



ATTORNEYS AT LAW

Effective Enforcement:

Investigating and Enforcing Code and Land Use Violations

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New Hampshire Municipal Association – Concord

Presented by
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Code Enforcement Basics

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Step by Step Code Enforcement Process: 1. Complaint Intake

- Oral (phone or in-person)
 - Memorialize in writing 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 (RSA 91-A)

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Step by Step Code Enforcement Process:

2. Investigation

- Can violation be observed without entering property?
 - Visible from right-of-way
 - Visible from abutting property (with abutter consent)
 - Aerial photographs / satellite images / Google Earth
- If violation is not visible
 - Do not enter the property without owner consent
 - Do not get "creative" (e.g. flying a drone over the property); consider expectation of privacy
 - Obtain administrative inspection warrant under RSA chapter 595-B
- Document violation
 - Photographs
 - Video
 - Journal /Notebook

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Step by Step Code Enforcement Process:

3. Notice

- Meet with owner, tenant and/or occupants to discuss issue
- Written warning of violation with deadline for compliance
- Formal Notice of Violation and/or Cease and Desist Order warning of fines and penalties
 - Notices must cite code section(s) being violated
 - Set a deadline for curing the violation
 - Describe appeal rights
 - Example: 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
 - Send via both certified mail (return receipt requested) and first class mail, also e-mail if possible
 - Hand delivery may be necessary in some circumstances ("actual" notice)

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Step by Step Code Enforcement Process:

4. Court Enforcement

- Superior Court
 - Broad equity powers (declaratory and injunctive relief – “thou shalt not...”)
 - Better for complicated cases
 - More intimidating for many violators
 - Lengthier process / more expensive
- District Court
 - Cease and Desist orders
 - Use for straightforward violations
 - More efficient / less expensive
- Self-Help (enforcement without court order) not recommended

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What Is Being Enforced?

- Identify up front which statutes, ordinances, codes or regulations apply
- Who has authority to enforce applicable authority in your municipality?
 - Code enforcement, zoning enforcement, building inspector, fire chief, health officer, governing body, etc.
 - Generally, land use boards do not have enforcement authority
- Multiple officials may work together if more than one kind of violation exists

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Penalties for Local Land Use Violation

- RSA 676:15 (Injunctive relief)
- RSA 676:17, I (Civil penalties)
- RSA 676:17, II (Attorney's Fees & Costs)
- RSA 676:17-a (Cease & Desist Order)
- RSA 676:17-b (Local Land Use Citation – pleas by mail)
- RSA 31:39-d (Local Ordinance Citation - pleas by mail)
- RSA 31:39-c (Local Admin. Enforcement Ord.)

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

- Public Health Nuisance (RSA 147)
- Fire Hazard (RSA 154)
- Hazardous and Dilapidated Building (RSA 155-B)
- Housing Standards (RSA 48-A)

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Nuisances, Rubbish, and Other Public Health Concerns RSA Chapter 147

- State law, local regulations
- Prevention and removal of public health nuisances
- Sanitary and health conditions for licensing food-serving establishments
- Local health regulation violation = “violation”
- Health officer can
 - Investigate dangers to public health
 - Order nuisances removed
 - Remove nuisances
 - Recoup expenses
 - Order buildings vacated due to “a clear and imminent danger to the life or health of occupants or other person” (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 (RSA 154:21-a overlaps with RSA 147:16-a)

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Hazardous and Dilapidated Buildings RSA Chapter 155-B

- Governing body may order 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, RSA 48-A:14 (violation)

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International Property Maintenance Code

- 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, RSA 48-A:14 (violation)

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State Building Code & State Fire Code



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State Building Code - Current

RSA 155-A:1, IV:

- ICC 2021 – Building, Existing Building, Plumbing, Mechanical, Energy, Residential, Swimming Pool & Spa
- NFPA – National Electric Code 2020 (except arc-fault circuit)
- Local authority to adopt nationally recognized codes not inconsistent with State Code

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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 Marshal, except for one & two family dwellings.



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State Building Code – Which Version Applies?

- Version in effect when building permit application is received governs work under that permit. RSA 155-A:2, I.
- However, within 6 months after State code change, applicant may elect new or previous code.
- Permit necessary* – RSA 155-A:4, RSA 676:11

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

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Local Building Code Enforcement Ordinance – Minimum Required 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. May be ZBA
- Must have position of building inspector
- Fee schedule, or a provision authorizing the governing body to establish fees
- Certificate of Occupancy requirement.

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Required State Review

- As of 1/1/2023, RSA 155-A:10, IV:
 - **Proposed** municipal amendments to State building code require review by State Building Code Review Board to confirm they aren't in conflict with, or less stringent than, State code
 - Cities: at least 90 days before adoption; towns: within 10 days after final hearing
 - Response within 90 days for cities, 45 days for towns. No response = confirmation.

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Required State Review

- As of 1/1/2023, RSA 155-A:10, IV:
 - Within 30 days after municipal approval, file documentation that public hearing properly noticed and held and provision was adopted.
 - Amendments may not be enforced unless and until such documentation filed with Board. RSA 674:51. II.
- As of 1/1/2023, RSA 153:4-a, II:
 - Local amendments to State Fire Code must be submitted to State Fire Marshall to confirm not in conflict with / less restrictive than State code and based on sound engineering practices.

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Requesting State Assistance

- RSA 155-A:2, IV:
 - Any municipality that has adopted local enforcement mechanism under RSA 674:51
 - For buildings or projects owned by county, town, city, village district
 - If a project requires specialized knowledge or municipal staffing limitations dictate
 - May request State Fire Marshal assistance under state building permit system, including issuance of permits, inspections, certificates of occupancy – but Fire Marshal may refuse

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State Fire Code - *Current*

- RSA 153:1, VI-a:
 - Life Safety Code, NFPA 101, 2021 ed.
 - Uniform Fire code, NFPA 1, 2021 ed.
 - NH Admin Code Saf-FMO
- Applies to new construction and renovation.
- Applies to existing buildings, even if not in renovation. NH Admin Code Saf-FMO 302.01
- May be amended by fire marshal, acting with board of fire control, and the Commissioner of Safety, and ratified by legislature within 1 year

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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

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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

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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.

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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

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Ordering Building Vacated – RSA 147:16-a

- By Health Officer (RSA 147:16-a), or Building Inspector (RSA 674:52-a) or Fire Chief (RSA 154:21-a)
- Laws do 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
- Consider welfare obligations

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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

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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 of Children, Youth & Families, 603-271-6562
- Sites harboring suspected solid waste or hazardous issues, contact NHDES Waste Management Division – 603-271-2925

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Private Covenants

- Documents and agreements that limit the way property can be used
 - HOA Covenants
 - Restrictions on a particular deed
 - Easements held by adjoining owners
- **Towns and cities have no authority to enforce!**
- These are civil matters that the parties have to take up with each other in court

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Junkyards



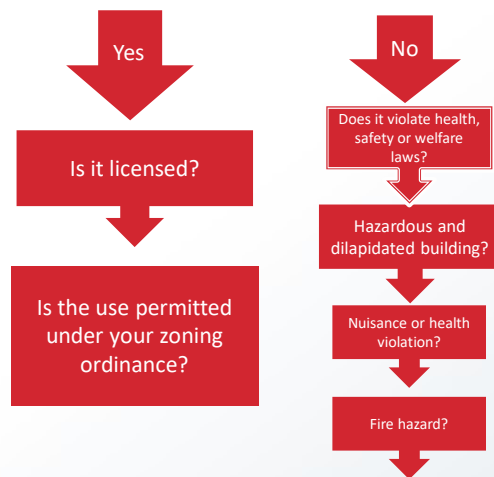
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Is it a junkyard?



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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

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Is it a junkyard?

- 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?

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Is it Licensed? The Basic Licensing Requirement

- Required by state law
- Separate from (but related to) zoning
- No grandfathering for license requirements (although location may be grandfathered)
 - What if never addressed before?

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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

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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

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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)

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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 July 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)

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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

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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!

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Questions?

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- Marijuana regulation, licensing, and moratoria
- Affordable housing development projects
- Major subdivision and development proposals
- Land conservation and environmental issues
- Labor and employment
- Public finance
- Tax increment financing (TIF)
- Municipal litigation
- Law enforcement defense and litigation
- Telecommunications law and utility franchise agreements
- Public meetings and Freedom of Access issues
- Town meetings and elections
- Legislation and government relations
- Negotiating state agency contracts
- Real estate and land use
- Ordinance drafting and enforcement

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