



Can I (We) Do That?



Can I (We) Do That?

A Guide to the Golden Rules For an Effective and Efficient Council



Can I (We) Do That?

Objective of the Presentation!!



TO KEEP YOU OUT OF TROUBLE!!!



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HOW ARE WE GOING TO DO THAT?

- Presentation of scenarios
- Small group discussion
- Report back from tables
- The Golden Rules



Can I (We) Do That?

Legislation vs Actions



Now
Let's get down to business



Scenario #1



Scenario #1

Having some contracting experience Councillor Dan notices that a building in the Town is not being constructed in accordance with the Permit issued by the Town. He talks to the Town Manager and asks that he advise the contractor that Council has adopted the National Building Code as the minimum building standard and he is to conform with them.



Question

Can Council require that buildings be constructed in accordance with the National Building Code?



Answer

Yes!

Section 414 (3)

“a Council shall adopt the National Building Code of Canada and supplements or amendments to that Code and may adopt standards which exceed the requirements of that Code and its supplements and amendments.”



Implications

- Buildings could be constructed in a manner to be a life safety hazard
- Council could be held liable for damages or injuries resulting from any substandard building



The Golden Rule

The Golden Rule:
**Treat others
the way you
would like
to be treated**



The Golden Rule

- By Resolution of Council must adopt the National Building Code as the required standard for construction in your community
- By Resolution of Council require that compliance with the standards of the National Building Code be on the owner or developer
- Make these two Resolutions annually (when adopting the budget)
- **Note:** Councillor Dan should refer instances of non-compliance to Town Manager for investigation and action



Scenario #2



Scenario #2

After a period of heavy rain Councillor Dan notices that one of the roads has a considerable number of pot holes. He drops by the depot and instructs the public works foreman to have class “A” placed on the road and have it graded.

Can he do that?



Answer

No!

Individual Councillors have no authority to direct staff to undertake any municipal work unless provided with that authority by Council.



Implications

- Staff may feel intimidated by your requests or directions ... staff are actually not obliged to carry out individual requests
- Taking such direction could lead to operational confusion
- Could lead to confusion and conflict
 - between Council and staff and
 - Councillor and Council
- If the work is done by a contractor the Councillor could be held responsible for the cost of the work



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The Golden Rule

Council
Decides

Senior Staff
Implements



Policy

Staff takes direction from council as a whole



Scenario #3



Scenario #3

It's tax time and Councillor Dan sees that the Town Clerk is overburdened with the issuance of the tax bills. Recently retired and being a community minded individual he has decided to spend more time at the Town Hall to help the Town Clerk with preparing the bills.

Can he do that?



Answer

No!

- Councillors can have access to public records as outlined in Section 215 of the Act
 - During business hours
 - Without interfering with employees work
 - Under the supervision of the Town Clerk or delegated employee (records may not be removed)
- Other records-subject to Council policy



Answer

No!

- Councillors should have access to records, other than public, under the following circumstances:
 - It is necessary to perform their duty as a Councillor
 - Subject to the approval of Council's "Access to Records" policy



Implications

- Violation of the ATIPP Act
- Gain access to private and confidential information
- Staff may feel intimidated by their presence
- Not deemed to be acceptable activity by fellow Councillors



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The Golden Rule

- Councillors should be aware of their role and the role of the Administrator.

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Scenario #4



Scenario #4

The Clerk has called a Privileged Meeting to evaluate the submissions received from the local contractors for the snow clearing contract. Councillor Dan's cousin has submitted a proposal and he is looking forward to seeing what the snow clearing costs will be for the Town during next winter.

Can Councillor Dan participate in the evaluation of the proposals?



Answer

Yes!

- Section 212 of the Act prohibits a Councillor from discussing or voting on a matter in which a relative has a monetary interest.
- A relative of a Councillor means a father, mother, spouse, cohabiting partner, sister, brother, child, step-child, ward, mother-in-law, father-in-law, sister-in-law, or brother-in-law of the Councillor



Implications

- **None**
- Councillor Dan is not prohibited from participating in the evaluation of the snow clearing proposals.



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The Golden Rule

- A Conflict of Interest exists if:
 - A Councillor has a monetary interest distinct from that arising from his or her function as a Councillor.
 - A Relative of Councillor has a monetary interest.
 - A Councillor is an officer, employee, or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest.



Scenario #5



Scenario #5

The time has come to vote on the snow clearing contract. Councillor Dan received so much negative kickback from the public for participating in the evaluation of the submissions that he told the Mayor that since his cousin is the preferred bidder he would refuse to vote on the matter.

Can Councillor Dan refuse to vote on the snow clearing contract?



Answer

No!

Section 212. (2) of the *Act* states:

A Councillor shall not abstain from voting on a motion or resolution before the Council unless he or she is required to abstain from voting because of a conflict of interest under section 207 or he or she has been permitted to abstain by a majority vote of the other Councillors in attendance at the meeting.



Implications

Their seat on Council is vacated!!!!

Section **206. (1) (h)** of the Act states:

“The office of a Councillor becomes vacant where he or she fails to vote on a matter before the Council when required to vote”



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The Golden Rule

- Councillors are elected to public office to represent the residents and are therefore required to take a position on each matter before Council unless the Act prohibits them from voting or they are authorized to abstain by their fellow Councilors.
- Take a position on all issues before council
- Vote in accordance to the provisions of the Act



Scenario #6



Scenario #6

During the recent election campaign Councillor Dan pledged to have a new ball field developed in the Town. After assessing their infrastructure priorities Council decided to pave a road instead. Councillor Dan has now decided to publicly take a strong position against the decision.

Can Councillor Dan do that?



Answer

No! (At least he shouldn't)

- *Before meetings* - you have a responsibility to become informed on matters coming before council
- *During meetings* - It is your responsibility to:
 - Take a position on all matters
 - Communicate your position in a reasonable way
 - Listen with an open mind and respect the positions of others
 - Vote on the issues as required



Answer

No. (At least he shouldn't)

- *After meetings* – publicly support the decisions of Council, even if you voted against a motion



Implications

- Leads to confusion and animosity
- Creates a dysfunctional Council
- Can damage Council / community relations
- Could lead to conflict between
 - Councillors
 - Council and staff



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The Golden Rule

- Listen to and respect the views of others
- Seek compromise with those of differing views
- Publicly show support for and solidarity with Council when decisions are made



Scenario #7



Scenario #7

At a recent Council meeting Councillor Dan expressed his frustration at activity going on in the Town that he didn't agree with and wanted to regulate.

In closing he made the state “We’re the Council of this Town and we can regulate whatever we want to!”



Scenario #7

- **Can a Council make regulations to deal with whatever issues they have or activity they want to control?**



Answer

No!

- Unless authorized by Municipalities Act or Urban and Rural Planning Act
- Councils must make regulations governing:
 - Water Supply
 - Private Water and Sewer Systems
 - Building Regulations (National Building Code)
- Subject to the approval of the Minister
 - Control and manage Fire Departments
 - Fire Department Operations



Answer

No!

- All other regulations are discretionary (optional) and must be authorized under the Municipalities Act (Section 414).



Implications

- Not regulating when needed
- Regulating when not needed
- Trying to regulate but not having the capacity
- Overly restrictive regulations
- Not enforcing regulations



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The Golden Rule

- Make sure you have the authority
- Explore all other options
- Ensure you have the means and political will to enforce
- Council cannot regulate any activity not included in the Act.



Scenario #8



Scenario #8

Councillor Dan has been keeping his eye on an old building in the Town that he feels is a safety hazard. At a recent Council meeting he indicated he wanted Council to issue an Order to the owner to have the building removed.

- **Can a Council issue orders to enforce its regulations, permits issues, and general authority provided to it by the Act?**



Answer

Yes!

- If Council has authority
- If an order is warranted
- If Council is prepared to enforce the order
- All orders are discretionary
- All orders are appealable to an Appeal Board.



Implications

- The decision by Council to issue an Order must be well thought out.
- The issuance of an Order should be the last resort and only exercised when all other avenues to address the matter have been exhausted.



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The Golden Rule

- Ensure the following four (4) steps are adhered to when issuing and enforcing municipal orders:
 - Determine Council authority
 - Investigate the offense
 - Prepare and issue the order
 - Be committed to enforce the order



Scenario #9



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Scenario #9

Council's back hoe has been breaking down quite a bit lately and Council told the Manager of Public Works to contact the local distributor and have a new one delivered.

- **Can a Council acquire an asset without going through a competitive process?**



Answer

No!

- A statutory framework has been established to enable public bodies to achieve best value, transparency and accountability in procurement.
- The statutory framework includes:
 - Public Procurement Act (PPA) and Regulations
 - Public Procurement Policy
 - Took effect March 24, 2018



Answer

No!

- PPA requires a Request for Proposal (RFP) process to acquire services, equipment, and capital infrastructure.
- Specifications/scope of work must be developed for an RFP to ensure you obtain what is required
- PPA requires evaluation criteria to be established so that cost is no longer the single deciding factor for any acquisition of services and/or goods.



Answer

No!

- Municipalities are required to meet with any unsuccessful supplier to provide the rationale on why their proposal was not successful, if requested
- Supplier has the right to lodge a complaint against the municipality if they feel they were not treated properly in the RFP Process



Implications

- Council:
 - Will be violating the requirements of the Public Procurement Act
 - Could be held responsible for the violation by the Public Procurement Agency
 - Could be required to pay an unsuccessful bidder for lost profits if not undertaking a defensible evaluation of the submissions



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The Golden Rule

- Municipalities must ensure they have staff trained in the requirements of the PPA
- LW Consulting is developing a Training Program to provide Municipal Councillors and Administrators with:
 - hands on training on how to develop an RFP
 - Developing specifications and scope of work
 - Developing evaluation criteria/processes to respond to requests from unsuccessful suppliers to an RFP



Golden Rules for Councillors



Golden Rules for Councillors

- Relationship Barriers:
 - Lack of personal integrity
 - Demeaning to staff
 - Undermining the decisions of Council
 - Increasing own workload; not trusting
 - Criticizing new ideas
 - Lack of focus



Golden Rules for Councillors

- Keys to Success:
 - Provide clear, consistent sense of direction
 - Build a foundation that involves teamwork
 - Recognize distinct difference of roles of Council and Administrator
 - Follow accepted chain of command
 - Respect role of Mayor



Conclusion

Information on LW Consulting



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Information on LW Consulting

- Team of Gerard Lewis, Keith Warren, and Dan Noseworthy performing work related to:
 - Feasibility studies/municipal organization review
 - Priority setting facilitation/strategic planning
 - Commissioner: Town Plans/Property Tax Assessment
 - Development of policies, procedures and bylaws
 - Recruitment and selection of municipal staff
 - Collective bargaining
 - Councillor and Staff Training



Conclusion

Contact Information

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