



VIRTUAL

WORKSHOP



Effective Enforcement:

Investigating and Enforcing Code and Land Use Violations

Matthew Serge, Esq., DrummondWoodsum

C. Christine Fillmore, Esq., DrummondWoodsum

May 8, 2020

Today's Presenters



Matthew R. Serge
Attorney

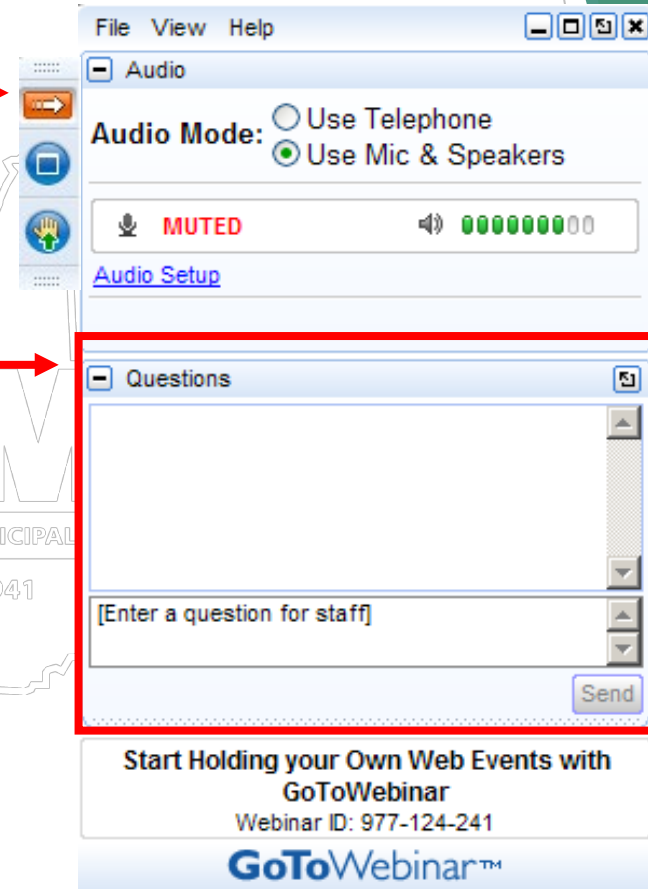


C. Christine Fillmore
Attorney

How to Participate Today



- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session



Code Enforcement Basics

Penalties for Violation of Zoning Ordinance



- RSA 676:15 (Injunctive relief)
- RSA 676:17 (Fines, penalties)
- RSA 676:17-a, -b (C&D, local land use pleas)
- RSA 31:39-c, -d (Admin. Enforcement, pleas by mail)



Step by Step on Code Enforcement Process

1. Complaint

- Oral (phone or in person)
 - memorialize complaint ASAP
- Written
 - Preferred method
 - Have a complaint form
 - Try to get complaining party to allow name to be used
 - Written complaints are “governmental records” for purposes of the New Hampshire Right to Know law



Investigation Phase

2. Investigation

- Can violation be observed without entering property?
 - Visible from right of way
 - Visible from abutting property (with abutter consent)
 - Aerial photographs / Google Earth
- If violation is not visible
 - Do not enter the property without owner consent
 - Obtain administrative inspection warrant under RSA chapter 595-B
- Document violation
 - Photographs
 - Video
 - Journal / Notebook



Enforcement Phase



- ▶ 3. Enforcement
 - Notice to the Violator
 - Visit property and discuss issue
 - Written warning of violation and deadline for compliance
 - Formal notice of violation or cease and desist order imposing fines and penalties
 - Written letters or orders should be mailed both certified (return receipt requested) and first class
 - Personal service may be necessary in some circumstances
 - Violator has the right to appeal an official's construction, interpretation of application of the zoning ordinance to the Zoning Board of Adjustment – RSA 676:5

Court Action Phase

- ▶ 4. Court Action
 - Superior Court
 - Broad equity powers (declaratory and injunctive relief)
 - Better for complicated cases
 - More intimidating for many violators
 - Lengthier process / expensive
 - District Court
 - Cease and Desist orders
 - Use for straightforward violations
 - More efficient / less expensive



Does the Condition of the Property Create Health, Safety, or Welfare Issues?



- Health Code
- Fire Code/Regulations
- Hazardous and Dilapidated Buildings
- Housing Standards

Nuisances, Rubbish, and Other Public Health Concerns

RSA Chapter 147



- State law, local regulations
- Prevention and removal of nuisances, public health
- Sanitary and health conditions for licensing food-serving establishments
- Local health regulation violation = “violation”
- Health officer can
 - Investigate nuisances
 - Order nuisances removed
 - Remove nuisances
 - Recoup expenses
 - Order building vacated, RSA 147:16-a

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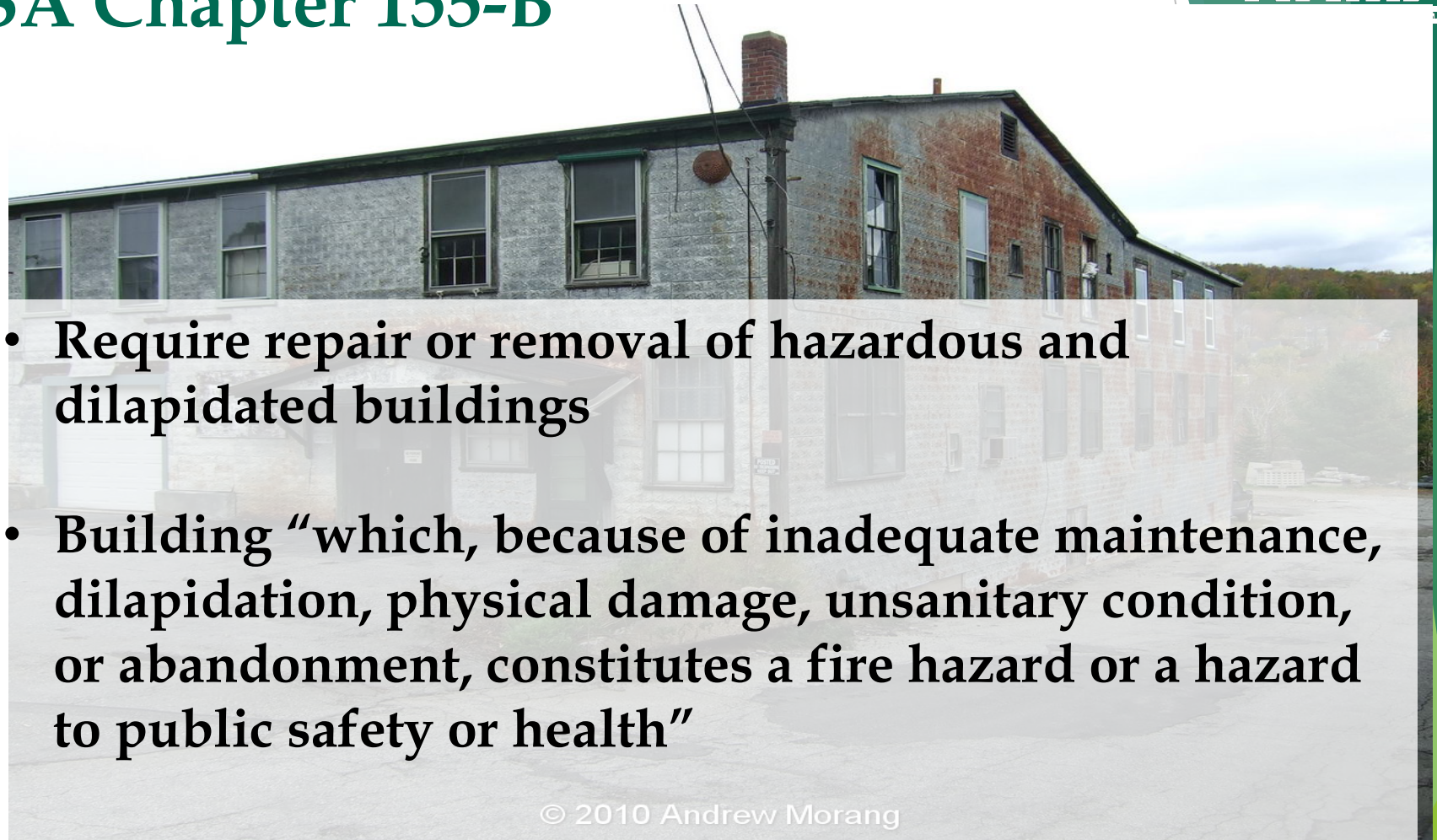
Fire Hazards

RSA Chapter 154



- Fire chief may make regulations for the elimination of fire hazards
- Fire chief may inspect all buildings, structures or other places, including but not limited to any place where any combustible or hazardous material is stored that is or may become dangerous as a fire menace
- May also inspect an area if he or she has reason to believe that such material has accumulated or is liable to be accumulated
- May order occupants to vacate building; same process as for health officer

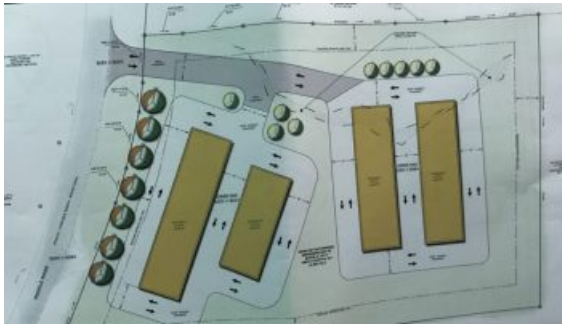
Hazardous and Dilapidated Buildings RSA Chapter 155-B



- **Require repair or removal of hazardous and dilapidated buildings**
- **Building “which, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health”**

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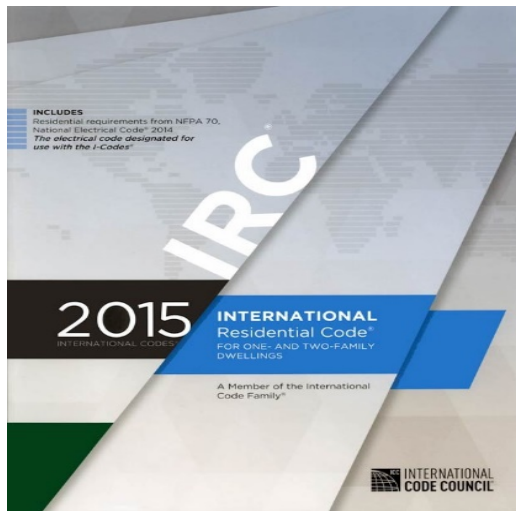




Minimum Housing Standards RSA Chapter 48-A



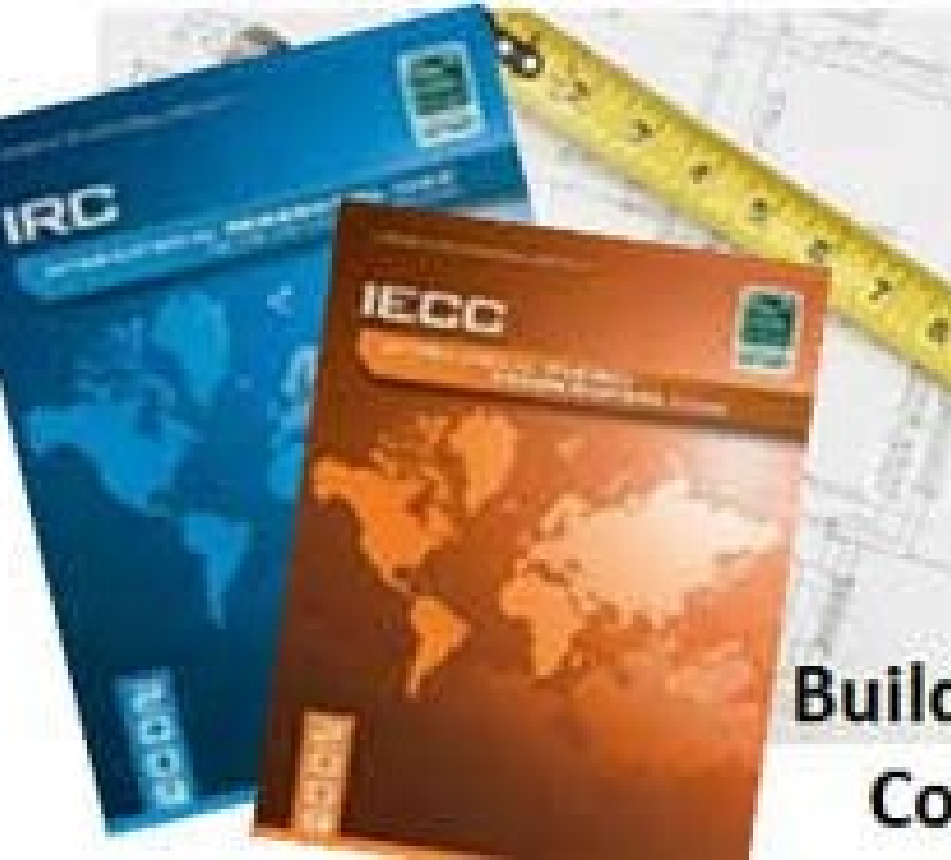
- Can adopt ordinances, codes, or bylaws to cause the repair, closing, demolition, or removal of dwellings that are “unfit for human habitation due to dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions.”
- 10 residents can petition and require investigation
- Minimum standards for landlords renting premises, 48-A:14 (violation)



International Property Maintenance Code



- Minimum maintenance standards for basic equipment, light, ventilation, heating, sanitation, and fire safety
- Adopted like local building code
- RSA 675:3 and RSA 674:51
- 2015 version:
<https://codes.iccsafe.org/public/document/IPMC2015>



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State Building & Fire Code

State Building Code - *Current*



RSA 155-A:1, IV:

- ICC 2009 – Building, Existing Building, Plumbing, Mechanical, Energy, Residential
- NFPA – National Electric Code 2017
- Local authority to adopt nationally recognized codes not inconsistent with State Code



State Building Code - Universal Compliance



- ▶ All New buildings must comply
- ▶ Buildings that are altered, renovated, or repaired must comply
- ▶ Permit necessary* – RSA 155-A:4, RSA 676:11



*Unless no local building code enforcement then notify State Fire Marshall, except for one & two family dwellings.

Local Enforcement Ordinance – Minimum Content RSA 674:51, III & IV



The date of first enactment and amendments.

Establish building code board of appeals as provided in RSA 673:1, V; 673:3, IV.

Must have position of building inspector.

Fee schedule, or a provision authorizing the governing body to establish fees.

Certificate of Occupancy requirement.

State Fire Code - *Current*



- ▶ RSA 153:1, VI-a:
 - Life Safety Code, 2015 ed.
 - Uniform Fire code, NFPA 1, 2009 ed.
 - NH Admin Code Saf-C 6000
- ▶ Applies to new construction and renovation.
- ▶ Applies to existing buildings, even if not in renovation. NH Admin Code Saf-C 6008.01
- ▶ May be amended by fire marshal, acting with board of fire control, and the Commissioner of Safety, and ratified by legislature within 1 year

State Fire Code Enforcement



RSA 153:5, V , RSA 155-A:7, I

- Local fire chief enforces the state fire code
- RSA 154:2, Fire Chief may inspect buildings for fire prevention purposes
- Must provide notice of the local appeals process and the state variance process when reviewing plans or giving notice of violations
- Fire Chief can adopt fire prevention bylaws, RSA 154:18

Building Code – Fire Code Enforcement Coordination RSA 155-A:2, II



- ▶ State Building Code and the State Fire Code conflict? The code creating the greater degree of life safety take precedence
- ▶ If no local agreement property owner can choose with notice to local officials

Take a Break



See you in 10 minutes

Scope of Review by Building Code Board of Appeals



The true intent of the code or the rules adopted thereunder have been incorrectly interpreted.



The provisions of the code do not fully apply.



An equally good or better form of construction is proposed.



The building code board of appeals cannot waive requirements of the state building code or the state fire code.

No Local Enforcement Mechanism or Building Inspector?

- ▶ The contractor notifies fire marshal about the type of construction. Not required for one- and two-family dwellings
- ▶ Fire marshal can establish a fee for permit system for municipalities without a building inspector or other enforcement mechanism
- ▶ The Contractor responsible for meeting the minimum requirements of the state building code and state fire code
- ▶ Municipality not liable for any failure by contractor to comply with the provisions of the state building code



Ordering Building Vacated - RSA 147:16-a

By Health Officer, or Building Inspector (RSA 674:52-a) or Fire Chief (RSA 154:21-a)

Statute does not apply to residence occupied only by owner and immediate family unless condition is clear and imminent danger to persons other than occupants

Target of 1998 Legislation - absentee building owners

If Court deems action to vacate frivolous/in bad faith municipality may have to pay other party attorneys fees

Dealing with Hoarders



- ▶ Hoarding is human behavior – compulsive collecting
- ▶ Start out by trying to establish a rapport – avoid judgmental language
- ▶ Do not conduct surprise clean-ups
- ▶ When there is a clear danger to occupant(s) of dwelling more direct action may be necessary due to odor and waste - & the pests or diseases associated with them
- ▶ A problem that affects your neighbors' health or quiet enjoyment

NH Public Health Nuisance Taskforce:

A nuisance is defined as a condition, activity, or situation that interferes with the use or enjoyment of property; a non-transitory condition or persistent activity that interferes substantially and unreasonably with the use and enjoyment of property

Triage Suggestions



- ▶ Contact the family or friends about the situation and encourage them to investigate and intervene
- ▶ If it is a rental property, contact the landlord
- ▶ You can report cases of self-neglect or abuse of a vulnerable adult to the NH Bureau of Elderly & Adult Services by calling 603-271-7014
- ▶ You can report suspected child neglect to the NH Division Children, Youth & Families, 603-271-6562
- ▶ Sites harboring suspected solid waste or hazardous issues, contact NHDES Waste Management Division
– 603-271-2905

Junkyards



Is it a “Junkyard”?

Yes

Is it licensed?

Is the use permitted under your zoning ordinance?

No

Does it violate health, safety or welfare laws?

Hazardous and dilapidated building?

Nuisance or health violation?

Fire hazard?

Housing Standards?



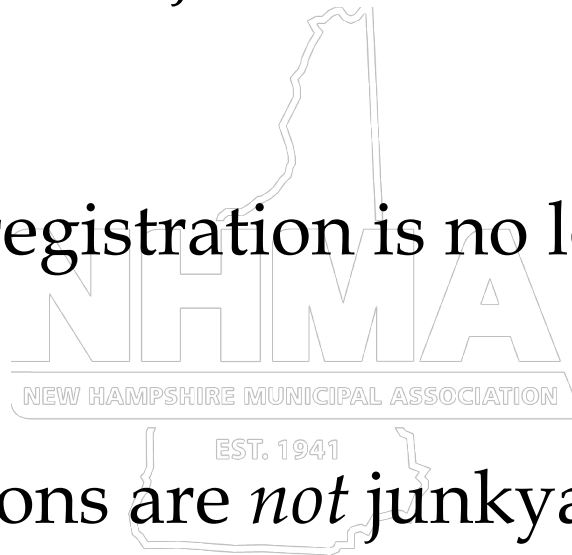


Is it a Junkyard? RSA 236:112



- Place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material
- Automotive recycling yards
- Machinery junk yards
- Motor vehicle junk yards

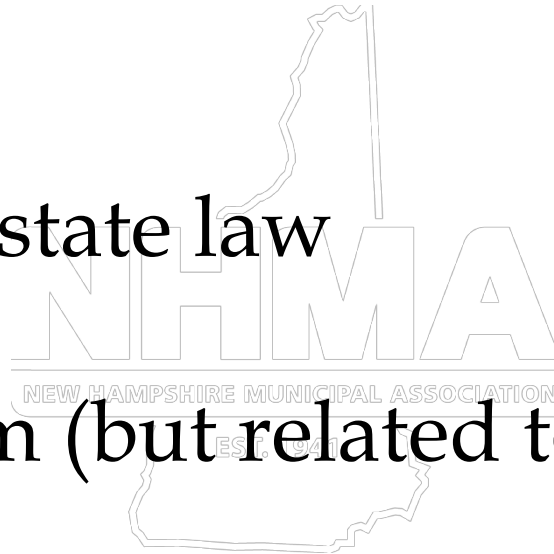
- It's *accumulation* of junk that matters, not what the owner is doing with it
- “Junk” is more than just broken-down motor vehicles
- Motor vehicle registration is no longer the standard
- Certain operations are *not* junkyards under state law
- Does your zoning ordinance define differently?



Is it Licensed?

The Basic Licensing Requirement

- Required by state law
- Separate from (but related to) zoning
- No grandfathering for license requirements



Is it Allowed Under Your Zoning Ordinance?



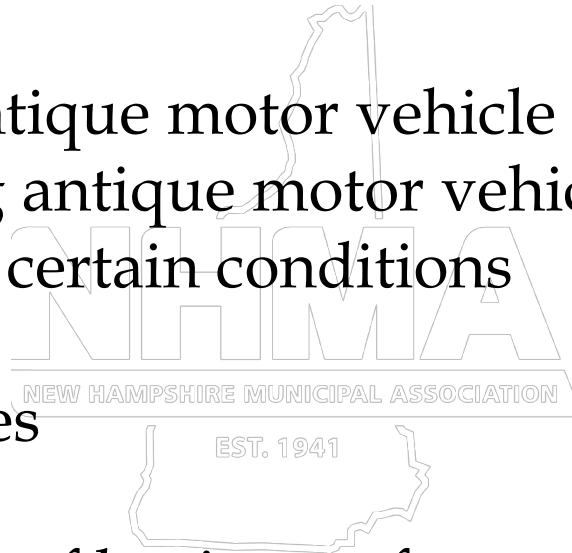
- How does your zoning ordinance define “junkyards?” (Local definitions will control)
- Are junkyards only allowed in certain zones?
- What restrictions are there?
- Must be approved location for license



Certain Operations are Exempt



- The principal place of business of any motor vehicle dealer registered with the director of motor vehicles
- Noncommercial antique motor vehicle restoration activities involving antique motor vehicles more than 25 years old under certain conditions
- Solid waste facilities
- The principal place of business of a new or used car dealer is not treated as a junkyard even though the location may contain a sufficient amount of wrecked vehicles or vehicle parts to meet the statutory definition



The Initial License Application



- A description of the land where the junkyard is to be located, by reference to permanent boundary markers
- In municipalities that have a zoning ordinance, a certificate from the ZBA stating that the proposed location is not contrary to the prohibitions of the zoning ordinance; and
- Certification of compliance with best management practices established by the DES for automotive recycling yards and motor vehicle junkyards
- Fee (\$250 max)



Hearing & Decision



- Public hearing required
- Decision within two weeks
- Consider
 - ✓ Suitability of applicant
 - ✓ Proposed location
 - ✓ General aesthetics

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Conditions of Approval



- The license is effective until the following April 1
- The certificate of location is part of the license
- The approval is personal to the applicant – cannot be assigned or assumed (236:121)
- Compliance with best management practices (236:115)
- Fencing requirements (236:123)
- Other reasonable conditions (e.g., hours of operation)

The License Renewal



An applicant may renew his or her license without a hearing upon payment of the annual license fee, provided the following are true:

- ✓ All the provisions of the junkyard statute have been complied with during the previous license period
- ✓ The junkyard has not become a public nuisance under the common law or RSA 236:119
- ✓ The applicant has not been convicted of any type of larceny or receiving stolen property, RSA 236:121; and
- ✓ For automotive recycling yards and motor vehicle junkyards, the applicant certifies compliance with best management practices established by the Department of Environmental Services. RSA 236:121, III





Junkyard Operating Without a License is a Nuisance



- Civil Penalty: \$50 for each day (236:119)
- Violation (236:127)
- Injunction (236:128)
- Citizen complaint (236:129)
- It may also be a zoning violation!



We have all the tools to meet your needs.

Drummond Woodsum's attorneys are experienced at guiding towns, cities, counties and local governments through a variety of issues including:

- Municipal bonds and public finance
- Land use planning, zoning and enforcement
- Ordinance drafting
- Tax abatement
- General municipal matters
- Municipal employment and labor matters
- Litigation and appeals

We use a team approach – small groups of highly specialized attorneys that work together to offer clients the counsel and support they need, precisely when they need it. It's an efficient way to practice law. It's also extremely productive and cost effective for our clients.



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Greg Im
Keriann Roman
Matthew R. Serge
E. William Stockmeyer
Shawn M. Tanguay
Jane F. Taylor
Matthew H. Upton
H. Bernard (Bernie) Waugh



**A special “thank you”
to Matt Serge and
Christine Fillmore from
Drummond Woodsum.**



WORKSHOPS






NHMA is strongly committed to providing our members a continuation of our education and training services during these challenging times. NHMA is fully functional and continues to support our members by using electronic communication and by utilizing teleconferencing tools to facilitate upcoming training events, such as these Virtual Workshops.

We hope you will join us in these virtual workshops and we are appreciative of your support.

We wish you, and your residents, good health!

Academy for Good Governance





Academy for Good Governance

New FREE Certificate Program

The Academy for Good Governance is a series of six courses created by NHMA and Primex, exclusively for elected governing body members (select board, town council, city council, board of aldermen, school board, and village district commissioners). Courses are taught by experienced attorneys and staff from NHMA, Primex, HealthTrust, and the New Hampshire School Boards Association (NHSBA). Attendees will receive education and training intended to make them more knowledgeable and effective in their governing body roles.

Attendance at the Academy is free and open to governing body members from municipalities and school districts that are members of NHMA and Primex. Space is limited, and registration will open on the NHMA website on April 6th. Attendees must attend all six courses to receive a Certificate of Completion. All classes run 5:00 pm – 7:00 pm.

CREATE NEW CONNECTIONS

Questions?
Call NHMA's Event Coordinator Ashley Methot at 800.852.3358 or email NHMAregistrations@nhmunicipal.org.

Don't miss this chance to build your skills and connect with fellow municipal officials!
Find out more: www.nhmunicipal.org/workshops

DATES AND LOCATIONS:

Governance & Governing Body Authority
Presented by NHMA/NHSBA
Wednesday, June 3, 2020, NHMA Offices

Financial Responsibility
Presented by NHMA
Wednesday, June 17, 2020, NHMA Offices

Employment Liability/Harassment
Presented by Primex
Wednesday, September 16, 2020, Primex Offices

Contracts and General Risk Management
Presented by Primex
Wednesday, September 30, 2020, Primex Offices

Health Care and Affordable Care Act
Presented by HealthTrust
Thursday, October 8, 2020, NHMA Offices

Effective Public Meetings
Presented by NHMA/NHSBA
Wednesday, October 21, 2020, NHMA Offices

WHO CAN ATTEND?

- Select board members ★
- Town councilors
- School board members
- City councilors
- Board of Aldermen
- Village district commissioners ★



REGISTER NOW!

Upcoming Trustee Training



2020 MUNICIPAL TRUSTEE TRAINING

BACK BY POPULAR DEMAND!

Terry Knowles, formerly with the New Hampshire Charitable Trusts Division at the Attorney General's Office, is coming out of retirement to explain the duties, responsibilities, and reporting requirements of municipal trustees and how these trustees interact with other municipal officials.

TENTATIVE AGENDA

9:00 am - 9:15 am:

Introduction to Charitable Trusts Division
Tom Donovan, Director, Attorney Generals Office

9:15 am - 10:45 am:

A Little Help From My Friends
Terry Knowles, Emeritus Assistant Director

10:45 am - 11:00 am: Break

11:00 am - 12:15 pm:

Governance and Right-to-Know Law
Stephen Buckley and Natch Greyes
NH Municipal Association

12:15 pm - 1:00 pm: Lunch

1:00 pm - 2:00 pm:

Breakout sessions with Cemetery Trustee and Trustees of Trust Funds representatives

2:00 pm - 2:15 pm: Break

2:15 pm - 3:30 pm:

Trust Fund Administration
Jamie Dow

NH Department of Revenue Administration

REGISTRATION FEE

\$65 per person
(Includes continental breakfast and lunch)

WHEN

**Wednesday,
June 10, 2020
9:00 am—3:30 pm**

WHERE

**NHMA Offices
25 Triangle Park Drive
Concord, NH 03301**

CONTACT INFO

**Ashley Methot
Events Coordinator
25 Triangle Park Drive
Concord, NH 03301
603.230.3340
amethot@nhmunicipal.org**

**FOR ADDITIONAL
DETAILS VISIT
www.nhmunicipal.org**

**REGISTRATION OPENS
EARLY APRIL 2020**



REGISTRATION
TO OPEN IN
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Complimentary Webinar



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25 Triangle Park Drive, Concord, NH
03301

www.nhmunicipal.org or
legalinquiries@nhmunicipal.org
603.224.7447 or NH Toll Free:
800.852.3358

nhmainfo@nhmunicipal.org /
800.852.3358 / www.nhmunicipal.org