



# HAMPTON

## PLANNING, ENGINEERING & DEVELOPMENT DEPARTMENT

Policy Title:	Building Permitting & Inspection Policy	By-Law Ref.:	Building By-Law
Policy No.	2024-01-BPIP	Supersedes:	PD 2020-001POL PD 2020-002POL
Effective Date:		Council Date:	

### INTRODUCTION

The New Brunswick Building Code Administration Act, Section 5(1), provides that:

*“Subject to this section, a council of a local government may make a building by-law to prescribe standards for the building, locating or relocating, demolishing, altering, structurally altering, repairing or replacing, or any combination of the work, of a building.”*

It is important to note that by adopting a Building By-Law, Hampton is responsible for the enforcement of the Code. The purpose of applying building code through the issuance of Building Permits is to protect the health, safety and welfare of the public and building occupants.

*“In Canada, building Inspectors and municipalities owe a duty of care to the owners and users of a building. The standard of care owed by the municipality is one that includes omissions as well as actions. In other words, the municipality cannot avoid liability simply by refusing to inspect. The municipality is responsible for ensuring that a building meets building code requirements for the sake of quality and safety. This duty of care has been clearly articulated by the courts.”*

*Municipal Liability: Building Construction & Inspection Issues*

*Andrew J. Heal B.A., J.D., LL.M. & Louis Pierre Gregorie, B.A.Sc, LL. B. Blaney Mc Murtry, LLP*

*“In Ingles vs. Tutkaluk Construction, the Court held that: “municipalities owe a duty of care to all who it is reasonable to conclude might be injured by the negligent exercise of their inspections powers.” The list of persons who “might be injured” is extensive and includes not only the initial owners and occupiers of buildings, but also any subsequent owners or occupiers. It further includes any person present at the building, or persons owning or occupying or present on adjoining property. It can even extend to non-owners/ occupiers who have financial interest in the building, such as mortgagors and investors.”*

*Building Inspection and Building Code Claims – A Brief Overview*

*Greg Van Berkel & Jonathan de Vries, Shillingtons LLP*

Hampton issues numerous Building Permit applications annually, to which the National Building Code of Canada (Code) and by-laws apply. A proper policy & procedure, along with a strong By-Law, for the evaluation of such applications and performing inspections, ensures work is going to be carried out appropriately to protect the life, property and the public within Hampton

Landlords, business owners and residents have a substantial investment that can be jeopardized through code violations. Therefore, the ultimate person being served is the owner of the property that assumes that the occupied property has been duly inspected and that every effort has been made to ensure that the property meets the Code.



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### POLICY STATEMENT

Hampton does not have the resources to inspect all aspects of construction to determine compliance with the Code at all times; therefore, Hampton shall rely primarily on the requirement of the Building Permit Approval and Inspection Stages.

Building Permit Approval is based on a review of a submitted application, plans and other applicable documents deemed necessary for the evaluation of the work, and will only be issued when:

1. an application, completed to the satisfaction of the Building Inspector to ensure proper evaluation of the work, together with the appropriate permit fee, have been received;
2. the *Development Officer or Planning Director* has approved the *work* with the issuance of a *Development Permit*; and
3. the proposed *work* conforms with the Building By-Law.

Inspections will be performed through the construction at select stages to ensure the development and maintenance of a safe and viable community. Matters observed as a matter of immediate life safety will be considered the exception. This policy provides the reasoning and responsibilities surrounding the issuance of Building Permits within Hampton. Hampton will focus on the protection of individual and community interests when reviewing permit applications and plans based on health, fire, structural and general safety standards.

### PURPOSE

The purpose of this policy is to:

1. Define the Building Inspector's responsibilities with respect to the administration and enforcement of provincially legislated duties and the Hampton Building By-Law;
2. Define areas that will be reviewed under the Building Permit Program;
3. Outline the general responsibilities of the Building Inspector, to confirm compliance with the most recently adopted version of the National Building Code of Canada, herein referred to as "Code"; and
4. Establish protocol for evaluations initiated by a complaint.



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### DEFINITIONS

1. **By-Law** means any by-law enacted or adopted by Hampton
2. **CAO** means the Chief Administrative Officer of Hampton
3. **Code** means the most recent provincially adopted version of the National Building Code of Canada, including amendments, revisions, and errata subsequently issued hereto.
4. **Councilor** means person elected to the Hampton Council
5. **Department Director** means the person (or designated representative) responsible for the Department for Planning, Engineering and Development within Hampton.
6. **Building Inspector** means a person who has the primary responsibility for the enforcement of by-laws or other laws with respect to building and construction, appointed by Council under the Local Governance Act,
7. **Existing Structures** means a building or structure that has previously been occupying a site prior to the issuance of a building permit.
8. **Initiate Prosecution** means the laying of information and issuing a summons under the provisions of the NB POPA System, by use of either an Information the Criminal Code of Canada or a Summary Offense Ticket under the Summary Proceedings Act.
9. **Land Gazette** means the Service New Brunswick database utilized by Hampton for the purposes of identifying outstanding permit requirements on a specified property.
10. **Local Peace Officer** means any member of a Municipal, Provincial or Federal law enforcement agency that is contracted to provide police services to Hampton.
11. **New Construction** means entirely new building, structure or significant extension to an existing structure, for which a building permit has recently been issued or has yet to be issued.
12. **Staff** means any person employed in any capacity, paid or otherwise, by Hampton.
13. **Hampton** means the town of Hampton.



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### RESPONSIBILITIES

Hampton has the responsibility for evaluating construction, by means of Building Permits, within its boundaries for the purposes of developing and maintaining a safe community. Hampton has many members that play a key role in the municipality, and as such, each role has been identified as it relates to the contribution of developing and implementing by-laws and policies. This is done by reviewing a completed application, submitted plans and other applicable approvals to ensure compliance with Code and associated by-laws as they pertain to design, construction and alteration of buildings and structures. The following are key members of Hampton including responsibilities as part of the organization.

1. The CAO, or designate, will oversee policy changes, when required, to ensure that the best interests of Hampton residents and the Corporate are served.
2. Councilors will refer all perceived infractions to the Department Director for investigation, will cease involvement at that time and will refer any inquiries relating to the infraction to the Department Director.
3. Hampton Staff will also refer all perceived infractions to the Department Director for investigation, will cease involvement at that time and will refer any inquiries relating to the infraction to the Building Inspector.
4. The Department Director, or designate, will provide senior support to the Building Inspector as needed, and will prepare the policy and/or tools required to provide consistent and effective Building Inspection Service to Hampton residents and businesses.
5. The Building Inspector responsibilities as related to Building Permits includes, but is not limited to, the following:
  - a. Administration of the By-Law and Policies which includes, but not limited to:
    - i. Responding to requests for information/complaints etc.
    - ii. Receiving copies of supporting permits from provincial and/or federal agencies
    - iii. Maintaining records of all activities.
    - iv. Monthly Building Report



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6. Review of applications and plans against Code and by-laws;
  - i. Reviews are conducted in a timely manner after all relevant information is received from the applicant including applications, plans and any other reports deemed necessary to evaluate the work. Should more information other than what has been submitted be required to ensure the work meets the applicable Code, the application will be placed on hold until such time as the information is received by the owner, at which time the review shall resume.
  - ii. At the request of the Building Inspector, Hampton may engage a qualified professional, as defined in the Building By-Law, for the purposes of a review in cases that may be deemed outside the knowledge of the Building Inspector.
  - iii. Any specifications, scale drawings, documents etc. submitted, that have been certified by a qualified professional, as defined within the Building By-Law, will be accepted by the Building Inspector without detailed review, as the qualified professional will be considered as an expert.
  - iv. It will not be a duty of the Building Inspector to provide Code or plan corrections; the Building Inspector will provide Code reference for any errors found upon review; however, it will be the responsibility of the applicant to provide the corrected information in order to resume the review.
  - v. All applications that are withdrawn and/or discontinued prior to the issuance of a building permit, as a result of requested information from the Planning department to the applicant not being received, shall be null and void after six (6) months.
    - i. Any fees received as part of the application process shall be refunded if the application has not received approval from the Building Inspector.
- b. Perform inspections in a timely manner, following being notified by the owner or duly authorized person,
  - i. for all buildings at the following construction stages as described below:
    - a. **Site Condition:** completed prior to establishing the foundation to review the location of building, soil conditions, drainage, and any other aspect as determined by the building inspector and/or development officer (or representative).



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- b. **Foundation & Sewer Connection:** completed prior to backfilling the building foundation and municipal services, to review foundation footings, walls, cover, details, drainage, damp proofing, lateral support, anchorage, and any other aspects as determined by the Building Inspector, and service lateral connection, cover, material, bedding, and any other aspect as determined by Public Works (or representative).
  - c. **Structural:** completed prior to placing insulation, vapor barrier or other energy components, to review installation of structural details, truss, joist, wall framing, beams, girders, lateral supports, structural ties, weather barrier (exterior) and any other aspect as determine by the Building Inspector
  - d. **Energy:** completed prior to the placing of interior drywall (or sheeting/other) and exterior cladding to review insulation, vapor barrier, ventilation, sealant and any other aspect as determined by the Building Inspector.
  - e. **Fire Safety & Protection:** completed prior to the placing of interior finishes such as paint and trim and request for occupancy to review, fire separations and ratings, egress, exit paths, and any other aspects as determined by the Building Inspector.
  - f. **Final Occupancy:** completed prior to project completion and/or issuing a Certificate of Occupancy to review smoke/carbon alarm, self-closing devices, handrails, guards, stairs, ventilation, exterior finish, lot grading and any other aspects as determined by the Building Inspector, and to confirm compliance with by-law including receipt of any inspection previous reports, record drawings and/or provincial/federal permit(s)..
- ii. Sewer inspections are only completed if a Municipal Sewer Connection Permit is issued and may be inspected by either the Building Inspector, Development Officer and/or Public Works representative.
  - iii. When conducting inspections, the Building Inspector will focus on the aspects of the component or which they have been notified to inspect and any other aspect the Building Inspector deems necessary, as related to the plans (or submitted changes thereto) and the Code.
  - iv. The Building Inspector shall perform inspections for the scheduled inspection group, as provided by the Department, and shall not perform any inspection on the day of receiving the inspection request. Inspection requests submitted outside of business



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hours shall be received the following day. Exceptions shall be considered only for emergencies and/or to be included in an already scheduled inspection group.

- v. At the request of the Building Inspector, Hampton will engage a qualified person, as defined in the Hampton Building By-Law, for the purposes of building inspection in cases that may be deemed outside the knowledge of the inspector.
  - vi. At the time of occupancy, the Building Inspector shall not issue an occupancy certificate until all inspections are complete with no reinspection, and copies of record drawings and provincial/federal permit(s) are received.
  - vii. At the time of project completion, the Building Inspector shall not close the building permit until all inspections are complete with no reinspection, and copies of record drawings and provincial/federal permit(s) are received.
- c. Enforcement of the Building By-Law and associated Policies as required.
- i. Hampton will follow the current By-Law Enforcement Policy when investigating a complaint regarding the structural integrity of existing structures and/or work without a permit. If any complaint is found to be valid, this policy shall apply at that time.
  - ii. The Building Inspector shall only provide an assessment for an existing building or structure's, with approval from the Department Director, and shall be nonintrusive with consideration to fire and life safety

### **Enforcement Protocol**

The Building Inspector is encouraged to use their Code knowledge, written requests or make use of education, where deemed appropriate, to rectify an issue if compliance is not immediately forthcoming. Wherever possible and appropriate, it is preferable that the Building Inspector obtain voluntary or negotiated compliance related to:

- i. absent information versus denying the issuance of a permit outright; and/or
- ii. observed Code and By-Law issues versus issuing an order.

Written requests provide evidence of the steps taken by the Building Inspector when trying to resolve an issue, provide details of the opportunities for compliance given to the person in question, and provide excellent evidence of the attempts to gain compliance should an issue result in action to initiate a prosecution. Certain infractions, such as public safety, structural integrity, or instances where voluntary



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or negotiated compliance is neither forthcoming nor appropriate, leave the Building Inspector little recourse other than denying the permit outright, issuing an order or initiating prosecution for continued work. In such cases, the Building Inspector should take all necessary steps to ensure that the most appropriate charge with the greatest chance of a successful prosecution is laid via legal counsel.

Building Inspector s will not be required to respond to information, inspection, or other duty requests unless it is during regular business hours, within the Building Inspector’s scope of duty. However, if the violation poses significant risk to public health, safety or the environment, the Building Inspector can/will respond outside of regular business hours.

The Building Inspector maintains the right to require, at the owner’s expense, uninspected work to be uncovered to ensure compliance in the event the owner fails to contact Hampton for the required inspections, as provided in the Building By-Law. Work that is not inspected may result in the property being placed on Land Gazette for having outstanding building by-law issues, registration of a Notice to Comply on Land Registry or initiating prosecution.

### **Associated Policies**

By-law Enforcement Policy (BEP)

Manufactured Building Policy (MBP)

Commercial Building Policy (CBP)