, or when the effect of directing the refuse of any sewers into the sea, or into any river, may be injurious to the health of the Inhabitants of any town, it shall be lawful for such Council to direct that the refuse of every house, whether night-soil, dung, ashes, or other filth and rubbish, shall be periodically deodorised, and conveyed at least once in every three months to some convenient place provided for its deposit. It shall not be lawful for any cesspool to be constructed upon any gravel stratum.

**36. Entry upon private lands.**

The Council shall have power by itself or its Officers to enter at all reasonable hours in the day-time into and upon any land, buildings, and premises within the town, without being liable to any legal proceeding on account thereof: Provided always, that except when herein otherwise provided, the Council or its Officers shall not make any such entry, unless with the consent of the Occupier, until after the expiration of twenty-four hours' notice for that purpose given to the Owner or Occupier.

**37. Stoppage of streets.**

The Council may stop up any street, and prevent the same from being used as a common thoroughfare for a reasonable time during the execution of any work authorised by this Ordinance.

**38. Prevention of accidents.**

The Council shall, during the execution of any work, take every proper precaution for guarding against accident, and every person who takes down, alters, or

removes any bar, or chain, or other protection, or extinguishes any light placed at or near to any work for protection without the authority or consent of the Council, shall, for such offence, be liable to a penalty not exceeding Forty Shillings.

**39. Receptacles for filth.**

The Council may from time to time provide places convenient for the deposit of night-soil, dung, ashes, and other filth and rubbish to be collected under the authority of this Ordinance.

**40. Estimates to be prepared.**

Before any contract, for the execution of any works under the provisions of this Ordinance, to the amount of One Hundred Pounds, shall be entered into, the Council shall obtain from its Surveyor an Estimate, in writing, as well of the probable expense of executing the work in a substantial manner, as of the annual expense of repairing the same, and also a Report, as to the most advantageous mode of contracting, that is to say, whether by contracting for the execution of the work only, or for executing and maintaining the same in repair during a term of years or otherwise.

**41. Notice of tenders being called for to be published.**

Before any contracts to the amount of One Hundred Pounds and upwards shall be entered into, fourteen days' notice, at least, shall be given in one of the newspapers published in the town, or if no Paper be published in the town, then in one of the Newspapers published in the town of Christchurch, expressing the object and purpose of such contract, in order that any person willing to undertake the same may tender for that purpose to the Council at a certain time and place in such notice to be mentioned, and the Council shall take security for the due performance of such contracts.

**42. Power of compounding.**

The Council may compound and agree with any party who shall have entered into any contract under the authority of this Ordinance, or against whom any action or suit may be brought for any penalty contained in any such contract, or in any bond or other securities for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond, or security, for any sum of money or recompense as the Council may think proper.

**43. Compensation for injury to drainage and sewerage.**

If any person, by means of any enlargement, alteration, or Compensation for indiscontinuance of any sewer or other proceeding of the Council, be deprived of the use of any sewer or drain which such person was theretofore lawfully entitled to use, the Council shall provide some other sewer or drain equally effectual for such purpose; and if the Council refuse, or do not within seven days next after notice, in writing, served upon it, begin, and thereupon diligently proceed to restore to its former effective state such drain or sewer, the use whereof has been affected by the acts of the Council, or to provide such other sewer or drain

as aforesaid, it shall forfeit to the person aggrieved any sum not exceeding Forty Shillings for every day after the expiration of such seven days during which he is deprived of the use of the drain or sewer to which he was so entitled.

**44. Penalty for making branch drains without permission.**

Every person, not being employed for the purpose by the Council, who shall make any drain into any of the sewers or drains so vested in the Council, shall forfeit to the Council a sum not exceeding Five Pounds: and the Council may cause such branch drain to be re-made as it thinks fit, and all the expense incurred thereby shall be paid by the person making such branch drain, and shall be recoverable by the Council as damages.

**45. Penalty for building over sewers without permission.**

No building shall be erected over any sewer belonging, to the Council without the consent of the Council first obtained in writing; and all vaults, arches, and cellars shall be substantially made and so as not to interfere or communicate with any sewers belonging to the Council; and if, after the operation of this Ordinance, any building is erected in any town, or any vault, arch or cellar be made therein contrary to the provisions herein contained, the Council may demolish or fill up the same, and the expense incurred thereby shall be paid by the person erecting such building, or making such vault, arch or cellar, and shall be recoverable as damages.

**46. Traps over sewers.**

All sewers or drains within the town, whether public or private, shall be provided by the Council or other persons to whom they severally belong with proper traps or other covering for means of ventilation, so as to prevent stench.

**47. Drainage and sewerage beyond limits of a town in connection with Municipal works.**

Any person being the Owner or Occupier of any lands beyond the town, and in respect of which he would not be liable to the payment of the rates authorised to be levied under this Ordinance, may, with the consent of the Council first obtained, in writing, and upon payment to them of a reasonable sum of money to be agreed upon between them, at his own expense, and under the superintendence of the Surveyor of the Council, cause to branch into and communicate with any of the sewers belonging to the Council any sewer or drain in respect of the said property which may be lawfully made therefrom, of such size and in such manner and form of communication as the Council may approve of: Provided always, that nothing in this Ordinance contained shall affect any right theretofore acquired by such Owner or Occupier to use any of the sewers or drains belonging to the Council.

**48. Obstructions and encroachments to be removed.**

The Council may give notice to the Occupier of any house or building to remove or alter any porch, step, fence, or any other obstruction or projection erected, or

placed against, or in front of any house or building within the town, and which is an obstruction to the safe and convenient passage along any street, or any encroachment thereupon, and such Occupier shall, within ten days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the Council, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the Council in such case may remove such obstruction, projection, or encroachment, and the expense thereof shall be paid to the Council by the Occupier so making default.

**49. No cellar or entrance thereto to be made under any street.**

No cellar or vault shall, after the coming into operation of this Ordinance within any town, be made under any street, nor shall any opening be hereafter made in any street or footpath to make an entrance into any cellar or vault.

**50. Gutter pipes and water troughs to be provided.**

The Council may order the Owner or Occupier of any house or building in, adjoining, or near to any street, to put up and keep in good condition a gutter-pipe or trough to convey the water from the roof thereof in such a manner that the water therefrom shall not fall upon the persons passing along the street or flow over the footpath, and in default of compliance with such Order within seven days after service thereof, such Owner or Occupier shall be liable to a penalty not exceeding Forty Shillings for every day that he shall so make default.

**51. Buildings in a dangerous state to be removed or protected.**

If any building, or wall, or anything affixed thereon within the town be deemed by the Surveyor of the Council to be in a state dangerous to Passengers or to the Occupiers of the neighbouring buildings, such Surveyor shall immediately cause a proper board or fence to be put up for the protection of Passengers, and shall cause a notice, in writing, to be given to the Owner of such building or wall if he be known and resident within the town; and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the Occupier thereof, if any, requiring such Owner or Occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such Owner or Occupier do not begin to repair, take down, or secure such building, wall, or other thing, within the space of two days after any such notice has been so given or put up as aforesaid, and complete such repairs, or thing down and securing as speedily as the nature of the case will admit, or if no Occupier can be found on whom to serve such Order, the Council shall, with all convenient speed, cause all or so much of such building, wall, or other thing that shall be in a dangerous condition, to be taken down or otherwise secured in such manner as it shall deem requisite; and all the expense of putting up such fence and of taking down or securing such building, wall, or other thing, shall be paid by the Owner thereof.

**52. Materials to be sold to defray expenses, balance returned to owner.**

If any such house or building as aforesaid, or any part of the same be pulled down by virtue of the powers aforesaid, the Council may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building, and restore any surplus to the Owner of such house or building on demand; nevertheless, the Council, although they sell such material for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

**53. No house to be built on a lower level than will allow of drainage.**

**Interpretation of word re-building.**

No house or building within the town shall be built upon a lower level than will allow of the drainage of the waste and refuse of such house or building into some sewer belonging to the Council either then existing or marked out upon the map herein directed to be made by them, or into the sea or some public stream or river into which the Council is empowered to empty its sewers. And whenever any house is taken down to or below the roof of the floor commonly called the ground or street floor for the purpose of being built up again, such building shall be deemed a re-building, within the meaning of this Ordinance.

**54. Notice of intention to lay out a new street or building houses to be given the Council, with Plans, to shew levels, &c.**

Before laying out any new street, beginning to build any house, or to re-build any existing house within the town, the person intending to lay out such streets, to build or re-build such house, shall give to the Council notice thereof, in writing, and shall accompany such notice with a Plan, showing the level at which such street or the foundation of such house is proposed to be laid, by reference to some level ascertained under the direction of the Council.

**55. Within fourteen days after such notice, Council to signify its disapproval of level proposed.**

Within fourteen days after receiving such notice, the Council may signify its disapproval of the level at which it is proposed to lay such street or the foundation of any such house, and in case of such disapproval may, within the said fourteen days, fix the level at which the same is to be laid.

**56. In default of sending such notice, course to be pursued by the Council.**

In default of sending such notice and Plan, or if such new street or building be begun, or made at any level different from that fixed by the Council, within the said fourteen days, or in any other respect contrary to the provisions of this Ordinance, the Council may, if necessary, cause such new street to be altered, or such building to be altered or demolished, as the case requires: and the expenses incurred by the Council in respect thereof shall be repaid to it by the

person failing to comply with the provisions aforesaid, and shall be recoverable as damages.

**57. Proviso in case the Council fail to regard the said notice.**

Provided always, that if the Council fail to signify, in writing, its approval or disapproval of the level shewn on such Plan as aforesaid, the said notice. within fourteen days after receiving such notice and Plan as aforesaid, the person giving such notice may, notwithstanding anything herein contained, proceed to lay out and make the street, or build or rebuild the house therein referred to, according to the level shewn on such Plan: Provided that such building or re-building be otherwise in accordance with the provisions of this Ordinance.

**58. Council to enforce the provisions for privies in any house.**

The Owner or Occupier of any dwelling-house shall provide the Council to enforce the same with a privy to the satisfaction of the Council within one month next after notice, in writing, for that purpose given by the Council to him, and, in default thereof, the Council shall cause such privy to be provided, and the expense incurred thereby shall be recovered from such Owner or Occupier.

**59. All drains, privies, cesspools, &c., to be under the control of the Council.**

All drains, as well within as without the premises to which they belong, and all privies and cesspools within the town shall be under the survey and control of the Council, and shall be altered, repaired, and kept in proper order and cleansed at the costs and charges of the Owners or Occupiers of the premises to which the same belong, or for the use of which they are constructed: and it shall be lawful for the Council to make such provisions as it shall think fit for the due removal of the refuse of each house within the town by the Occupier of such house. And such Council is hereby empowered to cause the same to be repaired and cleansed, and to recover the expenses incurred thereby from the Owner or Occupier of such house, building, or ground.

**60. In cases where any house shall be found not to be drained by a sufficient drain-communication with a sewer, the Council shall require one to be constructed.**

In all cases where any house or building situate within the town shall at any time be found not to be drained by a sufficient drain communicating with a sewer and emptying itself into the same to the satisfaction of the Council, and if a sewer of a sufficient size, under the jurisdiction of the Council, shall pass within one hundred feet of any such house or building on a lower level than such house or building, the Council may, by notice in writing, require the Owner of such house or building forthwith, or within such reasonable time as shall be appointed by the Council to construct or make from such house or building into the nearest common sewer a covered drain of such materials, of such size, at such level, and with such fall as shall be adequate for the drainage of such house or building, and also, if required by the Surveyor, of its areas, water-closets, privies and

offices, if any, and to carry and convey the soil, drainage and wash therefrom into the said sewer, and to provide a fit and proper trap affixed to the mouth of such drain to the satisfaction of the Council; and if the Owner of such house or building shall neglect or refuse, during twenty-eight days after the said notice shall have been delivered to such Owner, or left at such house or building, to construct such drain, or shall thereafter fail to carry it on and complete it with all reasonable dispatch, the Board may, and it is hereby empowered to cause the same to be constructed and made, and to recover the expense to be incurred thereby.

**61. Removal of noxious matter upon Certificate of Officer of Council or qualified Medical Practitioner.**

If at any time it shall be represented to the Council by any of its Officers, or by any duly qualified Medical Practitioner, that any stagnant water, or accumulation of dung, soil, or filth, or other noxious or offensive matter within the town ought to be removed, as being injurious to the health of the Inhabitants, the Clerk of the Council shall forthwith give notice to the Owner or Occupier of the land where the same may be, to remove it forthwith.

**62. Council may borrow by way of mortgage.**

Any such Municipal Council shall have power to borrow, by way of mortgage or otherwise, on the credit of land, funds, rates, or assessments to which it may be entitled, any sum or sums of money that may be required for the purpose of making, carrying on, or completing any permanent improvements that may directly benefit the Municipal district for which such Council has been elected: but in no case shall the sum or sums so borrowed exceed in the whole the estimated revenue of such Municipal Corporation for the period of three years: Provided that no money shall be borrowed by any such Municipal Council until the express sanction, in writing, of the Superintendent and Executive Council has been obtained not only for the amount to be borrowed, but also for the works or improvements upon which it is purposed to expend the sum or sums so to be raised.

**63. Superintendent to have power to commit to the Council expenditure of sums appropriated for works, and to appoint an Engineer to inspect such works.**

It shall be lawful for the Superintendent, with the consent of the Provincial Council, if he shall think fit to commit to the said Council the expenditure of any moneys appropriated, and the construction and maintenance of streets, bridges, drains, and public works within any district constituted under the provisions of this Ordinance, and to pay over the same to the Council, to be appropriated in such manner and for such purposes as the Council shall direct, the Plans and Specifications of all such works having first received the sanction of the Superintendent; and the Superintendent shall have authority to appoint any Engineer or other person to inspect all such works and improvements during their progress, and report thereupon; and in case it shall appear by any such Report that the works or improvements are not being carried on in accordance with the

Plans or Specifications so approved of as aforesaid, it shall be competent for the Superintendent to order such works or improvements to be forthwith stopped and to make such further order in the matter as he may see fit.

**64. Form of Mortgage. Register to be kept open for inspection.**

Every mortgage shall be by Deed, and shall be passed under the common seal of the Council, and be signed by any five Members thereof: Provided always, that a Register of all such mortgages shall be kept by the Council, and every such Register shall be open to public inspection, during office hours, at the said office, without fee or reward.

**65. Mortgages transferable.**

Any person entitled to any such mortgage may transfer his right and interest therein.

**66. Transfer to be produced to the Council within a certain time. Entry thereof to be made.**

Within thirty days after the date of every transfer, if executed within the Province, or otherwise, within thirty days after the arrival thereof in the Province, it shall be produced to the Council or their Clerk, and thereupon an entry or memorial thereof shall be made in like manner as in the case of the original Mortgagee; and for every such entry shall be paid a fee of Five Shillings, and after such entry every such transfer shall entitle the Transferee, his Executors, Administrators, or Assigns, to the full benefit of the original mortgage, and the principal and interest thereby secured, and such Transferee may in like manner transfer the same again toties quoties, and it shall not be in the power of any person, except the person to whom the same shall last have been transferred, his Executors, Administrators, or Assigns, to make void, release, or discharge the mortgage so transferred, or any money thereby secured.

**67. Works carried on with money so borrowed as aforesaid, subject to certain Regulations.**

Every work carried on by any Municipal district with any money so borrowed as aforesaid, shall be subject to the same Rules, Regulations, supervisions, and control as hereinbefore provided in regard to particular works carried on by any Municipal district after such district shall have received any Government aid or endowment specially

**68. Notices to Owners and Occupiers, how to be served.**

Where, under this Ordinance, any notice is required to be given to the Owner or Occupier of any premises, such notice addressed to the Owner or Occupier thereof, as the case may require, may be served on the occupier of such premises, or left with such inmate of his abode, or if there be no Occupier, may be put upon some conspicuous part of such premises; and it shall not be necessary in any such notice to name the Occupier or Owner of such premises: Provided always, that when the Owner of any such premises and his residence

are known to the Council, it shall be the duty of the Council, if such Owner be resident within the town, to cause every notice required to be given to the Owner to be served on such Owner or left with some inmate of his abode, and if such Owner be not resident within the town, but shall be resident with the Islands of New Zealand, it shall send every such notice by the post, addressed to the residence of such Owner.

**69. Re-payment of expenses incurred by the Council recoverable by summary proceedings.**

If the Owner or Occupier of any premises made liable by this Ordinance for the repayment to the Council of any expenses incurred by it, do not, as soon as the same becomes due from him, repay all expenses, the Council may recover the same from such Owner by summary proceedings.

**70. Council may determine whether expenses shall be defrayed by the Owner or Occupier.**

Whenever any question shall arise as to whether the work required by the Council to be performed ought to be executed by the Owner or Occupiers of any premises, the Council may determine the matter; the Council may also order that the expenses of executing the required work shall be borne by both Owner and Occupier in such proportions as it may deem equitable.

**71. In case the Occupier of any premises shall prevent the Owner thereof from carrying into effect any of the provisions of this Ordinance, the Council how to act.**

If the Occupier of any premises prevent the Owner thereof from carrying into effect in respect of such premises any of the provisions of this Ordinance after notice of his intention so to do has been given by the Owner to such Occupier, the Council may make an Order, in writing, requiring such Occupier to permit the Owner to execute all such works with respect to such premises as may be necessary for carrying into effect the provisions of this Ordinance, and if, after the expiration of ten days from the date of such Order, such Occupier continues to refuse to permit such Owner to execute such work, such Occupier shall, for every day during which he so continues to refuse, be liable to a penalty not exceeding Forty Shillings, and every such Owner during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such work.

**72. Nothing in this Ordinance to affect any agreement previously entered into for erecting or altering any building, &c, Protection from additional expense.**

Nothing in this Ordinance contained shall extend to avoid any agreement, in writing, entered into before the operation of this Ordinance for erecting or altering any building, but the same shall be performed from with such alterations as may be rendered necessary by this Ordinance, as if such alteration had been stipulated for in such Agreement; and the difference between the cost of the work

according to the Agreement, and the cost of such work as executed according to the provisions of this Ordinance, shall be ascertained by the parties to the respective Agreements, and paid for or deducted, as the case may require; and if the said parties do not agree upon the amount of such difference, the same shall, on the request of either party (notice being given to the other), be decided by the Surveyor to the Board; and for his trouble in making such decision, each of the said parties shall pay to the said Surveyor such sum, not exceeding Twenty Shillings, and to be disposed of for such purposes of this Ordinance as the Council shall direct.

**73. Statement of Accounts, &c., to be duly kept and submitted to meeting.**

The Council shall, in books to be kept by them for that purpose, enter true Accounts of all sums of money by them received and paid, and of the several matters in respect whereof such sums shall have been received and paid. All such Accounts, with Vouchers and Papers thereto, together with a full Abstract or Balance Sheet thereof, signed by at least three of the Members of such Council, shall, yearly, at such meeting aforesaid, be submitted to such meeting, and shall (as soon thereafter as conveniently may be) be examined and audited by two or more persons to be appointed for that purpose by such meeting.

**74. Balance-sheet of Accounts to be passed at meeting.**

A copy of each Balance Sheet shall be posted up by such Council, at or before the commencement of such meeting as aforesaid, upon some conspicuous part of the place in which such meeting shall be held.

**75. Settlement of accounts to be forthwith made by retiring Council with existing Council.**

No moneys found by the Auditors to be due from any retiring Council, together with all such Books of Accounts, Vouchers and Papers, shall be forthwith paid and delivered over to the Council for the time being.

**76. No Member to contract with or hold paid office under the Council.**

No Member of the Council shall, during the continuance of his office, become a Contractor, or hold any paid office in the gift of the Council.

**77. In cases where such Council desire to purchase lands, &c., value of such to be determined set forth in the "Diversion of Roads Ordinance, Session VII., No. 14."**

If it shall be found necessary by any such Council to purchase any land, buildings, or other real estate for the purpose of carrying on any works or improvements in such Municipal district, and the amount of purchase money to be paid for such land, building, or other real estate cannot be mutually agreed upon between the said Council and the Owner of such property, it shall be competent for the Owner or Occupier, or for both, to cause such value to be determined in manner set forth in an Ordinance, entitled "The Diversion of Roads Ordinance, Session XI., No. 3."

**78. If any Council to whom money shall have been advanced out of the public revenue, fail to observe the conditions required by the terms of such loan, the Superintendent may transfer their power to a Board of Commissioners, appointed, &c.**

If any Municipal Council, to whom moneys shall be given or advanced out of the public revenue, or to whom a guarantee therefrom shall have been given, whether as a loan or otherwise, shall refuse at any time to perform their functions in observing the conditions required by the terms of such loan, or guarantee, or advance, and the Ratepayers of the district for which such Council may have been elected shall decline to elect Councillors to perform the duties required by this Ordinance with regard to such loan, guarantee, or advance within thirty days after they shall have been thereunto required by, or on behalf of the Superintendent, then it shall be lawful for the Superintendent to declare that the functions, powers and privileges of the said Municipal Council shall, from and after a day named by the Superintendent, and published in the Gazette, absolutely cease and determine; and their said functions, powers, liabilities, together with all their lands, tenements, and hereditaments, shall be transferred to and vest in a Board of Commissioners, of not more than five Members, appointed by the Superintendent, under such Rules and Regulations as he may prescribe; and the said Board shall exercise all the powers and discharge all the functions of the said Council, as fully and effectually as if the said Board of Commissioners had been specially named in this Ordinance: Provided that the said Commissioners shall enter upon no fresh undertaking, and further that the powers and functions of such Commissioners shall cease and determine as soon as any loan, and all interest thereon, shall have been fully repaid and satisfied.

**79. Vesting powers in the Superintendent and execution, in Non-Corporate Districts except rating powers.**

In all cases where public Grants shall have been made for the purpose of carrying, into effect any of the provisions contained in this Ordinance, and where no Municipal district shall have been constituted, it shall be lawful for the Superintendent, acting by and with the advice of the Executive Council, to execute all the powers and duties herein vested in or imposed upon the Councils of any Municipal district, except those which empower, authorise, or enforce the levying of any rate or rates, and all such powers and duties executed by the Superintendent as aforesaid shall be as valid as though they had been executed and performed by a Corporate Body constituted under the provisions of this Ordinance.

**80. No penalty to exceed One Hundred Pounds.**

No penalty to be imposed on any one conviction under the provisions of this Ordinance shall exceed the sum of One Hundred Pounds.

**81. Fines and penalties to be recovered in a summary way.**

All fines and penalties imposed under this Ordinance shall be recoverable in a summary way.

**82. Title.**

This Ordinance shall be entitled and may be cited as the "Municipal Council Ordinance, Session XIV., No. 2."

**Notes.**

*The Ordinance was passed by the Provincial Council on 18th December 1860, and, having been reserved for the Governor's assent. He assented to it on 25th March 1861. See New Zealand Government Gazette 1861 page 90.]*

*As far as the City of Christchurch was concerned, this Ordinance was repealed by the Christchurch City Council Ordinance, 1862;" and, as far as Lyttelton was concerned, by the Lyttelton Municipal Council Ordinance, 1863.*

**3. The Gorse Ordinance 1861.**

Whereas it is expedient that the practice of growing Gorse within the limits of towns in the Province of Canterbury should be discouraged:

Be it therefore enacted by the Superintendent of the said Province, by and with the advice and consent of the Provincial Council thereof, as follows:

**1. Penalty not exceeding Twenty Pounds to be incurred on infringement of this Ordinance.**

Every Occupier of any land or premises within the limits of a town, who shall, after the First day of July, 1861, suffer any gorse to be planted, or suffer any gorse already planted to remain on such land or premises nearer than fifty links to any building occupied by himself or any other person, shall be liable to a penalty of not more than Twenty Pounds to be recovered in a summary way; and every twenty-four hours during which such gorse shall be, or remain on any such land or premises, shall constitute a distinct offence.

**2. Occupier of any premises to be at liberty to act according to the provisions of this Ordinance, provided that substitution be made for such gorse fences.**

Every such Occupier shall (any terms of his tenure notwithstanding) be at liberty to cut down and remove so much gorse on such land or premises as may be

necessary for his compliance with the first Section of this Ordinance, without incurring any liability to the Owner thereof in respect of any such cutting down or removal: Provided that in every case where the gorse so cut down shall have been used as a fence and where such Occupier is Tenant under a term having five years or more from the First day of July, one thousand eight hundred and sixty-one, unexpired, the provision lastly hereinbefore contained shall not exempt such Occupier from liability, unless he shall, within such unexpired term, put up and erect, in lieu of such gorse, a fence which shall be one of the fences enumerated in the Schedule to this Ordinance. And every such fence so put up and erected as aforesaid, shall, as regards any covenants relating to such gorse fence on the part of the person removing the same, be construed and taken to be such gorse fence.

### **3. Term "town" defined.**

The term "town" in this Ordinance shall include the towns described in Schedule B to this Ordinance, and all other towns or townships which have been hitherto or may be proclaimed by the said Superintendent, by and with the advice and consent of the said Provincial Council.

### **4. Title.**

This Ordinance shall be entitled and may be cited as "The Gorse Ordinance, Session XIV., No. 3."

### **Schedule A.**

1. A post and rail fence, at least three feet six inches in height, of substantial materials, firmly erected, of not less than two rails, with no greater distance between the rails at any one point than one foot nine inches, and the posts not more than eight feet six inches asunder.
2. A substantial upright paling, at least three feet six inches in height.
3. A substantial wire fence, at least four feet in height, not having less than four wires tightly stretched, and kept painted of a white colour, and the posts of which are not further than twelve from each other.
4. A substantial iron hurdle, at least four feet in height, and kept painted of a white colour.
5. A bank or wall of substantial materials, at least four feet in height, of which the slope is not more than one foot from the perpendicular on the outer side thereof.
6. A close and sufficient live fence, at least four feet in height.
7. Any combination of fences of the above kind, at least four feet in height.

## **Schedule B.**

List of Towns to which this Ordinance refers.

The town of Christchurch, as set forth in the Map of the Chief Surveyor of the Province of Canterbury, including the town reserves.

The town of Lyttelton, bounded on the north by the summit of the range of hills on the north side of Lyttelton Harbour; on the east and west by lines drawn due north and south through the easternmost and westernmost points respectively of the boundary of the said town, as shewn on the Map of the Chief Surveyor of the Province of Canterbury; and on the south by low-water mark, including also the town reserve.

The town of Akaroa, set forth in the Proclamation of the Superintendent of the said Province, bearing date 1st May, 1856.

The town of Kaiapoi, as set forth in the Schedule to "The Kaiapoi Town Ordinance, Session VII, No. 7."

### **Notes.**

*This Ordinance was passed by the Canterbury Provincial Council on the 3rd January 1861, and was assented to by the Superintendent on the 15th January 1861.*

## **4. The Appropriation Ordinance 1861**

Title.

1. Appropriation of Provincial Revenue for the year ending 30th September, 1861.
2. Provincial Treasurer shall and be allowed credit for the sums appropriated.
3. Provincial Treasurer shall be allowed credit for certain sums expended up to 30th September 1860.
4. Title.

### **Notes.**

*The Ordinance was passed by the Canterbury Provincial Council, and assented to by the Superintendent on 15th January 1861. The sum voted for the year commencing 1st October 1860, and ending 30th September 1861 £100,281 5s. 7d.. Sums paid in excess of "Appropriation Ordinance 1860 was £22,009 17s. 1d.*