

**CITY OF TIOGA**  
City Commission Meeting Minutes  
March 16, 2020

A meeting of the City Commission of the City of Tioga was called to order at 7:01 pm on March 16, 2020, at the Tioga City Hall, by the City Commissioner Drake McClelland.

PRESENT: Drake McClelland, Tim Christianson, Natalie Bugbee, Tim Sundhagen, Heather Weflen, Elizabeth Pendlay (on phone) and Ronica Pederson  
ABSENT: Abby Salinas  
GUEST: Dan Larson, Jacob Orledge, Austin Rollag, Josh Reiner, Scott Bertsch, Linda Meyer, Corey Murphy, Alexis Knudson, Duane Knudson

**Sundhagen made a motion to approve the Commission Minutes of March 2, 2020, second by Christianson. Roll Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

**Commissioners Reports:**

Christianson: None

Bugbee: Advised Commission Board that the Community Center has been closed due to the recommendations of the CDC and the North Dakota Department of Health for social distancing. Bugbee also advised that there were 2 resignations at the Community Center and will need to advertise for the position of the full time Community Center Event Coordinator and the part time Assistant.

**Sundhagen made a motion to advertise for the 2 vacancies at the Community Center of full time Community Center Event Coordinator and the part time Assistant, second by Christianson. Roll Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Sundhagen: Advised Commission Board that on Thursday he will be doing the walk through for final punch list items on the new Police Station.

Weflen: Advised Commission Board that Salinas sought permission to advertise the bid for the water and sewer North East Reconstruction, and due to the short time limits she approved the advertisement. Moore will provide an update during agenda item 3.

McClelland: None

**Modifications/Approval of Agenda:**

**Sundhagen made a motion to approve agenda as is, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

**Old Business:**

1. Ordinance 2020-03 Correction of Clerical Error in Tioga Ordinances 18 and 19 Second Reading – Pederson handed exhibit of Ordinance 2020-03 Correction of Clerical Error in Tioga Ordinances 18 and 19 for their review and consideration. AN ORDINANCE MAKING CORRECTION OF CLERICAL ERRORS EXISTING WITHIN CHAPTERS 18 AND 19 OF THE ORDINANCES OF THE CITY OF TIOGA (TIOGA FUND TAX, LODGING TAX, TIOGA MEDICAL CENTER FUND/TAX AND INFRASTRUCTURE FUND/TAX). BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TIOGA, NORTH DAKOTA, AS FOLLOWS: The City of Tioga (the “City”), having become aware of certain clerical errors existing within Chapters 18 and 19 of the City of Tioga Ordinances, which inaccurately characterize and affect the expiration date of various taxes that exists within the City, herein sets forth and corrects such deficiencies in the interests of ensuring that such Ordinances correctly and accurately described such taxes and their respective expiration dates in accordance with the prior elections, resolutions and appropriate actions of the citizens and City in connection with the passage and maintenance of the same. The following provisions are intended to correct, amend, and supplant the contents of certain Sections of Chapters

18 and 19 such that these corrected and amended Sections shall comport with the ballot measures, resolutions and official actions giving rise to and defining the same. The historical record of various taxes that exist within the City of Tioga are summarized as follows: In 1994, a one percent (1%) sales tax is established within the City for the funding and maintenance of the "Tioga Fund," which, at its inception, was designated and deemed to end in 1999, subject to subsequent extension. Thereafter, to follow the 1994 establishment of the one percent (1%) sales tax for the Tioga Fund, a special election was conducted, which resulted in the said one percent (1%) sales tax continuing in perpetuity, subject to future action. Presently, the one percent (1%) sales tax remains unencumbered by a definitive termination or expiration date, a reality not clearly conveyed and memorialized by the controlling Ordinance which exists prior to the passage of the instant corrective Ordinance given here. Thereafter, on June 6, 2012, Tioga's proposed one percent (1%) Infrastructure Tax/Fund was established and provided a termination/expiration date of December 31, 2020. Also, in 2012, a Lodging Tax and Tioga Medical Center Tax was established, both of which passed and which contained no definitive termination/expiration date. Thus, such Lodging Tax and Tioga Medical Center Tax were passed in perpetuity, subject to subsequent action. Finally, in 2017, action was successfully undertaken to remove the then-existing tax cap. To follow this series of events described above, the drafting of various Sections pertinent to these events erroneously failed to designate the distinctions among the respective termination/expiration dates of the aforementioned taxes. Specifically, in error, the said Sections of the pertinent Ordinances inadvertently grouped together various taxes, and provided that the same should cease on December 31, 2020, which was a termination designated only for the June 6, 2012 Infrastructure Tax described above. The result creates an ambiguity and clerical error which misstates the end dates for other taxes for which no definitive expiration/termination date actually existed at their respective passages. The Ordinance Sections at issue should have properly memorialized that the Infrastructure Tax would terminate on December 31, 2020 and should not have included direct or indirect reference to the Tioga Fund Sales Tax, Lodging Tax, or Tioga Medical Center Tax. This corrective Ordinance is given to clarify and correct the inadvertent drafting and clerical errors that exist within the City of Tioga Ordinances to that end. NOW THEREFORE, the City of Tioga herein revises, corrects, and amends the following Sections of Chapters 18 and 19 to properly describe and memorialize the provisions of the prior Ordinance, which were drafted and passed in error as described above: 18.0103 Powers of City 7. Any other transaction exempted from imposition of the state sales tax or use tax pursuant to state law. a. One percent (1%) of sales tax revenues raised and collected under this chapter shall be dedicated only to "The Tioga Fund" established hereinafter and shall not be used for any other purpose than those specifically described herein. This revenue shall be maintained in the fund separate and apart from all other funds, except as provided by this section. d. The Tioga Fund shall be administered by the City Commission of the City of Tioga, with assistance of a five (5) member advisory committee appointed by the Tioga City Commission. This advisory committee shall receive, review and make recommendations to the City Commission on all applications for the said funds. The final decision for the distribution of funds shall remain under the discretion of the Tioga City Commission. 19.0108 Dedication of Tax Proceeds One percent (1%) of all revenue raised and collected under this ordinance shall be dedicated to business retention, expansion or recruitment, property tax relief, recreation, parks and community improvements. This shall be maintained in the fund to be known as "The Tioga Fund" separate and apart from all other funds. One-half percent (0.50%) of all revenues raised and collected under this ordinance shall be dedicated to Tioga Medical Center for the purpose of capital improvement. One percent (1%) of all revenues raised and collected under this ordinance shall be dedicated to repair and replacement of the City infrastructure; including streets, water distribution, sewer collection and disposal. This shall be maintained in the fund known as "Infrastructure Fund" separate and apart from all other funds. 19.0109 Termination The one percent (1%) Infrastructure Tax/Fund referred to in Section 19.0108 imposed herein shall terminate on December 31, 2020. Scope of Correction/Modification/Amendment: Except as expressly corrected, modified and amended herein, the provisions of Chapters 18 and 19 of the City of Tioga Ordinances shall remain in full force and effect.

**Christianson made a motion to approve the second reading Ordinance 2020-03 Correction of Clerical Error in Tioga Ordinances 18 and 19, second by Sundhagen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

2. Legal – Elizabeth Pendlay – Advised Commission Board of the items she is currently working on contract with Moore for construction services and will need approval for Drake to sign subject to legal revisions.

**Sundhagen made a motion to approve signing contract with Moore Engineering for construction services subject to legal revision, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Pendlay also gave COVID-19 update for public meetings and stated that its important that we stay ahead of the this. Sent meeting options to the City Auditor. Discussions held.

3. Moore Engineering: Joshua Reiner – Advised Commission Board on updates of work being completed on the Northeast reconstruction and stated estimate is \$4.3 Million however due to COVID-19 that might have a potential impact on how bids come back. Weflen stated that we might have to eliminate things such as sidewalks if needed at a later time but for now we need to advertise for bid to see what comes back.

**Weflen made a motion to put out to bid the construction of NW Reconstruction Water and Sewer, second by Sundhagen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Reiner states that Moore Engineering has been working with Jeff Moberg and Kirk Odegaard to update the City Specifications and they will need to be adopted before the bid is complete. The updated specs have been added to the bid process for the NW Reconstruction for the Water and Sewer. Reiner also states that GIS will be up and ready to publish tomorrow with login access and he will be scheduling a training for employees.

4. FCI Construction- Austin Rollag – Advised the Commission Board of the status for the Police Station and Museum construction. Rollag asked if he wanted to have one provided for all fire suppression systems under City, he will contact person who is available to get an estimate, McClelland asked Rollag to proceed. Discussions held on safe practices. Handed exhibit of pay application #9 from FCI in the amount of \$203,089.10 for the work done in the month of February 2020 on the Museum.

**Sundhagen made a motion to approve Pay Application #9 from FCI Construction in the amount of \$203,089.10 for the work done in February of 2020 at the New Museum, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Handed pay application #10 from FCI in the amount of \$440,029.55 for the work done in the month of February 2020 on the Police Station.

**Sundhagen made a motion to approve Pay Application #10 from FCI Construction in the amount of \$440,029.55 for the work done in February of 2020 at the New Police Station, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

#### **New Business:**

5. Resolution 2020-04 Renewal of Sales Tax for Infrastructure – Pederson handed exhibit to Commission Board of Resolution 2020-04 Renewal of Sales Tax for Infrastructure WHEREAS, on or about December 7, 2016, the City of Tioga (the “City”) passed a resolution and thereafter properly introduced and effected a ballot measure/initiative and a related Ordinance amending Chapter 18, Article 1, Section 3, Subsection (b)(3) to remove caps on the amount of City sales and use tax that may be imposed on any single sales transaction at twenty-five dollars (\$25.00); and WHEREAS, such action was undertaken in accordance with N.D.C.C. 40-05.1-07, which provides that “[t]he home rule charter adopted by any city may be amended or repealed by proposal submitted to and ratified by the qualified electors of the city in the same general manner provided in sections 40-05.1-02 and 40-05.1-04” and N.D.C.C. 40-05.1-02 and 40-05.1-04 provides that the governing body of any city may on its own motion cause a home rule charter to be submitted to the qualified electors of the city at a regular or special election; and WHEREAS, in connection with the foregoing, the City commission determined to submit to the voters of the City of Tioga the issue of amending the Tioga Home Rule Charter to remove the twenty-five

dollar (\$25.00) on the amount of sales and use tax that may be imposed on any single sales transaction and to create and/or perpetuate other tax-based funding in relation to the same; and WHEREAS, thereafter a ballot initiative was passed under which Chapter 18, Article 1 Section 3 Subsection 3 was amended, which, among other things, provided as follows: That an additional one percent (1%) retail sales tax shall be imposed on the gross receipts taxed pursuant to Chapters 57-39.2 and 57-40.2, N.D.C.C., be imposed for sales within the corporate boundaries of the City of Tioga. The additional retail sales tax under this subsection is in full force and effect until December 31, 2020. Further, that the entire proceeds of the additional one percent (1%) sales tax shall be dedicated to and only used for repair and replacement of city infrastructure, including the following: street construction, repair and maintenance; water distribution system, construction repair and maintenance; sewer collection and disposal system construction, repair and maintenance. The above-quoted provision and its ultimate passage gave rise to what is commonly referred to as the City's "Infrastructure Tax," which, since its passage, has served to support, enhance, and protect the health, welfare, and economic development of the community of Tioga by providing for continued and improved infrastructure within and for the said community; WHEREAS, subsequent to the passage of the amendments discussed above, in March of 2020, the City became aware of certain clerical errors within the original Ordinance amending said Chapter and Article and passed an Ordinance correcting, amending and clarifying the same; those amendments did not alter the said Infrastructure Tax; and WHEREAS, among its enumerated powers the City shall be the authority to impose a retail sales tax and use tax of no more than one percent (1%) of those gross receipts taxed pursuant to Chapters 57-39.2 and 57-40.2, N.D.C.C.; and WHEREAS, the said Infrastructure Tax, as it presently exists, contains a sunset provision, which shall cause its expiration on December 31, 2020, if not extended by ballot measure at the next election and reduced to appropriate Ordinance to follow approval of the same; WHEREAS, the Commission Board of the City of Tioga believes the perpetuation of the above-described Infrastructure Tax remains in the best interests of the City of Tioga; NOW THEREFORE, BE IT RESOLVED, by the City Commission of the City of Tioga, Williams County, North Dakota: On a motion made and seconded to amend Chapter 18, Article 1 Section 3 Subsection 3 to allow for the extension and perpetuation of the City's Infrastructure Tax by ballot measure; IT IS FURTHER RESOLVED, that the Tioga city auditor is authorized to take all steps necessary to have the above-described extension and perpetuation of the existing Infrastructure Tax submitted to the voters at a special election, to be held no sooner than 60 days from the date of this resolution. IT IS FURTHER RESOLVED, that language on the ballot shall be: The purpose of the Amendment Proposed is: To extend and approve the City of Tioga's existing Infrastructure Tax beyond its present expiration date, which would otherwise occur on December 31, 2020, such that the existing one percent (1%) sales tax shall continue be collected for and dedicated to and only used for repair and replacement of city infrastructure, including the following: street construction, repair and maintenance; water distribution system, construction, repair, and maintenance; sewer collection and disposal system construction, repair, and maintenance. Such Infrastructure Tax shall remain in full force and effect until such time as a subsequent ballot measure shall properly pass to limit or extinguish the same. Yes – Will approve and extend the existing one percent (1%) Infrastructure Sales Tax to for dedication and use for the repair, replacement, construction, and maintenance of city infrastructure. No – Would decline to approve and extend the existing one percent (1%) Infrastructure Sales Tax, which would cause its expiration on December 31, 2020.

**Christianson made a motion to Resolution 2020-04 Renewal of Infrastructure Tax, second by Bugbee.**

**Call: Ayes; Christianson, Bugbee, Weflen, McClelland Nays; Sundhagen**

6. Planning & Zoning – Dan Larson – Larson handed Exhibit to Commission Board of Building Permit from Allen and Dee Pressnall to move their double wide to be set on piers, for their review and consideration. Planning and Zoning Board have reviewed and recommend approval.

**Sundhagen made a motion to approve Building Application from Allen and Dee Pressnall to move their double wide on piers, second by Weflen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Larson handed exhibit to Commission Board of Building Application from Cody Knudson for a new modular on permanent foundation for Their review and consideration. Planning and Zoning Board

have reviewed and recommend approval. Discussions held on the adding new sewer line to Knudson's home.

**Sundhagen made a motion to approve Building Application from Cody Knudson to move a new modular on a permanent foundation, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

7. Tioga Fund Applications - Pederson handed exhibit to Commission Board of a Tioga Fund application from Tioga Recreation Council in the amount of \$9,200 for Woodside Mooremann Basketball Camp, for their view and consideration. Tioga Fund Board advised Commission Board that they have reviewed application from Tioga Recreation Council and recommend approval of \$9,200.

**Sundhagen made a motion to approve the Tioga Fund application from Tioga Recreation Council in the amount of \$9,200 for Woodside Mooremann Basketball camp, second by Weflen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Pederson handed exhibit to Commission Board of a Tioga Fund application from Tioga Park Board in the amount of \$64,158 for new park equipment, for their review and consideration. Tioga Fund Board advised Commission Board that they have reviewed application from Tioga Park Board and recommend approval of \$64,158.

**Sundhagen made a motion to approve the Tioga Fund application from Tioga Park Board in the amount of \$64,158 for new park equipment, second by Bugbee. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Pederson handed exhibit to Commission Board of a Tioga Fund application from Tioga Recreation Council in the amount of \$2,000 to start a new elementary golf program, for their review and consideration. Tioga Fund Board advised Commission Board that they have reviewed application from Tioga Recreation Council and recommend approval of \$2,000.

**Bugbee made a motion to approve the Tioga Fund application from Tioga Recreation Council in the amount of \$2,000 to start a new elementary golf program, second by Weflen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

Pederson handed exhibit to Commission Board of a Tioga Fund application from Tioga EDC in the amount of \$30,000 to hire Prairie Consulting Group as a facilitator for their review and consideration. Tioga Fund Board advised Commission Board that they have reviewed application from EDC and recommend approval of \$30,000.

**Sundhagen made a motion to approve the Tioga Fund application from Tioga EDC in the amount of \$30,000 to hire Prairie Consulting Group as a facilitator, second by Weflen. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

8. Visitor Promotion Applications – None
9. Payroll – Pederson handed exhibit of payroll for 03-7-2020 for their review and consideration.  
**Bugbee made a motion to approve payroll for 03-7-2020, second by Christianson. Call: Ayes; Christianson, Bugbee, Sundhagen, Weflen**

**With no further business, the meeting of the Tioga City Commission was adjourned by unanimous vote moved by Sundhagen, second by Bugbee at 8:12 p.m. call: Ayes; Christianson, Bugbee, Sundhagen, Weflen, McClelland**

The next meeting of the City of Tioga Commission Meeting is scheduled for Monday April 6, 2020 at 7:00 p.m., to be held at the Tioga City Hall.

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Drake McClelland, City Commission President

ATTEST:

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Abby Salinas, City Auditor