

WORKSHOP

HOT TOPICS IN ROAD LAW: A NEW HARD ROAD TO TRAVEL WORKSHOP

Stephen C. Buckley, Legal Services Counsel
Natch Greyes, Municipal Services Counsel
April 17, 2020

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Today's Presenters



Stephen Buckley
Legal Services Counsel

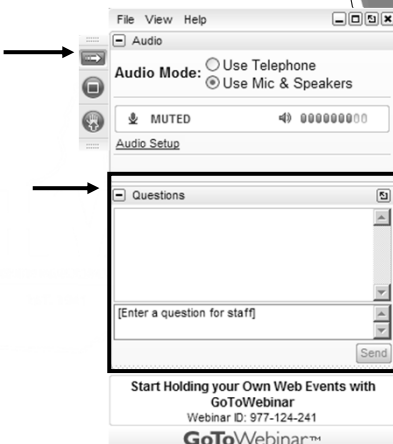


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How to Participate Today



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

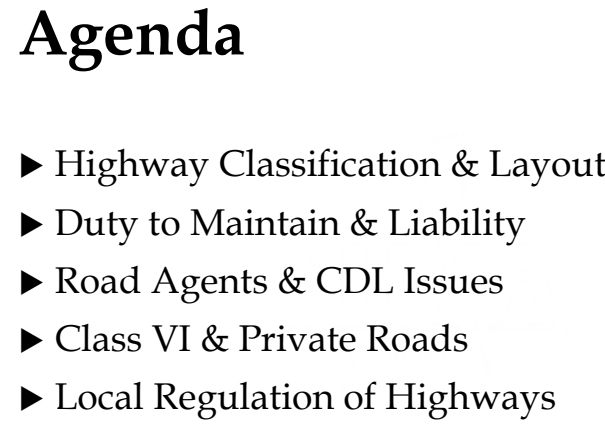
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Agenda







- ▶ Highway Classification & Layout
- ▶ Duty to Maintain & Liability
- ▶ Road Agents & CDL Issues
- ▶ Class VI & Private Roads
- ▶ Local Regulation of Highways

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What is a Public Highway? (Highway = Road)

-  Easement for viatic use
-  Public use
-  RSA 229:1 “Highways Defined” – Not really a “definition” statute.
-  Ownership separate from easement

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State Highway Classification



Class I	Primary State System
Class II	Secondary State System
Class III	State Recreational Road
Class III-a	Boating Access Roads

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Municipal Highway Classification



Class V	RSA 229:5, VI & 231:3
Class VI	RSA 229:5, VII & 231:21-a
Class IV	Urban Compact Section Highways - RSA 229:5, IV
Class II	Unimproved Class II - RSA 230:4

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Dedication vs. Acceptance

Dedication

- Case law/RSA 231:51 (*Duchesnaye*)
- Clear & unequivocal intent
- Filing & recording subdivision plan
- May be implied

Acceptance


- Vote of legislative body
- RSA 674:40: planning board, then town meeting
- May be implied (*Hersh v. Plonski*)
- RSA 674:40-a: delegated acceptance to select board

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Statutory Layout RSA 231:8

- Right to appeal
- Petition required
- “Occasion”
- Steps:
 - Notice
 - Planning Board, then legislative body
 - Hearing
 - Return
 - Damages

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Other Common Issues

-  Always get a deed, whether fee or easement
-  What is the width of a road?
-  RSA 231:27: Reestablish boundary lines
-  Street Plat 674:40, I(b) & :40-a

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Reclassification



- ▶ Reclassification
 - ▶ RSA 229:5, VII: Class V → Class VI
 - ▶ RSA 231:22-a & 229:5, VI: Class VI → Class V
- ▶ State → Municipal Road



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Conditional Layout of a Class VI Road as Class V

- ▶ The conditional layout statute, RSA 231:28, incorporates the “occasion” requirement of RSA 231:8.
- ▶ A petitioner requesting that the select board layout a Class V road over an existing Class VI at the petitioner’s expense must still show that an “occasion” exists for the layout, *Green Crow Corp. v. Town of New Ipswich*, 157 N.H. 344 (2008).
- ▶ In deciding whether there is an “occasion” to lay out the proposed Class V road over a Class VI road the select board must balance the public need for the road against the burden the road would impose upon the town.
- ▶ If the overall benefit to the town by making a road Class V is not outweighed by the future maintenance and safety burdens then the select board could deny the layout petition.



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Winter Roads
RSA 231:24
Nov. 15 – Apr 1


&

Highways to Summer Cottages
RSA 231:79 - :81
Apr 10 – Dec 10*

*This time period can now be extended to a period no earlier than November 15 and no later than April 30.




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Scenic Roads

- ▶ RSA 231:157 - :158
- ▶ Legislative body approval for designation
- ▶ Prior written permission of planning board



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**RSA 229:5: Duty to
Maintain Class V
Roads**

**RSA 231:57 Levy of
Highway Taxes**

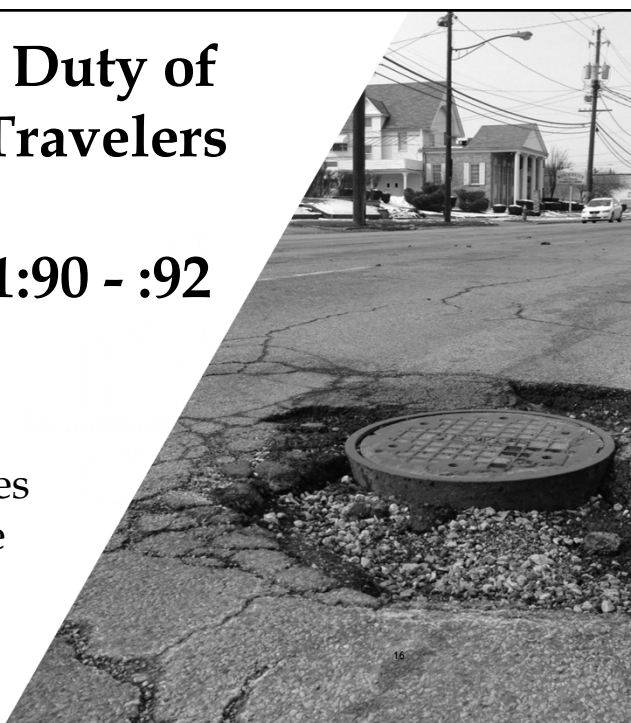
**RSA 231:59
Expenditure**

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**General Duty of
Care to Travelers**

RSA 231:90 - :92

► Correct
Insufficiencies
after Notice



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Duties and Supervision of Highway or Road Agent

- ▶ Has charge of the construction, maintenance, and repair of highways, bridges, and sidewalks and other activities as voted by the town.
- ▶ Additional duties that may be authorized by a vote of town meeting; rubbish collection, public dumps, parks, cemeteries, playgrounds, beaches, forests, and shade and ornamental trees.
- ▶ The select board may supervise the methods and manner of performance of road agents.
- ▶ Compensation of Road Agents set by the select board or by vote of town meeting.
- ▶ The select board may remove a Road Agent under RSA 231:65 for intentionally or deliberately neglecting to comply with lawful instructions of the selectmen, or, intentionally or deliberately refusing or neglecting to carry out the duties prescribed by law after written request by the selectmen.



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Who Must Have A Commercial Driver's License?

- ▶ **All operators (with a few exceptions) of commercial motor vehicles must have a commercial drivers license (CDL).**
- ▶ **Under RSA 259:12-e a "commercial motor vehicle" is defined as:**
 - ▶ (a) vehicles weight 26,001 pounds or more;
 - ▶ (b) vehicles with a gross combination weight rating or actual weight of 26,001 or more pounds, inclusive of any towed unit with gross vehicle weight rating or actual weight of more than 10,000 pounds;
 - ▶ (c) The vehicle is designed or used to transport 16 or more passengers, including the driver; or
 - ▶ (d) The vehicle is of any size and is used in the transportation of hazardous materials required to be placarded under 49 C.F.R. part 172, subpart F.
- ▶ **Excluding from the definition of commercial motor vehicles are:**
 - a) Emergency vehicles assigned or registered to a fire department or fire service organization when driven by fire service personnel in pursuit of fire service purposes, or returning from fire service purposes, or being driven in a parade.
 - (b) Recreational vehicles.
 - (c) Military vehicles when driven by non-civilian military personnel in pursuit of military purposes.
 - (d) Vehicles used exclusively for agriculture and farming within 150 miles of the owner's farm.



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Commercial Driver's Licensing & Drug and Alcohol Testing

- ▶ Federal regulations require municipal employers to perform drug and alcohol screening of employees with CDL driver's licenses in certain situations:
 - (a) the first time a driver reports to work for the employer,
 - (b) optional pre-employment testing after a conditional offer of employment is made if all prospective employees are tested in exactly the same manner,
 - (c) post-accident testing,
 - (d) testing upon reasonable suspicion of drug and/or alcohol use (based on specific, contemporaneous, articulable observations of the person's appearance, behavior, speech or body odors) and
 - (e) return-to-duty testing after a violation. 49 C.F.R. Part 382, Subpart C
- ▶ CDL drivers are required to submit to random testing for drug and alcohol use. 49 C.F.R. §382.305(a).



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Take a Break



See you in 10 minutes



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Class VI Roads



- ▶ RSA 229:5, VII
- ▶ **Public Roads**
- ▶ No duty to maintain
- ▶ Select board has regulatory authority
- ▶ “Subject to gates and bars”
- Can’t lock!
- ▶ Warning signs

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RSA 674:41



Generally prohibits issuance of building permit unless street giving access is on a Class V or better road

Does not require a certain *amount* of frontage

No grandfathering

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Municipalities are not obligated to allow building on Class VI or private roads.

Town-wide policy not required.

Examine on case-by-case

Can dwelling be safely reached?

Also suggests long-term municipal planning of services should be emphasized.

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Private Roads

RSA 231:81-a “Repair of Road Not Maintained By Municipality”

Often analogized to Class VI b/c municipality does not maintain.

- Analogy to “Driveway” may be better.
 - Town controls name and numbers.
 - Town can regulate connection to town highway.
- Towns control who may maintain all town highways.
 - Including Class VI highways.

Subject to property taxation by town.

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Law Allowing Local Street Regulations



Under the provisions of RSA 41:11, select boards are afforded the same authority as city councils to regulate local roads as provided in RSA 47:17, VII, VIII and XVIII.



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Liability for Damage to Town Roads

- ▶ Criminal Liability - RSA 236:38
- ▶ Civil Liability for Damage - RSA 236:39
- ▶ Restoration - RSA 236:11
- ▶ Obstructions - RSA 236:15
- ▶ Diverting Water - RSA 236:19



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Procedures for Adopting Local Street Regulations



- ▶ Steps:
 - ▶ Hold a Public Meeting
 - ▶ Provide Due Process Notice
 - ▶ Conduct a Public Hearing
 - ▶ Keep a Record of Enactment

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Bridges

- RSA 234:39 (no town bridge aid) v. RSA 234:4 (bridge aid)
- RSA 234:23: inspection
- RSA 266:18-c: signs



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Unsafe Bridges

A bridge in town has become unsafe – it needs repairs that the town cannot presently afford. Can the select board close the bridge indefinitely while awaiting funds for the necessary repairs?



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Weight Limits, RSA 231:190 & :191



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Driveways – RSA 236:13



- Planning Board authorized to approve driveway permits on town roads.
- Must adopt driveway regulations.
- Delegate permit issuance and enforcement to Road Agent or other designee.
- Continuing authority over any driveway even if no permit issued.
- Property owner can be ordered to fix driveway that is hazard to traveling public or threat to road integrity.

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What About Water Diverted Over the Road?



- ▶ If the water makes the road “unsuitable for public travel” or is “damaging the highway,” RSA 236:19 allows that person to be prosecuted.
- ▶ It is a violation if a person and misdemeanor if a business or other artificial person.



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What About Obstruction by Snow?



- ▶ RSA 236:20 – Applies to State highways only!
- ▶ Towns must enact local regulations to prevent obstruction by snow.



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Damages from Grade or Drainage Change – RSA 231:75


- Give *Notice* of road work to be done to abutters
- Schedule hearing for opportunity to be heard
- Grant hearing upon request



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Utility Lines & Excavations

- ▶ RSA 231:159 - :182:
Poles, cables, etc.
- ▶ RSA 231:183 - :189
- ▶ RSA Chapter 374/PUC
Regulations
- ▶ Trees: RSA 231:145 &
RSA 231:172

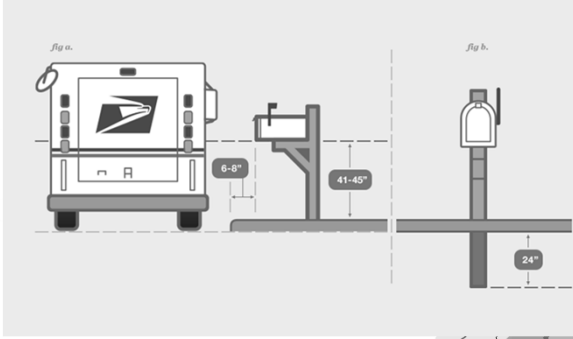


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Mailboxes



- ▶ Town may be liable for damage
- ▶ “Properly placed”



<https://www.usps.com/manage/mailboxes.htm>

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Street Signs



- ▶ All signs must comply with Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD). RSA 47:17, VIII(a).
- ▶ "Unauthorized" signs, signals, markings, or devices are prohibited under RSA 265:14.



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Street Names & Numbers

- Assigning names – RSA 231:133
- Assigning numbers – RSA 231:133-a
- E-911




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Parking Regulations




- ▶ Enforceable Without Signs - Parking on Bridges, Sidewalks, Crosswalks
- ▶ Requiring Local Ordinance- E.g. Parking In "No Parking" Areas
- ▶ Parking Meters - RSA 231:130.
- ▶ Special Enforcement Mechanisms - Towing, Immobilization, Denial of Car Registrations, etc.
- ▶ Public Parking Facilities - Special Procedure under RSA 231:114-:129

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Off Highway Recreational Vehicles RSA 215-A

Snowmobiles RSA 215-C



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OHRV's: New for 2019!

- ▶ Prior to 2019 legislative session, the governing body of a municipality could vote to allow (or not allow) OHRVs to use local highways, with no notice or hearing requirements.
- ▶ Now, the governing body is required to have "a duly noticed public hearing advertised at least 14 days in advance in a public location in the city or town and notification to abutters by verified mail pursuant to RSA 451-C:1, VII" in advance of any change in local rules. The cost of the notice to abutters is to be borne by the person or organization asking the governing body to alter the currently existing local rules.

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Upcoming Virtual Workshop

Hot Topics in Road Law - A New & Improved Hard Road to Travel Virtual Workshop

9:00 am - 12:30 pm (pre-registration is required)
Friday, April 17, 2020

Cost: \$65.00, does not including publication.

How Does the Select Board grant permission for use and repair of a Class VI Road?

What can we do about Postal Service Vehicles causing ruts in road shoulders?

What are the rules governing CDL licensing for municipal employees?

Join NHMA Legal Services Counsel Stephen Buckley and Municipal Services Counsel Natch Greyes for the answers to these questions -- and many more! The attorneys will discuss the designation and management of Class VI roads, including how and when building permits can be issued under RSA 674:41, granting permission for use of Class VI roads by OHRV's and snowmobiles, and allowing abutting property owners to undertake private repairs. This virtual workshop will also cover management of local highway construction, repair and maintenance through the office of an elected or appointed road agent or expert agent, and the requirement of CDL licensing for municipal highway employees. This virtual workshop will also provide a review of the local regulation of highways by the select board including, parking, street numbers, street names, weight limits, mailbox location, as well as driveway regulation by the planning board.

Online pre-registration required!
Questions? Call 800.852.3358, ext. 3350,
or email NHMAregistrations@nhmunicipal.org

REGISTER TODAY!



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Upcoming Virtual Workshop

A Guide to Effective Code Enforcement Virtual Workshop


9:00 am - 12:00 pm
Friday, May 8, 2019

Cost is \$65, includes supplement to:
A Guide to Effective Enforcement: Investigating and Enforcing Code and Land Use Violations

Building inspectors, code enforcement officers, fire chiefs, health inspectors, and various other municipal officials are responsible for the enforcement of a variety of codes, regulations, and ordinances related to the use of land. These include both local regulations, such as zoning ordinances, site plan and subdivision regulations, health regulations, and the conditions of approval that accompany many land use board approvals, as well as state law, such as the State Building and Fire Code and statutes governing junkyards.

Effectively enforcing these various codes and regulations can pose a challenge to municipalities. Join Attorneys Matt Serge and Christine Fillmore from the law firm of Drummond Woodsum, for this half-day virtual 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, dilapidated buildings, and health codes. There will be ample time for questions and answers on all aspects of the law.


REGISTER TODAY!



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Check out NHMA's Guide to Effective Enforcement at www.nhmunicipal.org

For registration information, visit www.nhmunicipal.org under Calendar of Events.
 Questions? Call 800.852.3358, ext. 3350, or email NHMAregistrations@nhmunicipal.org





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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 NHMARegistration@nhmunicipal.org

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WHICH CAN ATTEND?

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

DATES AND LOCATIONS:

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

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

Employment Liability Measurement
Presented by Primex
Wednesday, September 16, 2020, Primex Office

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

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

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

If interested, contact Ashley Methot at amethot@nhmunicipal.org

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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 General's 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 MAY

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today!*

Mission Statement

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