



**NEW HAMPSHIRE MUNICIPAL ASSOCIATION**



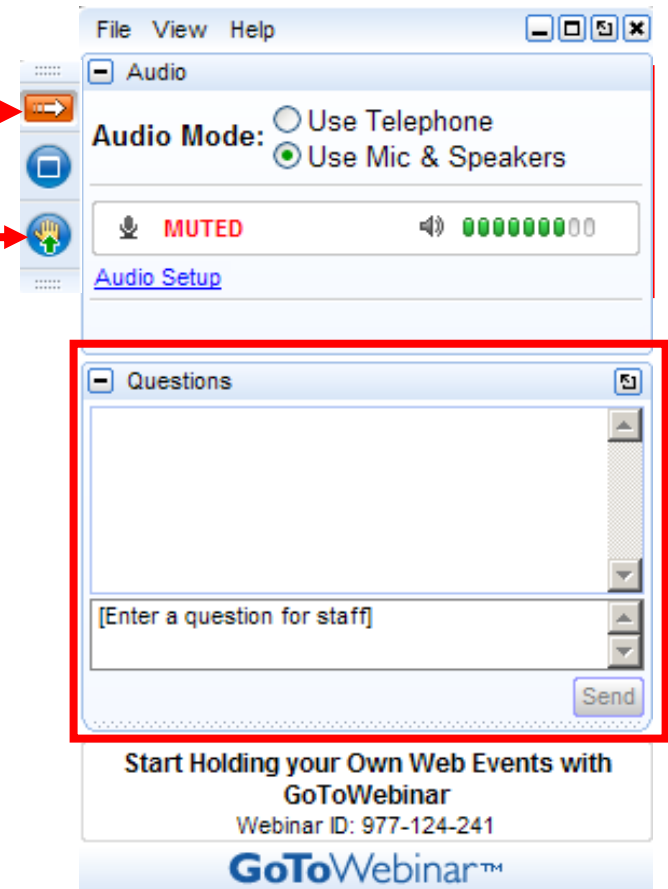
# Controlling Junk: Junkyard Enforcement 101

Margaret Byrnes, Esq., NH Municipal Association  
Matthew Serge, Esq., DrummondWoodsum

May 23, 2018

# How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed during and at the end of today's session



The screenshot displays the GoToWebinar interface. The 'Audio' panel is open, showing 'Audio Mode' with 'Use Telephone' selected and 'Use Mic & Speakers' selected. Below this, there is a 'MUTED' indicator and a volume level bar. The 'Questions' panel is also open, showing a text input field with the placeholder '[Enter a question for staff]' and a 'Send' button. Red arrows point to the 'Open Panel' and 'Close Panel' icons in the top navigation bar. A red box highlights the 'Questions' panel. At the bottom, there is a banner for 'Start Holding your Own Web Events with GoToWebinar' with Webinar ID: 977-124-241 and the GoToWebinar logo.



# Our Presenters



*Margaret Byrnes, Esq.*  
**Staff Attorney**



*Matt Serge, Esq.*  
**Drummond Woodsum**



## A Guide to Effective Enforcement Workshop: Investigating and Enforcing Code and Land Use Violations



9:00 am—12:30 pm  
Friday, June 1, 2018

NHMA Offices, 25 Triangle Park Drive, Concord

Cost is \$90, includes workshop and new book

Check out our NEW book!

*A Guide to Effective Enforcement:  
Investigating and Enforcing Code  
and Land Use Violations.*



Municipal officials, specifically code enforcement officers, fire chiefs, health inspectors, and building inspectors, are responsible for the enforcement of a variety of codes, regulations, and ordinances. These codes include the State Building Code, health and safety ordinances; and the municipality's respective zoning ordinance, site plan review regulations and subdivision regulations. In addition, municipal officials are responsible for ensuring compliance with the conditions of approval that accompany variances, special exceptions, conditional use permits, site plan approvals and subdivision approvals.

Effectively enforcing these various codes and regulations can pose a challenge to municipalities. Join Legal Services Council Stephen Buckley, Staff Attorney Margaret Byrnes and Attorney Matt Serge of Drummond Woodsum for this half-day workshop which will provide municipal officials with practical guidance on how to navigate the nuanced procedures associated with code enforcement, as well as practical advice in pursuing an enforcement action against non-compliant property owners. Our legal experts will address some of the most difficult issues under the law, including junkyards, boarding, dilapidated buildings and junkyards. There will be ample time for questions and answers on all aspects of the law.

For registration information, visit  
[www.nhmunipal.org](http://www.nhmunipal.org)

under Calendar of Events.

Questions? Call 800.852.3358, ext. 3350, or  
email [NHMAregistrations@nhmunipal.org](mailto:NHMAregistrations@nhmunipal.org).



# A GUIDE TO EFFECTIVE ENFORCEMENT

*Investigating and Enforcing Code  
and Land Use Violations*



NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
DRUMMOND WOODSUM, ATTORNEYS AT LAW



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?

- 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



# Is it Licensed?

## The Basic Licensing Requirement

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



# 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)





# Pop Quiz



# When Did New Hampshire Municipalities Get Responsibility to License Junkyards at Local Level?

1. 1955

2. 1960

3. 1965

4. 1970

5. 1975



**TOWN OF NORTH HAMPTON, NEW HAMPSHIRE  
ORDINANCE FOR THE CONTROL OF JUNK YARDS**



# Hearing & Decision



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



# 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.



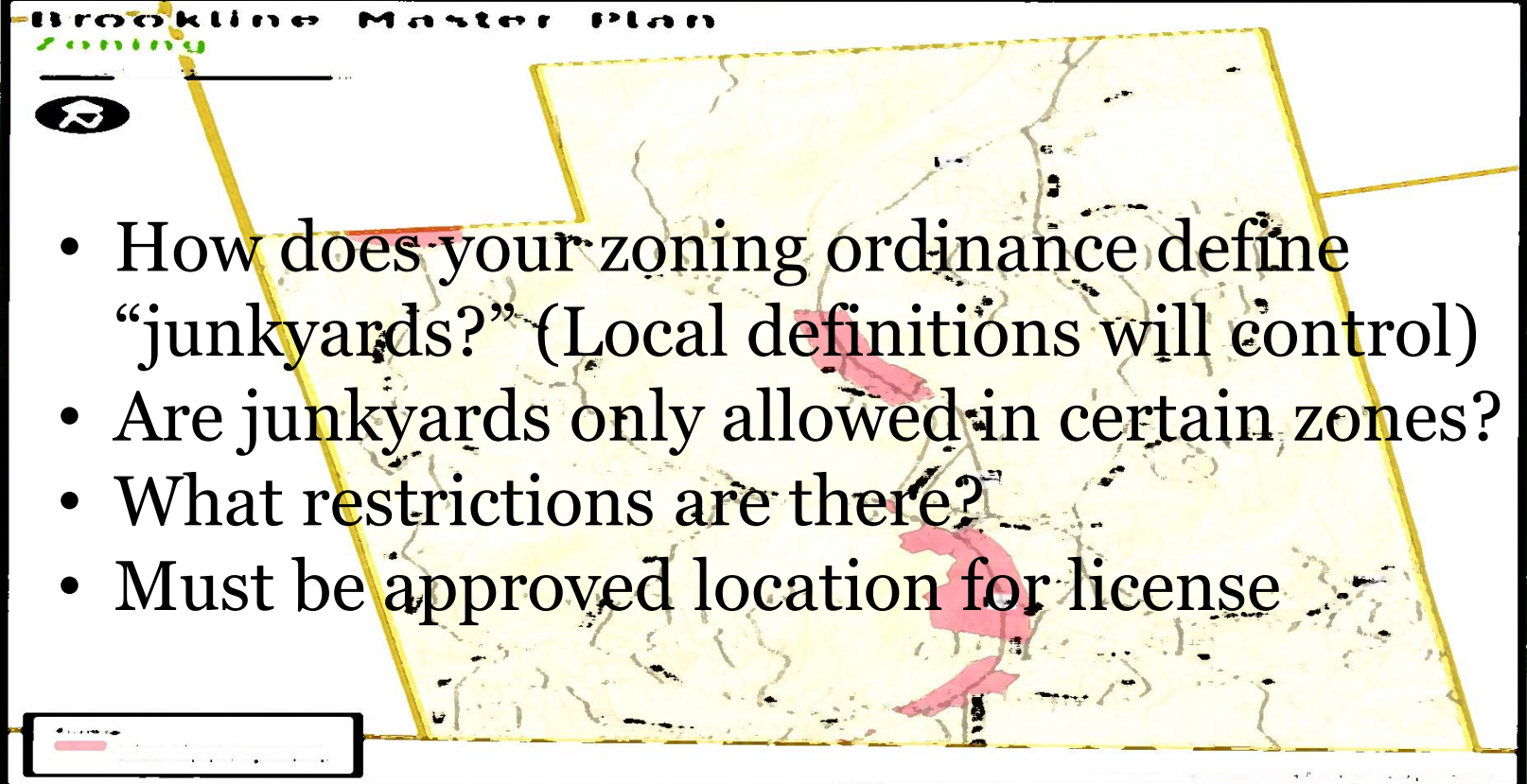
# Junkyard Operating Without a License is a Nuisance



- **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!**



# Is it Allowed Under Your Zoning Ordinance?



**Brookline Master Plan**  
**Zoning**

- 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







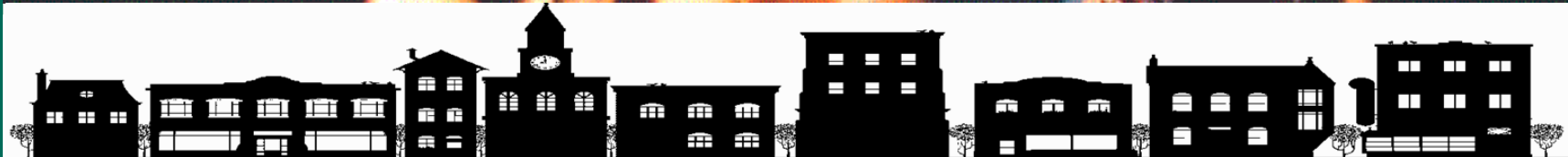
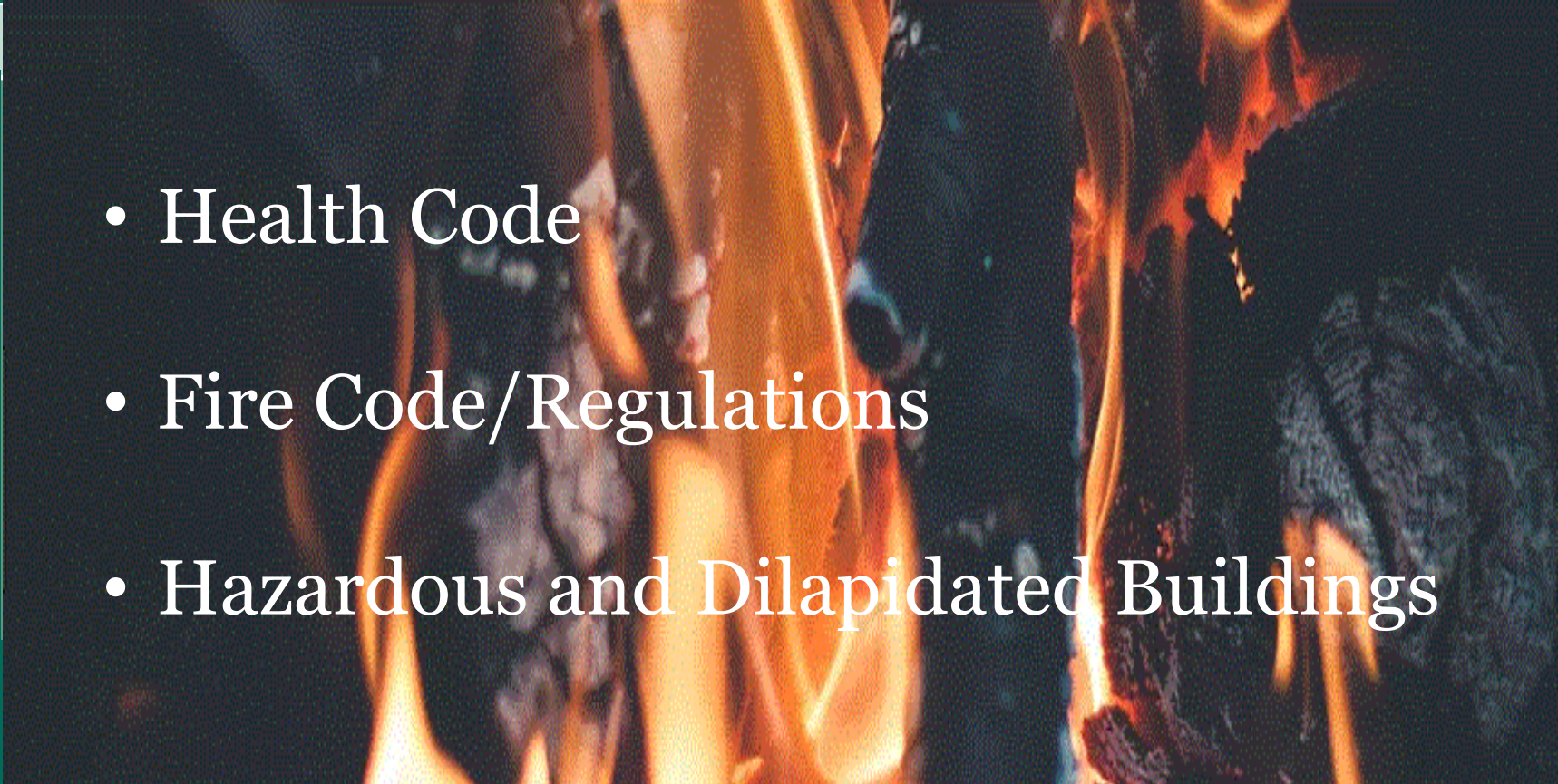
# Penalties for Violation of Zoning Ordinance

- 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)



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

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



# Nuisances, Rubbish, and other Gross Things

## 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
  - Investigation nuisances
  - Order nuisances removed
  - Remove nuisances
  - Recoup expenses
  - Order building vacated





# Pop Quiz



# Does RSA 236 Apply to All Municipalities, Whether or Not There is a Local Zoning Ordinance?

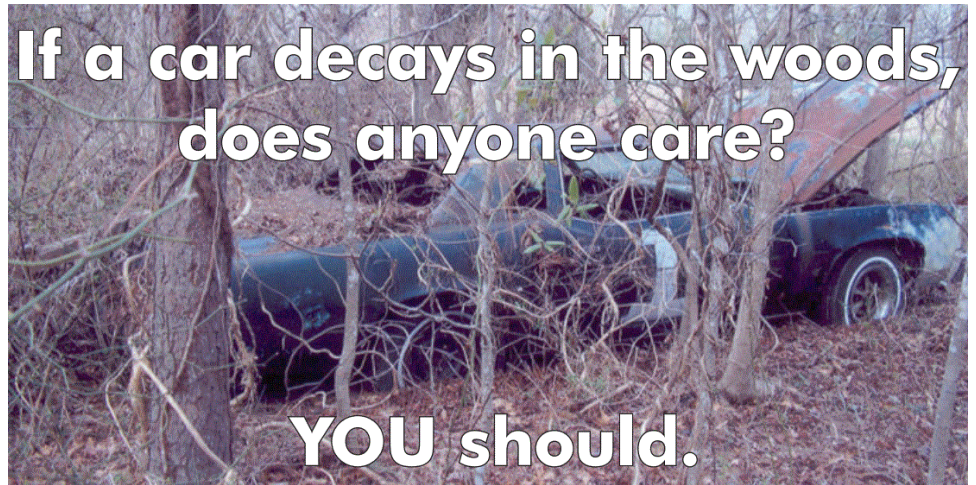
1. Yes

2. No

3. Unsure

If a car decays in the woods,  
does anyone care?

**YOU** should.



# Fire Hazards

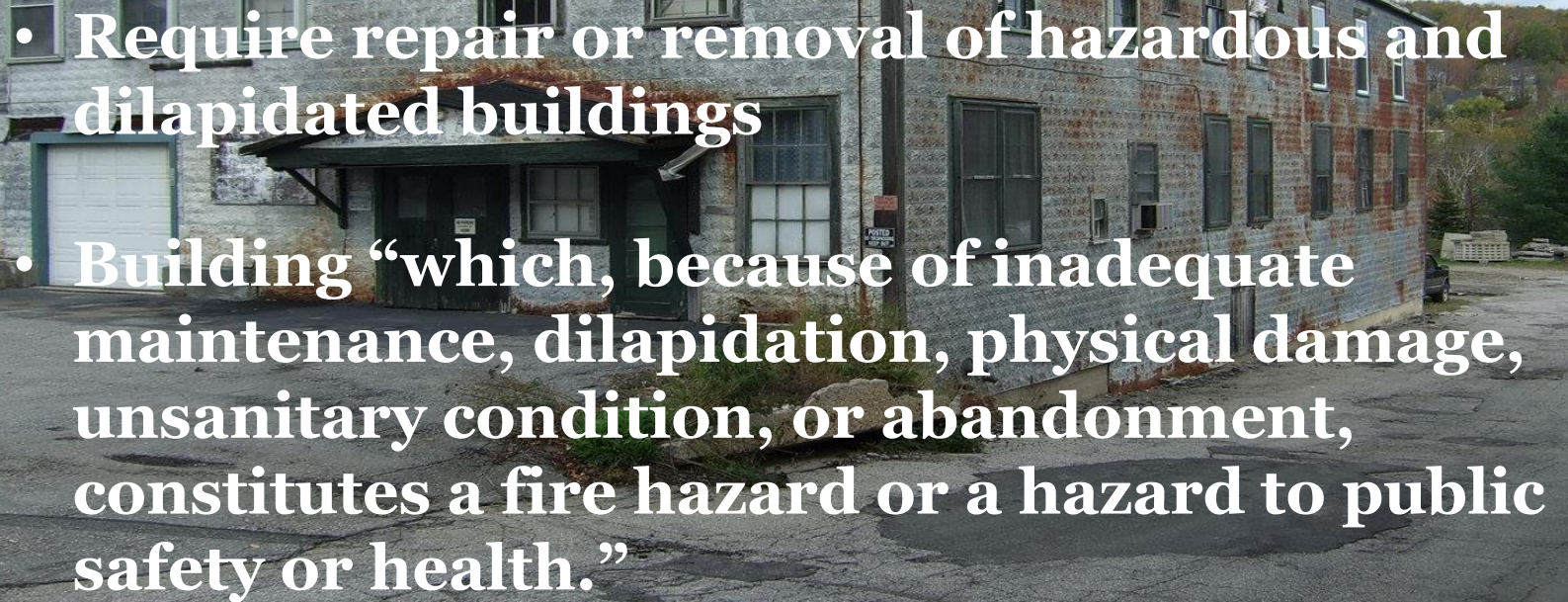
## RSA Chapter 154

- 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



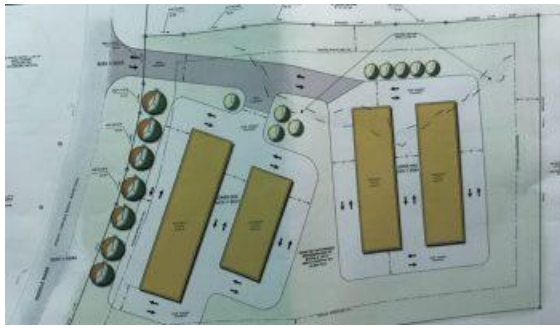
# Hazardous and Dilapidated Buildings

## 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.”



# Minimum Housing Standards RSA Chapter 48-A

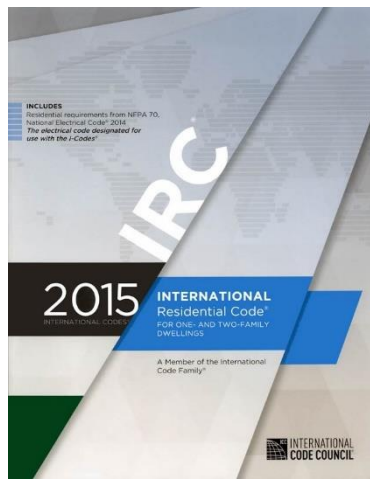


- Can adopt ordinances, codes, or bylaws to cause the repair, closing, demolition, or removal of dwellings that are “unfit for human habitation due to dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, 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](#)





## A special “thank you” to Matt Serge and Drummond Woodsum....

### We have all the tools to meet your needs.

Drummond Woodsum's Municipal Group **Mark Broth, Matt Upton, Matthew Serge, Anna Cole** and **Demetrio Aspiras** are experienced at guiding towns, cities, counties and local governments through a variety of issues including:

- Land use planning, zoning and enforcement
- Ordinance drafting
- Coastal and shoreline access
- 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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THANK  
YOU

*for attending  
our webinar  
presentation  
today!*

## Mission Statement

The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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