Tioga City Commission

June 2, 2014

Minutes

Commissioners Present: Germundson, McClelland, Spivey, and Goldade

Commissioners Absent: Davidson

Visitors Present: Rich Zakrajsek, Harlan Engberg, Melissa Koch, Desiree Hanson, Kevin Killough (Tioga Tribune), Ryan Girt (AE2S), Charles Vein (AE2S), Loren Hoffman (AE2S), Daryl Carlyl (AE2S), John Grubb, Larry Maize, Chris Norgaard, Dee Doman (Nomarco Const.), DRC Contracting, LLC.

The regular meeting of the Tioga City Commission was called to order at 7:00 pm by President Germundson at Tioga City Hall.

McClelland made a motion and Spivey seconded to dispense the readings of May 19, 2014 minutes. Germundson mentioned updating the minutes that we are not selling the city stage to the Visitors Promotion Fund but that they are reimbursing the city for the cost. With that update to the minutes, all voted aye. Motion carried.

Commissioners Reports:

McClelland presented a rough draft of the drawings for the city hall proposal. He indicated it could possibly include a 2 story building, which includes city hall, police department, museum, and the 2nd story would include storage for the museum and possible additional offices that can be leased out until needed. He also indicated there may possibly be room for a public library.

Spivey indicated the police department has started a community service program that has completed 70 hours of cleanup on the streets and community in the Tioga. He has received positive feedback from those doing the required community service.

Germundson indicated that the city is currently working on the final details for purchase of the Key Building for the new city shop location.

Public Input: none

Old Business:

Representatives from AE2S presented a Benchmark Analysis for Comparable Communities for the City of Tioga. It included population and staffing estimates for the City of Tioga over the next 5 years. They also encouraged the commission to consider additional assessments and projects that could include updating an utility master plan, 5 year capital improvement plan, utility rate study, and evaluate land use planning under a Program Management Service. Commissioners encouraged AE2S to put together an estimate of costs for those services and present them in the next commissioner meeting.

Discussion was held on the current wastewater holding dikes/lagoons project. Harlan Engberg indicated they had three bid proposals ranging from $4-$6million for that project. Harlan indicated that regardless of what wastewater facility treatment the commission board decided to go with that they would still require the larger lagoons for storage and holding capacity. Julie Ramos Lagos and Spivey encouraged that a water sample be taken to determine water quality for possible Class A options and consideration of possible Wastewater treatment facilities. Spivey made the motion to approve the bid for $4.7 million for the lagoon project in order to move forward with the SRF loan, McClelland made a second motion. All voted aye, motion carried. Rich Z. and Jeff Moberg were told to pull a water sample right away for determination of possible Class A options. Harlan Engberg indicated that BNSF has been working on the railroad tracks on 105th.

Julie Ramos Lagos stated that the City of Tioga has hired Hannah Odegaard as a part-time summer intern for the office . She will start on June 3, 2014.

Melissa Koch gave an EDC update, explained the approved funding from the Magic Rural Fund towards a new city brochure, that a public hearing will be scheduled for the public to learn about the Renaissance Zone, she is still looking for volunteers to serve on a Renaissance Zone committee, and that the EDC is considering of developing the city lots themselves and renting out the commercial, office, or residential space.

McClelland made a motion to approve the first reading of the Ordinance 2014-3 regarding Alcohol requirements, Goldade made the second motion. All voted aye, motion carried.

**ORDINANCE NO. 2014-3**

AN ORDINANCE AMENDING ARTICLE 6 CHAPTER 8 RELATING TO THE LICENSES OF ALCOHOLIC BEVERAGES.

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BE IT ORDAINED BY THE CITY COMMISSION AND MAYOR OF THE CITY OF TIOGA NORTH DAKOTA:

Article 3 Chapter 7 of the Ordinances of the City of Tioga shall be amended to reads as follows:

ALCOHOLIC BEVERAGES

Section

7.0301 Definitions.

7.0302 License required.

7.0303 License--Qualifications.

7.0304 License--Application.

7.0305 License renewal.

7.0306 Application--Investigation of.

7.0307 Licenses--Classifications.

7.0308 License--Fees.

7.0309 Issuance and transfer of licenses--Restrictions--Hearing required.

7.0310 Restrictions on sale, service or dispensing of alcoholic beverages.

7.0311 Restrictions on sale or consumption in a public place.

7.0312 Restrictions on sale to obviously intoxicated person.

7.0313 Licenses--Termination, suspension, revocation.

7.0314 Unlawful practices.

7.0315 Inspection of licensed premises.

7.0316 Penalty.

7.0301. Definitions.

In this article, unless the context or subject matter otherwise requires:

1. “Alcohol” shall mean neutral spirits distilled at or above 190 proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. “Alcoholic beverages” shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. All alcoholic beverages shall be deemed intoxicating.
3. “Beer” shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
4. “Business complex” shall mean any shopping center, shopping mall or similar physical facility where two or more retail businesses are located and conducted, whether or not such businesses are separately owned and operated.
5. “Council” shall mean the governing body of the City of Tioga.
6. “Entertainment” shall mean all forms and types of entertaining patrons of licensed premises, whether such entertainment is provided by means of live performances or audio and/or video presentations, whether remote or prerecorded; provided, however, that “entertainment” shall not be deemed to include the use of any regularly broadcast television or radio programs, or coin-operated music machine.
7. “Licensee” shall mean any person to whom a license has been issued under the provisions of this article.
8. “Licensed premises” shall mean the bar area, dining rooms, meeting rooms, outdoor dining areas and all other areas or spaces where alcoholic beverages are regularly or occasionally sold, served or dispensed. In the alternative, any person applying for a license under the provisions of this article may describe, depict or otherwise identify in his application for a license various areas or spaces which shall constitute the licensed premises. The council, in its discretion, may require any applicant to so describe, depict or otherwise identify the licensed premises as a condition for the issuance of a license under the provisions of this article.
9. “Lodge” or “club” shall mean any corporation or association organized for civic, fraternal, social or business purposes, or for the promotion of sports. Said lodge or club shall have at least 200 members at the time a license is applied for and shall have been in existence for at least 20 years prior to the time of application for the license; provided, that a local veteran’s organization which has not existed for 20 years but is a subsidiary of and chartered by a national organization which has had a bona fide existence for more than 20 years shall be deemed to be a “lodge” or “club” for purposes of this article.
10. “Off-sale” shall mean sale of alcoholic beverages in original packages solely for consumption off or away from the premises where sold. An off-sale license shall authorize the licensee to conduct such off-sale at the place designated in the license.
11. “On-sale” shall mean sale of alcoholic beverages for consumption only on the licensed premises. An on-sale license shall authorize the licensee to conduct such on-sales at the place designated in such license or as may be authorized by a Class E license issued pursuant to the provisions of this article.
12. “Package” and “original package” shall mean any container or receptacle holding alcoholic beverages when such container or receptacle is corked or sealed by the manufacturer thereof and when the cork or seal has not been removed or broken prior to the sale of such package to the purchaser thereof.
13. “Person” shall include any natural person, association, partnership, corporation and any clerk, agent and abettor thereof.
14. “Public place” shall mean any building, property or other place that the general public can occupy as a matter of right or any building, property or place that is open to the general public by implied or express invitation, either for business purposes or otherwise.
15. “Sale” shall mean all methods or modes of furnishing alcoholic beverages, with or without consideration, whether by selling, dispensing, exchanging, bartering or other similar means of transfer. Such term shall include all transactions, whether for cash, credit or other considerations and shall include, but not be limited to, transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the consideration is called a “donation”, or used to purchase any ticket, token or other object redeemable for alcoholic beverages.
16. “Transfer” shall mean a change in location of the licensed premises; or any assignment, sale, exchange or other conveyance of any license issued pursuant to the provisions of this article. A transfer shall be deemed to have occurred upon the assignment, sale, exchange or other conveyance of 50% or more of the interest in a licensee partnership or stock in a licensee corporation, whether such assignment, sale, exchange or other conveyance occurred in one single transaction or multiple transactions.

7.0302. License required.

No person shall engage in the business of the sale at retail of alcoholic beverages without first obtaining a license pursuant to the provisions of this article and posting the same in a conspicuous place on the licensed premises.

7.0303. License--Qualifications.

No license shall be issued to any applicant except as follows:

1. If the applicant is an individual or partnership, such individual or partners must be a legal and bona fide resident of the City of Tioga and state of North Dakota and be at least 21 years of age.
2. If the applicant is a corporation, the manager of the licensed premises or another full-time employee of the licensee who is at least 21 years of age must be designated in the license application as an agent of the corporation.
3. No license shall be issued to any person, partnership or corporation as the representative or agent of another, and the license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.
4. If the applicant is a lodge or club, said applicant shall be deemed qualified for a Class “A” license only and no other class license shall be issued to any lodge or club.
5. The applicant or manager must not have been convicted of a felony.
6. The building in which the business is to be conducted must meet local and state requirements regarding sanitation and safety.
7. Taxes on property for which application for license is made must not be delinquent.
8. If applicant’s place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

7.0304. License; Application.

Any person desiring to obtain the issuance or transfer of a license authorizing the sale at retail of alcoholic beverages shall make and file an application for such license with the council. Said application shall be made on a form approved by the council and made available through the office of the city auditor. The application shall contain the following information:

1. The type of license being applied for.

2. The street address and legal description of the premise is sought to be licensed, accompanied by a reasonably accurate sketch map of the location and extent of the licensed premises if they form part of a building containing premises which are not licensed for the sale of alcoholic beverages.

3. The name(s), date of birth(s) and current address of the applicant and/or manager.

4. All addresses and legal residence that the applicant and/or manager have resided at during the prior five years.

5. If the applicant is the natural person, a statement to the effect that the applicant is a lawful residents of the United States of America.

6. If the applicant is a Corporation, a statement to the effect that the applicant is incorporated in North Dakota or that is the foreign corporation registered as such in North Dakota and in either event, in good standing with the North Dakota Secretary of State.

7. The names and addresses of all partners or shareholders with a stake of 5% or more. A list of the with the name and addresses of the governing body of the applicant.

8. A statement to the effect that with regard to the five years preceding the date of application neither the applicant nor the manager has been convicted of a felony or of any violation of any state or federal law pertaining to the sale of alcoholic beverages.

9. A statement to the effect that neither the applicant nor the manager has had a license for the sale of alcoholic beverages issued and revoked to him within the preceding five years of the application.

In addition to the information supplied on the application form, the council, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

7.0305. License renewal.

The holder of an existing license issued pursuant to the provisions of this article who desires to renew said license for another license year, shall not be required to make and file a new application under the provisions of this section; provided, however, that said licensee shall be required to make annual payment as provided and to submit a written request for renewal and an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, and such other information as the city may require. The affidavit shall be on a form to be prescribed by the city auditor’s office. The written request, affidavit and payment shall be due by June 30 of each year.

Renewal Fee- The annual fee to renew an existing licenses is as follows:

1. Class AB--$1000.00
2. Class A--$750.00
3. Class B--$750.00
4. Class C--$750.00
5. Class D--$750.00

7.0306. Application--Investigation of.

The chief of police or other employee or agent of the city as appointed by the city commission, shall investigate the facts stated in the application filed with the council pursuant to the provisions of section 7.0303 of this article, and shall report the results of his investigation to the council prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the chief of police as to whether or not such license should be granted. In addition, the council may request and consider such other recommendations and reports of other city officials. Unless specifically requested by the city auditor’s office or police department at the time of the filing of the application, an investigation and report is not required for a transfer involving only a change in location of the licensed premises or a transfer wherein the existing license is to be exchanged for a license of lower category.

7.0307. Licenses--Classifications.

Licenses authorizing the sale at retail of alcoholic beverages within the city of Tioga shall be divided into the following classes:

1. Class AB. - “Class AB” license shall authorize the licensee to sell “on-sale” and “off-sale.”
2. Class A. - A “Class A” license shall authorize the licensee to sell “on-sale” only.
3. Class B. - A “Class B” license shall authorize the licensee to sell “off-sale” only. No Class “B” license shall be issued to any applicant whose primary business is not, or upon the issuance of the license applied for, shall not be the sale of alcoholic beverages on an off-sale basis.
4. Class C. - A “Class C” license shall authorize the licensee to sell beer “on-sale” only.
5. Class D. - A “Class D” license shall authorize the licensee to sell beer “off-sale” only.
6. Class E. – A “Class E” license shall authorize the licensee to sell beer and/or wine “on-sale, subject to the following conditions:
   1. The a “Class E” license are restricted to licensee who operate a business which 50% or more of its gross receipts are from the preparation and serves of food.
7. Class F. - A “Class F” license, in the nature of a special permit, shall authorize the holder of an existing “on-sale” license to engage in the sale of alcoholic beverages (on-sale only) on such licensed premises as may be designated in the “Class F” license, subject to the following restrictions and conditions:
   1. That any holder of a city license, except “Class E” may apply for a “Class F” license.
   2. That any holder of a license to sell “on-sale” alcoholic beverages, issued by competent jurisdiction within Williams County and the adjacent counties may apply for a “Class F” license.
   3. A Class “F” license may be issued for a period of time not to exceed 14 days, and may include Sundays.
   4. Except as hereinabove provided, a Class “F” license shall not include days or times when the sale of alcoholic beverages is prohibited by state law and/or city ordinances.
   5. Persons less than the age of twenty-one (21) years of age may be allowed to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit subject to the following conditions:
      1. The area where persons less than twenty-one (21) years of age must remain must be specifically set forth in the permit;
      2. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one (21) years of age may deliver and sell the beer, wine or sparkling wine;
      3. Subject to 7.0310, the area where persons under twenty-one (21) years of age may remain may not be the qualified alcoholic beverage licensee’s fixed or permanent licensed premises as shown on the state and local governing body’s alcoholic beverage license issued pursuant to §5-02-01, N.D.C.C., and comparable city ordinance;
      4. No person less than twenty-one (21) years of age within the area described in the permit may consume, possess or receive alcoholic beverages.

7.0308. License--Fees.

1. Initial issuance fee--For a license granted which is not a renewal or a transfer of an existing license, the following fees shall be payable as hereinafter provided:
   1. Class AB--$2500.00
   2. Class A--$2000.00
   3. Class B--$2000.00
   4. Class C--$2000.00
   5. Class D--$2000.00
   6. Class E--$1000.00.
   7. Class F-- $100.00
2. No fee shall be charged for the initial issuance of a license hereunder to a lodge or club, nor shall any fee be charged for the initial issuance of a license to any liquor establishment licensed by any other political subdivision over which the city of Tioga has subsequently acquired jurisdiction by annexation, provided, however, that such liquor establishment must have been in existence for at least fifteen (15) years prior to such annexation by the city of Tioga. The initial issuance fee charged shall be the difference between the city fee and the fee originally charged by the issuing subdivision.
3. A non-refundable payment in the sum of 10% of the initial issuance fee shall be paid upon the submittal of the application for a license; the remainder of the fee shall be due within 30 days of issuance of the license by the council.
4. The transfer of a license issued pursuant to the provisions of this article shall require a transfer fee equal to the total annual cost of the license being transferred; provided, however, that a transfer fee shall not be imposed for the following-described transfers:
   1. When an individual holding a license issued pursuant to the provisions of this article has become deceased, the license may, upon application of the personal representative of the decedent, be transferred to another individual, partnership, firm or corporation.
   2. When any corporation holding a license issued pursuant to the provisions of this article voluntarily dissolves, a license may be issued to any individual shareholder in such corporation who held said stock at the time of the issuance or last renewal of the license and whose application is approved by the holders owning a majority of the outstanding shares of stock in said corporation prior to the time of dissolution; provided, however, that such shareholder shall be subject to all the requirements of this article relating to the application for a license and to the qualifications of a licensee.
   3. When any licensee under the provisions of this article applies for and receives the approval of the council on the change of location of the licensed premises.
   4. When an individual licensee desires to transfer a license to a corporation in which the licensee is the owner of at least 75% of the outstanding shares of stock in said corporation; provided, however, that such licensee may not permit his stock ownership in the transferee corporation to fall below a majority of the outstanding stock in said corporation without the prior approval of the council and payment of the required transfer fee. The transferee corporation shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a licensee.
   5. When a licensee is a corporation or partnership which desires to transfer a license to another corporation or partnership having substantially the same partners or stockholders; provided, however, that such transferee corporation or partnership shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a licensee. No Class “F” licensee shall transfer his license under any circumstances.
   6. In addition to the fees set forth in paragraphs A, B and E of this section, each application for a new license, except Class “F”, or a transfer of a license pursuant this article shall, at the time of submission of his application for such issuance or transfer, pay to the city auditor, the sum of $500.00 as a minimum non-refundable fee for the investigation which is required by this article. Any additional costs incurred by the city in connection with such investigation shall be paid by the applicant prior to the hearing on said application and shall not be refunded in the event that the applicant is not successful.

7.0309. Issuance and transfer of licenses--Restrictions--Hearing required.

1. When an application for any license is filed with the council pursuant to the provisions of this article, the city auditor shall cause notice to be published in a newspaper of general circulation within the city of Tioga, that the applicant has applied for a license to sell alcoholic beverages at the place named in the application or for the transfer of an existing license, and that the application will be acted upon by the council on a certain day and time. A hearing on the application shall be held at the next regularly scheduled council meeting. The expense of the publication, in addition to the license fee, shall be paid by the applicant to the city auditor prior to publication.
2. At the time of the hearing on the application, the council shall, in its discretion, determine if the issuance or transfer of the license is in the best interests of the public health, safety, morals and general welfare of the community. Among the factors to be considered by the council in granting or denying a license or a transfer are the following:
   1. The convenience of police regulation.
   2. Public health and sanitation.
   3. The proximity of other businesses licensed to sell alcoholic beverages.
   4. The proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
   5. Protests of neighboring property owners or occupants.
   6. Zoning regulations.
   7. Interference with neighboring properties.
   8. Suitability of premises for sale of alcoholic beverages.
   9. Public convenience and necessity.
   10. Number of such licenses already in existence.
   11. Economic impact upon other such licensed premises.
   12. Sufficiency of the application required by this article.
   13. Recommendations and reports of city officials, such as the chief of police, chief of the fire department, building inspector, health officer, and any other official submitting a recommendation or report at the request of the board of city commission.
   14. No transfer of any license shall be approved by the council until the transferee has submitted a license application and has met all the requirements imposed upon an applicant for a new license.
   15. No license issuance or transfer authorizing off-sale of any kind shall be approved by the council for the sale of alcoholic beverages on premises, any part of which are closer than 100 feet to any grocery store, drug store or gasoline service station, or any portion thereof; provided, that this restriction shall not apply to a transfer which is an assignment, sale, exchange or other conveyance of a license.
   16. The number of licenses which may be issued by the city commission shall be limited to six total licenses at any one time from the following license types “AB”, “A”, “B”, “C”, “D”. There is no limit on the amount of Class “E” license that can be issued at any one time.

7.0310 Restrictions on sale, service or dispensing of alcoholic beverages.

1. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person less than 21 years of age; and no licensee, his agent or employee, shall permit any person less than 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
2. No person less than 21 years of age shall be permitted to enter any portion of licensed premises in which alcoholic beverages are sold, served or dispensed; nor shall anyone less than the age of 21 years be employed in any portion of licensed premises in which alcoholic beverages are sold, served or dispensed, except as provided in subsections (C) and (D) of this section. For purposes of this section, a person is not 21 years of age until 8 a.m. on the person’s twenty-first birthday.
3. Any person less than 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area. Any person who is employed by the restaurant as a food waiter, food waitress, busboy or busgirl may not engage in the sale, dispensing, delivery or consumption of alcoholic beverages; provided, that any person who is between 19 and 21 years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 21 or more years of age. A law enforcement officer or person cooperating with and under the control of such law enforcement officer, under the age of 21 years may enter premises where alcoholic beverages are sold, dispensed, or consumed in the performance of an official duty. Any establishment where alcoholic beverages are sold may employ persons from 18 to 21 years of age to work in the capacity of musicians under the direct supervision of a person over 21 years of age. Any person under 21 years of age may enter and remain on the license premises if the person is an independent contractor or the independent contractor’s employee engaged in contract work and is not engaged in selling, dispensing, delivering or consuming alcoholic beverages. Any person under 21 years of age may remain in the area of and event where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to § 5-02-01.1, N.D.C.C., and the city comparable ordinance.
4. Any person under 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold when accompanied by a parent or legal guardian, whether or not the restaurant is separated from the room in which alcoholic beverages are opened or mixed and whether or not gross sales of food are equal to gross sales of alcoholic beverages. For purposes of this subsection, a restaurant shall be any establishment which serves prepared food and holds a restaurant license or permit.
5. No Class “B” licensee shall permit the opening or consumption of alcoholic beverages upon the licensed premises; provided, that a Class “B” licensee may permit the sampling of alcoholic beverages upon the licensed premises without charge to the consumer.
6. No licensee, his agent or employee shall sell, serve, consume or permit to be sold, served or consumed on the licensed premises any alcoholic beverages after 2:00 a.m. on Sundays, before 12:00 noon on Sundays, or between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week; nor shall any licensee, his agent or employees sell, serve or permit to be sold, served or consumed on the licensed premises any alcoholic beverage on Christmas Day or after 6:00 p.m. on Christmas Eve. Additionally, there shall be no off-sale sales allowed after 2:00 a.m. on Thanksgiving Day. For purposes of this provision, any person having a glass or other opened container containing an alcoholic beverage in close proximity or otherwise available for consumption shall be deemed to be consuming an alcoholic beverage.
7. All licensed premises shall be closed and locked not more than one-half hour after the termination of business hours as specified in subsection (F) of this section and no persons shall be permitted to remain on said premises thereafter except for the owner and his employees for normal cleaning and maintenance activities; provided, that a licensee may remain open for the purpose of providing food service and operate its entertainment business, provided, however, that the licensee must comply with all other terms of Article 8 and those of its State of North Dakota liquor license.
8. No license to sell alcoholic beverages under the provisions of this article shall entitle the holder thereof to carry on such business at more than one location under any one license and each license shall contain a legal description of the place where the holder thereof operates such business; provided, however, the foregoing provision shall not apply in the case where a licensee, in addition to his regular license, is granted a Class “F” license to engage in the sale of alcoholic beverages at the place designated in the Class “F” license.
9. No licensee, his agent or employee shall sell or serve, or permit to be sold or served on the licensed premises any food other than prepackaged, confectionery items such as peanuts, potato chips and similar items, and prepackaged sandwiches, pizza and similar food products which are prepared and packaged off the licensed premises; provided, that this prohibition shall not apply to licensed establishments which hold a restaurant license or permit.
10. Any person under 21 years of age may enter and remain in a licensed premises for a designated alcohol-free public event in any licensed premises or in a separate room within the licensed premises where the licensee has determined not to sell or permit consumption or possession of alcoholic beverages on that licensed premises or within the designated separate room within the licensed premises during a specified time period provided the licensee complies with the requirements of this subsection. For purposes of this subsection a public event is any event to which admission is open to the general public and may be gained with or without payment of a fee or an event which is advertised to the general public.
11. The licensee shall give written notice of the intent to operate the premises or separate room within the premises as an alcohol-free area at least 72 hours in advance to the council or its designee. The notice shall specify which portion of the licensed premises will be used for the alcohol free event or if a separate room within the premises will be used for the alcohol free event. If only a separate room within the licensed premise will be used for the event, the room must have a point of entry and exit which does not permit those under the age of 21 to enter any portion of the licensed premises where alcoholic beverages are being sold, mixed or consumed. The notice shall define what security measures within the licensed premises or the separate room thereof will be taken to prevent the consumption of alcoholic beverages by persons during the alcohol-free event. The council or its designee may, in his discretion, require such additional information from the licensee as is necessary to ensure compliance with this section.
    1. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order on the premises. The city commission, the chief of Police or other employee or designee of the city commission may determine the amount of security need.
    2. The licensee shall post conspicuously at all entrances to the alcohol-free event a notice stating the sale, possession or consumption of alcoholic beverages will not be permitted during the duration of the alcohol-free event and that no participant under the age of 21 is permitted into any area within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include common areas such as hallways or restrooms.
12. Any person under 21 years of age may enter and remain in licensed premises or in a separate room within the licensed premises for a private event where the licensee has restricted access to invited guests provided that the licensee complies with the requirements of this subsection. For purposes of this subsection a private event is an event which is not open to the general public to which access is granted to invited guests only, for which no admission fee is paid, and for which no advertising was conducted to the general public.
    1. The licensee maintains the responsibility to comply with city ordinance prohibiting selling, serving or dispensing any alcoholic beverage to a person less than 21 years of age; or permitting any person less than 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
    2. The room must have a point of entry and exit which does not permit those less than the age of 21 to enter any portion of the licensed premises, not designated as the private event, where alcoholic beverages are being sold, mixed or consumed.
    3. The licensee shall post conspicuously at all entrances to the private event a notice stating the sale, possession or consumption of alcoholic beverages by those less than the age of 21 will not be permitted and that no participant lees than the age of 21 is permitted into any area outside of the designated separate room within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include common areas such as hallways or restrooms.
    4. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order.
    5. The licensee shall have all patrons regardless of age removed from the private event following the completion of the private event and not reopen the separate room to the general public for the purpose of the sale, possession or consumption alcohol until one hour after the completion of the private event.
13. Removal of wine from restaurant. If a full bottle of wine has been opened and the contents partially consumed, in conjunction with the purchase of a meal the premises may permit an individual purchasing the bottle in conjunction to remove the bottle on leaving the licensed premises if the licensee re-corks the bottle, seals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

7.0311. Restrictions on sale or consumption in a public place.

1. No owner, manager or person having control of any public place shall serve, permit to be served, or permit any person to drink alcoholic beverages in such place, unless such place has been duly issued an on-sale or other appropriate license under this chapter.
2. No person shall mix, prepare, serve or consume alcoholic beverages in any public place unless such place has been duly issued an on-sale or other appropriate license under this chapter.

7.0312. Restrictions on sale to obviously intoxicated person.

No licensee or partner, principal, agent or employee of any licensee shall sell, serve, or furnish alcoholic beverages to or allow possession and consumption of alcoholic beverages on the licensed premises by any person who is or has become intoxicated and/or incapacitated by the consumption of alcoholic beverages. A person may be considered to be obviously intoxicated when it can be plainly determined by appearance, conduct, and/or demeanor. The term “obviously intoxicated” shall mean that the person’s obvious intoxication be reasonably discernible or evident to a person of ordinary experience.” Such indicators of intoxication may include, but are not limited to a combination of any of the following types of conditions:

1. Problems with balance, inability to maintain balance, i.e., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, resting head on bar;
2. Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable to pick up change and the like;
3. Disorientation and mental confusion as to locations, date, names and the like;
4. Strong smell of alcohol;
5. Unusual or distorted speech, i.e., slurred, thick tongue, uncontrollable voice pitch, muttering, and the like;
6. Bloodshot and/or glassy eyes, flushed face, and the like;
7. Condition of clothes and hair, i.e., soiled clothing, urinated upon clothing and the like;
8. Unusual behavior, i.e., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior, sleeping or unconscious.

Violation of this ordinance may result in sanctions as prescribed in section 7.0313 Sanctions for a licensee selling, serving or furnishing alcoholic beverages shall require a sale and a showing that the police officer observed and determined the person to be intoxicated. In addition, a corroborating witness or witnesses who can opine that the person was obviously intoxicated shall be required. Sanctions for a licensee allowing the consumption of alcoholic beverages on the licensed premises shall require a showing that the police officer observed and determined the intoxicated person to be intoxicated on the licensed premises, as well as a showing that the intoxicated person was allowed to consume alcoholic beverages on the licensee’s premises. The police officer’s observation and determination must be accompanied by information from a corroborating witness or witnesses who can opine that the person was obviously intoxicated when allowed to consume alcoholic beverages on the licensed premises.

If a licensee, partner, principal, agent or employee of any licensee shall contact law enforcement to report the presence of an obviously intoxicated patron or to obtain law enforcement assistance in removing an obviously intoxicated patron, a rebuttable presumption is created and sanctions shall not be imposed. This presumption may be overcome, however, by evidence that the licensee, partner, principal, agent or employee of any licensee did not contact law enforcement in good faith.

7.0313. Licenses--Termination, suspension, revocation, and sanctions.

All licenses issued under the provisions of this article, unless otherwise specifically provided, shall terminate on June 30th next following the date of issuance; provided, however, that any license issued under the provisions of this article may, under certain circumstances, terminate automatically or may be terminated, suspended or revoked by the council.

1. Any license issued under the provisions of this article shall automatically terminate:
   1. Upon the death of the licensee unless, upon application to the council by the personal representative of the decedent, the council shall consent to the carrying on of such business by the personal representative. Said application must be submitted to the council within 30 days of the licensee’s death.
   2. When the licensee, for any reason, ceases business at the licensed premises, except as permitted in accordance with this article. Business shall be deemed to have ceased upon occurrence of any of the following:
      1. When no sale of alcoholic beverages occurs on the licensed premises for a period of at least 30 consecutive business days; or
      2. When alcoholic beverages are not sold on the licensed premises on at least 15 of any 60 consecutive business days; or
      3. When the licensed premises are not open for normal business for at least 180 hours in any 60 consecutive business days; provided, however, upon written request of the licensee, the council, in its discretion and for good cause shown, may extend the date upon which business shall be deemed to have ceased.
      4. When any license or permit of the licensee from the United States government or state of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been revoked.
2. The council may, in its discretion, suspend or revoke for cause any license issued under the provisions of this article. The grounds for suspension or revocation shall, among others, include the following:
   1. The licensee has filed a petition in bankruptcy.
   2. An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active management of the licensed business is convicted of violating any of the provisions of this article.
   3. The licensee has been convicted of a felony under the laws of the United States or under the laws of one of the several states.
   4. The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health and sanitary regulations of the city of Tioga.
   5. The licensee has made any false statement in his application for a license.
   6. The licensee conducts his business in a manner which results in, encourages or is conducive to the creation of disturbances of the peace, disorderly conduct or any other violations of federal, state and/or city laws.
3. The grounds enumerated in subsection (B above) of this section shall not be deemed to be exclusive and any license issued under the provisions of this article may be suspended or revoked by the council for any other reason deemed by the council to be sufficient in order to promote and protect the public health, safety, morals and general welfare of the people of the city of Tioga. When any license is suspended or revoked by the council pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.
4. No license issued under the provisions of this article shall be suspended or revoked for cause by the council without a public hearing. In the event that the council intends to consider the suspension or revocation of any license for cause, it shall direct the city auditor to notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of 15 days after the date of the service of the notice upon the licensee. If, upon such hearing, it appears to the council that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this article, the council shall make its order suspending or revoking the said license.
5. Penalties for failing compliance checks are as follows:
   1. First offense - $500 penalty. This penalty may be waived if the person serving the alcoholic beverages, as well as the management, have server training certificates.
   2. Second offense - $750 penalty. No license sanction penalty.
   3. Third offense - $1,000 penalty - for all license holders, one day suspension of license (liquor sales only) with the date selected by licensee within thirty (30) days of either occurrence of the offense or final decision upon appeal. For all other classes of liquor licenses, two days suspension of liquor sales only.
   4. Fourth offense - no monetary penalty - For all other classes of liquor licenses, six consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.
   5. Fifth offense - no monetary penalty - revocation of liquor license.
6. The foregoing penalties for failing compliance checks will be those offenses occurring within a one-year period. Said one-year period commences to run and is calculated (365 days) from the first offense by the licensee. The city of Tioga, in conjunction with its designee, will make a reasonable effort to conduct up to four compliance checks a year at each licensed liquor serving establishment in the city. In the event a licensed establishment fails to pass compliance checks during such visits, the same may result in additional compliance checks being conducted at that establishment during the year.
7. Sanctions or penalties under subsections E above may not be invoked without a public hearing if so requested by the licensee. Upon written notification by the city auditor’s office that a penalty is being sought under subsections E and F above, the liquor licensee may notify the city auditor’s office within ten (10) days and request a hearing on the proposed penalty. A hearing shall be set by the city commission specifying the time and place of the hearing, and shall further describe the reason for said hearing, and shall be served upon the liquor licensee in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of fifteen days after the date of service of the notice. The hearing for said suspension shall be heard by the board of city commission. A record of the hearing shall be made by electronic recording device. If, upon such hearing, it appears to the majority of the board of city commission that sufficient causes exists for the penalty sanctions, the board of city commission shall make its order in accordance with the provisions of this article. The city commission shall further issues its findings, conclusions and order which shall be served on the liquor licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.
8. Administrative penalties for violation of section 7.0312 regarding sale to an intoxicated person or person incapacitated by consumption of alcoholic beverages are as follows:
   1. First offense: Warning. There will also be mandatory server training refresher course within 30 days after the offense.
   2. Second offense: $1,000 penalty, plus one-day suspension of alcoholic beverage license to be determined by the city commission.
   3. Third offense: $2,000 monetary penalty, plus a three-day suspension of alcoholic beverage license to be determined by the city commission.
   4. Fourth offense: $2,000 monetary penalty, plus a four-day day suspension of alcoholic beverage license.
   5. Fifth offense: $2,000 monetary penalty, plus a 10-day suspension, and a possible revocation of alcoholic beverage license
   6. The level of offenses shall be determined by reference to an 18-month period from the first offense by licensee. By way of illustration, a second offense occurring more than 18-months after a first offense would then be deemed a first offense.
9. Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales could, if applicable, continue on the licensed premises.
10. It is the intent of this ordinance that no multiple offenses shall be deemed to have occurred from a single incident. For example, on an officer contact with the licensed premises, if there should be two or more offenses involving intoxicated persons on the premises, the same will constitute one offense and not multiple offenses. Any subsequent officer contact with the establishment at a different time may constitute a separate offense.
11. Sanctions or penalties under this subsection may not be invoked without a public hearing if so requested by the licensee. Upon written notification by the city auditor’s office that a penalty is being sought under this ordinance, the liquor licensee may notify the city auditor’s office within ten (10) days and request a hearing on the proposed penalty. A hearing shall be set by the board of city commission specifying the time and place of the hearing, and shall further describe the reason for said hearing, and shall be served upon the liquor licensee in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of fifteen days after the date of service of the notice. The hearing on said suspension shall be heard by the liquor control committee subject to an appeal to city commission who will review the findings of fact made by the liquor control committee. A record of the hearing shall be made by electronic recording device. Upon appeal to the board of city commission, the licensee shall be allowed to make any statements or arguments and fully argue its case, but it will not be entitled to a trial de novo. The hearing shall be based on the findings of fact made by the liquor control committee, the record of the hearing, together with the statements and arguments of the licensee.
    1. If, upon such hearing, it appears to the majority of the board of city commission that sufficient causes exists for the penalty sanctions, the board of city commission shall make its order in accordance with the provisions of this article. The city commission shall further issue its findings, conclusions and order which shall be served on the liquor licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

7.0314. Unlawful practices.

In addition to such other prohibitions as are contained in this Article:

1. It shall be unlawful for any person to sell or consume any alcoholic beverage in any automobile, or upon any street, alley or public highway, including any public sidewalk or boulevard, or on any private property without consent of the owner or occupant within the city of Tioga.
2. It shall further be unlawful for any person to possess any bottle or receptacle containing any alcoholic beverage which has been opened or the contents of which have been partially consumed while such person is upon any street, alley or public highway, including any public sidewalk or boulevard, or upon property owned, operated or leased by the city of Tioga or by the state of North Dakota or any political subdivision or agency thereof, within the city of Tioga.
3. The sale, possession, use or consumption of alcoholic beverages shall be unlawful and prohibited in and on the premises of any public building.
4. It shall be unlawful for any person less than 21 years of age to misrepresent his or her age for the purpose of purchasing or drinking any alcoholic beverage or for the purpose of entering any premises licensed under the provisions of this article.
5. It shall be unlawful for any person, either personally or through an agent or employee, to procure, furnish or deliver any alcoholic beverage for the use of any person less than 21 years of age.
6. No licensee shall deliver or permit to be delivered to any customer outside the licensed premises any alcoholic beverages sold under the terms and provisions of this article.

7.0315. Inspection of licensed premises.

The members of the city commission of the city of Tioga, the chief of police, or any officer of the health or police department may, at any time, enter upon any licensed premises for the purpose of police inspection or to determine whether the licensed premises are in compliance with any and all ordinances of the city.

7.0316. Penalty.

Any person, firm or corporation violating §§ 7.0310 or 7.0314 of this article shall, upon conviction thereof, be punished by a fine not to exceed $1,000 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof.

Every person, firm or corporation violating any other sections of this article shall, upon conviction thereof, be punished by a fine not to exceed $500; the court to have power to suspend said sentence and to revoke the suspension thereof.

New Business:

Julie Ramos Lagos presented a plaque of thanks for service to Jeff Spivey for all his time and dedication to the City Commission. Spivey presented a letter of resignation to the city commission to be effective immediately and gave a speech indicating his thankfulness to the committee during his time on the commission. McClelland made a motion to approve the resignation and declare a vacancy for the city commissioner position in which the commission can appoint a new member after 15 days to serve for the remaining term to end of 2016 and that the public is allowed to petition during that given time, Goldade made a second motion. All voted aye, Spivey abstained, motion carried.

Larry Maize, Chief of Police presented a letter of request to the City Commission to hire Jeff Spivey as Police Administrator. McClelland made a motion to approve the requests made on the submitted letter and hire Spivey, Goldade made a second motion. All voted aye, motion carried.

McClelland made a motion to approve contract with Black Gold Cleaning for city hall and police department cleaning services, Goldade made second motion. All voted aye, motion carried. The commission discussed dust control for the gravel roads at 105th, Front St, truck route, and industrial park and encouraged McClelland to look into estimates and possible bids.

Goldade made a motion to approve entrance and exit signs for MainStay Suites that were presented, McClelland made a second motion. All voted aye, motion carried. The city commission approved adding an additional raffle item to Brenda Torgerson’s originally approved permit.

Rich Z. presented several building permits to the city commission. Goldade made a motion to approve DRC Class A Contracting License, McClelland made a second. All voted aye, motion carried. Goldade made a motion to approve Steve Iverson’s fence permit, McClelland made a second motion. All voted aye, motion carried. McClelland made a motion to approve Dean Hanson’s 12x16 deck, Goldade made a second motion. All voted aye, motion carried. Goldade made a motion to approve Jared Loveridge’s permit. McClelland made a second motion. All voted aye, motion carried. Goldade made a motion to approve New Fortune Real Estate, LLC Class B License from Mei Xiang, McClelland made a second motion. All voted aye, motion carried. Goldade made a motion to approve permit from Anytime Fitness pending contract review and Rich’s approval, McClelland made a second motion. All voted aye, motion carried. McClelland made a motion to approve Steve and Holly Grubb’s new trailer place on original pad, Goldade made a second motion. All voted aye, motion carried. McClelland made a motion to approve Tioga Public School’s request for Matthew Schwab as Class A contractor and preliminary drawings so they can start dirtwork but requires submittal of final drawings, Goldade made a second motion. All voted aye, motion carried. Goldade made a motion to approve Rori Siverson’s shed permit, McClelland made a second motion. All voted aye, motion carried. McClelland made a motion for City of Tioga to follow the updated 2012 Building Code Amendment requirements by the State of ND. Goldade made a second motion. All voted aye, motion carried.

Being no further business the meeting adjourned at 8:51 pm.

Nathan Germundson Julie N. Ramos Lagos,

President, Tioga City Commission City Auditor