

## ENACTING ORDINANCE

### ORDINANCE NO. 1

Adopting the Revised Ordinances of the City of Tioga, of North Dakota, and repealing all ordinances previously adopted with certain exceptions.

BE IT ORDAINED BY THE CITY OF TIOGA, NORTH DAKOTA:

Section 1. 1999 Revised Ordinances of Tioga. This ordinance and the ordinances hereby adopted shall be known and cited as the 1999 Revised Ordinances of Tioga.

Section 2. ENACTMENT. The 1999 Revised Ordinances of Tioga, consisting of Chapter 1 to 25, both inclusive, an original copy of which has been authenticated by the original signatures of the city's chief executive officer and auditor and which original is on file in the office of the City Auditor, are hereby adopted as the Ordinances of the City of Tioga.

Section 3. REPEAL. All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinance which shall constitute in full force and effect regardless of the fact that they are herein omitted:

1. All existing ordinances granting franchises, if omitted from these revised ordinances.
2. All existing ordinances creating contract obligations on the part of the city, which obligations shall remain binding until fully performed by the City.
3. All existing ordinances establishing special improvement districts, or street grades.
4. All of the existing ordinances levying taxes for any years under the provisions of any law relating to the issuance of revenue bonds, municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or specific.
5. All salary and appropriation ordinances.
6. The incorporation herein of any ordinances of the City of Tioga granting franchises shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that fixed in that ordinance granting the same and enacted herein.
7. Any and all other ordinances adopted in said 1999 Revised Ordinances of Tioga by reference, although the same are not set forth in full therein.
8. All existing ordinances establishing, extending or reducing the City Limits of the City, if omitted from these revised ordinances.

Section 4. EXISTING LICENSES AND PERMITS. All licenses and permits issued

prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the 1999 Revised Ordinances of Tioga for the remainder of the terms of said licenses and permits, in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the 1999 Revised Ordinances of Tioga.

Section 5. NEW LICENSES AND PERMITS. In the case of any license or permit not heretofore required and appearing for the first time in the 1999 Revised Ordinances of Tioga, such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefore shall be pro-rated for the remainder of that term thereof on a monthly basis, provided, that the minimum fee for any such new license or permit shall be \$1.00.

Section 6. INVALIDITY OF PART. If any section, subsection, sentence, clause or phrase of these ordinances is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase, or portion thereof. The governing body hereby declares that it would have passed these ordinances and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

Section 7. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and approval, and without publication.

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President of the Board of City Commissioners

ATTEST:

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City Auditor

## CHAPTER ONE

### GOVERNMENT ORGANIZATION

#### **ARTICLE 1 - Jurisdiction**

##### 1.0101 Over Person and Property

The jurisdiction of the City of Tioga, North Dakota, extends to all persons, places and property within its boundaries, and such extra-territorial jurisdiction as is granted to it under the provisions of the North Dakota Century Code and amendments thereto.

##### 1.0102 Defining City Limits

There shall be included within the municipal limits of the City of Tioga, North Dakota, all areas duly platted and recorded as being within said City; all lots and blocks shall also include all streets, alleys and public ways included within the area and adjacent thereto which are defined as within the confines of the city limits. The City Commission shall have jurisdiction within the corporate city limits and over any common or public grounds belonging to the City, and in and over all places within one-half mile of the municipal limits for the purpose of enforcing health and quarantine ordinances and police regulations and ordinances adopted to promote the peace, order, safety and general welfare of the municipality.

##### 1.0103 Division of City into Election Ward

The City of Tioga shall compromise one election ward, and all the property within the corporate limits of the City shall be contained within said election ward.

##### 1.0104 City Fines and Penalties Limited

The maximum allowable penalty and fine which can be assessed in a municipal court is a one-thousand-dollar (\$1,000.00) fine or a thirty (30) day term of imprisonment or both such fine and imprisonment.

#### **ARTICLE 2 - Governing Body - Board of City Commissioners**

##### 1.0201 Regular Meetings

The Tioga City Council shall meet regularly at the City Hall on the first and third Monday of each month at the hour of 7:00 p.m. unless some other time and place shall be

specifically fixed by the Board. The Board shall meet in addition thereto, as often as required by Section 47-09-11 of the North Dakota Century Code.

#### 1.0202 Special Meetings

Special meetings may be called at any time by the President, or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Written notice of any special meeting shall be given to each member of the governing body at least three hours before the time of the meeting.

#### 1.0203 Meeting to be Public - Journal of Proceedings to be Kept

All meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept. Notice of the regular meeting time or of special meeting shall be given as provided by Section 44-04-20 of North Dakota Century Code and amendments thereto.

#### 1.0204 Quorum

The provisions of Section 40-06-03 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A majority of the members of the governing body of a municipality shall constitute a quorum to do business by a smaller number may adjourn from time to time. The governing body may compel the attendance of absentees under such penalties as may be prescribed by ordinance, and may employ the police of the municipality for that purpose.

#### 1.0205 Reconsidering or Rescinding Votes at Special Meeting

The provisions of Section 40-06-04 of the North Dakota Century Code and all subsequent amendments shall be and hereby are incorporated by reference in this ordinance.

No vote of the governing body of a municipality shall be reconsidered or rescinded at a special meeting unless there is present at such special meeting as large a number of members as were present when such vote was taken.

#### 1.0206 Rules and Order of Business

Rules and order of business for the parliamentary government of the governing body shall be governed by Robert's Rules of Order.

**ARTICLE 3 - Elective Officers**

1.0301 Board of City Commissioners

The governing body of the City of Tioga shall be the Board of City Commissioners which shall be composed of the President of the Board of City Commissioners and four City Commissioners. The President and four City Commissioners shall be elected as provided by law.

1.0302 Commissioners - Terms of Office - Terms of Members of First Board - Resignation

Each commissioner and the president of the Board of City Commissioners shall hold office for four years from and after the date of his election, and until his successor shall have been duly elected and qualified. The president and any other member of the Board may resign his office by filing his written resignation with the City Auditor, who shall levy the resignation before the Board of City Commissioners at its next regular meeting, or at a special meeting called for consideration of such resignation. The resignation shall become effective upon its acceptance by the Board. The term of each commissioner shall commence on the first day of July in the year in which he/she is elected.

1.0303 President of Board as Executive Officer - Duties - No Veto Power

The provisions of Section 40-09-08 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The president of the Board of City Commissioners shall be the executive officer of the City and he shall see that all the laws of the City are enforced. He shall have the right to vote as a member of the Board, but he shall have no veto power.

1.0304 Vice - President and Acting President of Board - Powers to Act

The provisions of Section 40-09-09 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

At the first meeting of the Board after each biennial election, one of its own members shall be elected vice-president. The vice-president shall perform all the duties of the office of president in the absence or inability of the president to act. In the absence or inability to act of both the president and the vice president, the Board shall elect one of its members as acting president, who shall have all the powers and perform all the duties of the president during his absence or disability.

1.0305 Departments of Administration of City Divided Among Commissioners - Duties

The provisions of Section 40-09-12 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The Board of City Commissioners, by a majority of all the members thereof, shall designate from among its members:

1. A police and fire commissioner who shall have under his special charge the enforcement of all police regulations of the City and the general supervision of the fire department of the City;
2. A commissioner of streets and improvements who shall have under his special charge the supervision of the streets and alleys of the City and who shall be charged with responsibility for the lighting, cleaning and sanitary condition of the streets and alleys and with the enforcement of all rules and regulations relating thereto, and with the preservation of the health of the inhabitants of the City. He shall have under his special charge the supervision of all public improvements and the conditions of all grants of franchises or privileges are compiled with faithfully and performed;
3. A waterworks and sewerage commissioner who shall have under his special charge the waterworks and sewerage department of the City and who shall see to the enforcement of all regulations with respect to said departments and all revenue pertaining thereto; and
4. A commissioner of finance and revenue who shall have under his special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to the City, from whatever source the same may be derived, and who shall examine into and keep informed as to the finances of the City.

The duties assigned to the various members of the Board by this section may be otherwise distributed by a majority vote of the Board's members.

**ARTICLE 4 - Elective Officers Other Than Governing Body**

1.0401 Municipal Judge - Duties Of

The municipal judge shall perform all the duties prescribed by laws of the State of North Dakota and the ordinances of this City. He shall receive an annual salary as full compensation for all services rendered.

#### 1.0402 Report to Board of City Commissioners

It shall be the duty of the municipal judge to make a full report under oath, of all proceedings in the actions or matters before him in the City of Tioga is a party, or interested therein, to the governing body of the City of Tioga, at the close of each month. Until such report has been filed with the City Auditor, no salary shall be paid the judge for such work.

### **ARTICLE 5 - Appointive Offices**

#### 1.0501 Appointive Officers - Right to Dispense with Offices

At the first meeting after the qualification of its members, or as soon thereafter as possible, the Board of City Commissioners shall appoint the following officers:

1. City Auditor;
2. City Assessor;
3. City Attorney;
4. City Engineer;
5. City Health Officer;
6. Chief of Police
7. Such other officers as the City Commissioners deems necessary and expedient.

#### 1.0502 City Auditor - Duties Of

It shall be the duty of the City Auditor in connection with his other duties, to be present and keep a correct journal of the proceedings of each meeting of the City Commissioners and to make a correct record of the same, engross all ordinances and by-laws and record the same in a book for ordinances, furnish the several commissioners with copies of resolutions and other matters that may be referred to them, unless the original papers are furnished, and to do such other clerical duties as may be prescribed by statutes of this state, or by an ordinance, resolution, or proper instruction of the City Commissioners.

#### 1.0503 City Attorney - Duties Of

The City Attorney shall conduct all the law business of the City and of the departments thereof, and all law business in which the City shall be interested; he shall, when requested, furnish written opinions upon the subjects submitted to him by the City Commissioners, or any other department. It shall also be his duty to draft all ordinances, bonds, contracts, leases,

conveyances and such other instruments as may be required by the officers of the City; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes and to perform each and every and all duties and things prescribed by him to do by statutes of the state, or by an ordinance, resolution or proper instruction of the City Commission.

1.0504 General Duties of Other Appointive Officers

All other appointive officers shall perform such duties as directed by the Tioga City Council, directed by these ordinances, or directed or authorized by the laws of the State of North Dakota.

**ARTICLE 6 - Special Provisions Regarding City Officers**

1.0601 Bonds of Municipal Officers and Employees

The following officers and employees of the City of Tioga shall be bonded in the sums as hereinafter set forth:

President of the Tioga City Commission  
Tioga City Commissioners  
Tioga Municipal Judge  
Tioga City Auditor  
City Assessor  
Tioga Deputy Auditor  
Tioga Administrative Assistant

Said officers or employees shall be bonded in accordance with the provisions of the North Dakota Century Code.

1.0602 Salaries of Officers Fixed by Ordinance - Diminution During Term Prohibited

Any officer or employee of a municipality shall receive the salary, fees, or other compensation fixed by ordinance or resolution, and after having been once fixed, the same shall not be diminished to take effect during the term for which the officer was elected or appointed.

1.0603 Salaries of City Officials and Appointive Officers

Salary of City Officials and Appointive Officers, except as otherwise provided by law, shall be in such sums and amounts as may be, by resolution of the governing body, fixed from time to time.



#### 1.0604 Administrative Policy and Procedure

PERFORM DUTIES. Each Officer Shall:

1. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the governing body.
2. Be immediately responsible to the governing body for the effective administration of their departments and all activities assigned thereto.
3. Keep informed as to the latest practices in their particular field and shall inaugurate with approval of the governing body such new practices as appear to be of benefit to the service and to the public.
4. Submit such reports of activities of his department as the governing board may request. Be responsible for the proper maintenance of all City property and equipment used in his department.
5. Establish and maintain records of sufficient detail to furnish all information needed for proper control of department activities and to form a basis for reports to the governing board.
6. Cooperate with other officers, departments and employees.
7. Have power to direct and supervise all subordinates under him.

### **ARTICLE 7 - Municipal Elections**

#### 1.0701 Qualified Electors in Municipal Elections - Restrictions

The provisions of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Every resident of a municipality who is qualified to vote therein at general elections may vote therein at general elections may vote at all municipal elections held therein.

#### 1.0702 Designation of Polling Places for Municipal Elections

The governing body of the City, at the time of calling any general or special municipal election, or prior to the time of registration for said election, if said registration is required by law, shall by resolution, designate such polling places for said election as it may deem necessary for the conduct of the same, and shall, in giving notice of said election, designate polling places.

## **ARTICLE 8 - Disposing of Property**

### **1.0801 Competitive Bidding Requirements**

All purchases of and contracts for supplies and contractual services, and all sales or property which has become obsolete or unusable shall, except as provided herein, be bases, whenever possible, on competitive bids.

### **1.0802 Procedure**

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed one thousand dollars (\$1,000.00) shall be purchased from the lowest responsible bidder after due notice inviting proposals. All sales or disposition of obsolete or unusable property when the estimated value shall exceed one thousand dollars (\$1,000.00) shall be sold to the highest responsible bidder. The lowest responsible bidder, or the highest responsible bidder shall be the bidder who in addition to price has the best ability, capacity and skill to perform the contract or provide the service required, promptly or within the specified time without delay or interference. There shall also be considered character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of performance of previous contracts, sufficiency or financial resources, and previous and existing compliance with state laws and city ordinances.

### **1.0803 Open Market Purchases**

All purchases and contractual services and all sales of property which has become obsolete or unusable of an estimated value of less than five hundred dollars (\$500.00) or all supplies and services of a non-competitive type or kind, or purchases and sales between governmental bodies, or when in the opinion of the City Commission an apparent emergency requires immediate purchase of supplies or contractual services, shall be made or obtained in the open market without competitive bidding.

### **1.0804 Conveyance, Sale, Lease, or Disposal of Property**

1. When the property to be disposed of is estimated by the City Commission to be of a value less than two thousand five hundred dollars (\$2,500.00), such property may be sold at private sale upon the proper resolution of the City Commission. In all other cases, such property may be sold only at public sale, in the manner stated in section 1.0804(2).
2. Upon resolution by the City Commission authorizing the public sale of real property, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the City's official newspaper having a general circulation in the municipality once each week for two consecutive weeks with the last publication being at least ten days in advance of

the date set for the sale. The notice shall specify bids as determined by the City Commission. The property advertised shall be sold to the highest bidder if his bid is deemed sufficient by a majority of the members of the City Commission

## CHAPTER TWO

### ORDINANCES

#### **ARTICLE 1 - Procedure**

##### 2.0101 Enacting Clause for Ordinances

The enacting clause of every ordinance adopted by the City of Tioga shall be “Be it ordained by the City of Tioga.” Such caption, however, may be omitted where the ordinances are published in book form or are revised and digested.

##### 2.0102 Procedure in Passing Ordinance

All ordinances shall be read twice and the second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before the final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all the members of the governing body must concur in the passage of an ordinance and in the creation of any liability against the City, and in expending or appropriating money.

##### 2.0103 Yea and Nay Passage - When Required

The yea and nay shall be taken and entered on the journal of the governing body’s proceedings upon the passage of all ordinances and upon all provisions creating any liability against the City or providing for the expenditure or appropriation of money, and in all other cases at the request of any member. It shall require a majority vote of all the members elected to sell any City property where the value is more than one hundred dollars (\$100.00). A member of the City Commission who passes his vote, or who remains silent when the roll call on the vote is taken, shall be deemed to have voted yea and a record of yea shall be entered in the journal.

##### 2.0104 Reconsideration or Rescinding Vote

No vote of the governing body shall be reconsidered or rescinded at a special meeting unless, at such special meeting there is present as large a number of members as was present when such vote was taken.

##### 2.0105 Publication of Ordinances

The title and penalty clause of each ordinance, imposing any penalty, fine, forfeiture, or imprisonment for its violation, after its final adoption, shall be published in one issue of the official paper of the City.

#### 2.0106 Effective Date of Ordinances

Ordinances adopted and requiring publication shall take effect and be in force from and after publication unless otherwise provided. Ordinances not requiring publication shall take effect and be in force from and after final approval unless otherwise provided.

#### 2.0107 Effect of Repeal

When any ordinance repealing a former ordinance, clause or provision, shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

### **ARTICLE 2 - Construction of Ordinances**

#### 2.0201 Rules of Construction

General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

Gender - Singular and Plural. Every word in any ordinance importing the masculine gender shall extend to and be applied to females as well as males. Every word importing the singular number only shall extend to and be applied to several persons or things as well as to one person or thing. Every word importing the plural number only shall extend and be applied to one person or thing as well as to several persons or things.

Person. The word “person” shall extend and be applied to firms, corporations, or voluntary associations, as well as to individuals, unless plainly inapplicable.

Tenses. The use of any verb in the present tense shall include the future when applicable. Shall Have Been. The words “shall have been” include past and future cases.

Heretofore and Hereafter. Whenever the word “heretofore” occurs in any ordinance it shall be construed to mean any time previous to the day when such ordinance shall take effect. Whenever the word “hereafter” occurs it shall be construed to mean the time after the ordinance containing such word shall take effect.

Reasonable Time. In all cases where any ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

Time - how computed. The time within which an act is to be done as provided in any ordinance in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Sunday, it shall be excluded. When any such time is expressed in hours, the whole of Sunday from midnight to midnight shall be excluded.

Week. The work “week” shall be construed to mean seven days, but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week. All publications heretofore made in accordance with the terms of this sub-section are hereby validated.

#### 2.0202 When These Rules of Construction Shall Not Apply

The rules of construction set forth in this ordinance shall not be applied to any ordinance which shall contain any express provision excluding such construction, or when the subject matter or context of such ordinance may be repugnant thereto.

#### 2.0203 Reference to Titles, Chapter, or Sections - Conflicting Ordinances

In addition to the rules of construction specified in section 2.0201, the following rules shall be observed in the construction of these ordinances:

1. All references to titles, chapters, or sections are to the titles, chapters, and sections of these ordinances unless otherwise specified.
2. If the provisions of different chapters of these ordinances conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.
3. If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in the numerical order shall prevail unless such construction be inconsistent with the meaning of such chapter.

#### 2.0204 Form of Penalty Clause

The standard penalty clause for ordinances for which there shall be a penalty incurred upon violation shall be as follows:

“Any person, firm, or corporation violating any of the terms or provisions of this chapter shall, upon conviction, be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment not to exceed thirty (30) days or 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.”

## CHAPTER THREE

### PUBLIC PLACES AND PROPERTY

#### **ARTICLE 1 - Construction and Repair**

##### 3.0101 Supervision

All construction maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the City Engineer or Commissioner of Streets and Public Improvements. He shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances.

##### 3.0102 Construction and Repair - Permits

It shall be unlawful to construct, reconstruct, alter, grade, or repair any public street, sidewalk, driveway, curbs, gutters, or retaining walls, without having first secured a permit therefor, unless said work is performed by the City contractor. Applications for such permits shall be made to the City Auditor and shall state the location of the intended pavement or repair, the extent thereof, and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the City.

##### 3.0103 Bond

Each applicant shall file a bond with surety to be approved by the City Commission conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

##### 3.0104 Specifications

All construction, maintenance, and repair herein shall be made in conformity with specifications laid down or approved from time to time by the governing body.

##### 3.0105 Duty of Owner to Maintain

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail to so maintain such sidewalks the City Engineer or Street Commissioner shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the City Engineer or Street Commissioner, the City Engineer or Street Commissioner shall report the facts to the

governing body who shall then proceed, as provided in the laws of the State of North Dakota, to make such sidewalk safe.

### 3.0106 Application for Permit

An applicant for a permit hereunder shall file with the City Engineer or City Auditor an application showing:

1. Name and address of the owner, or agent in charge, of the property, abutting the proposed work area.
2. Name and address of the party doing the work.
3. Location of the work area.
4. Attached plans or sufficient sketches showing details of the proposed alterations.
5. Estimated cost of the alterations.
6. Such other information as the City Engineer or Street Commissioner shall find reasonably necessary to the determination of whether a permit should be issued hereunder.

### 3.0107 Sidewalks Built to Grade Specifications

1. The several types of sidewalks herein specified shall be designated as “Type A” and “Type B” respectively. Sidewalks of Type A shall be constructed along both sides of Main Street from the intersection of Third Street and Main Street to the south side of the Street intersecting Main Street and laying on the south side of Blocks thirteen (13) and eighteen (18).
2. Sidewalks as directed by the Board of City Commissioners in consultation with the City Engineers to be constructed along any other street or portion of street within the City of Tioga shall be of Type B.
3. Sidewalks of Type A shall be ten (10) feet in width and shall be four (4) inches in thickness, and the kind and quality of material used, therefore shall be as follows: Portland cement, not less than one (1) cubic foot of Portland cement to not more than two and one-half (2½) cubic feet of fine aggregate, and not more than three and one-half (3½) cubic feet of coarse aggregate and not more than six and one-half (6½) gallons of water. A cubic yard of cement in place shall contain not less than six (6) sacks of cement; concrete shall have a compressive strength of three thousand (3,000) pounds per square inch after curing twenty-eight (28) days in standard twelve (12) inch long by six (6) inch in diameter sample cylinder under the same curing conditions as the pore of which a sample was taken.



4. Sidewalks of Type B shall be eight (8) feet in width or less four (4) inches in thickness, and the kind and quality of material used therefore shall be the same as set forth in section 3.0107(3) of this article.

## **ARTICLE 2 - Use and Care of Streets, Sidewalks, and Public Places**

### 3.0201 Obstructions

It shall be unlawful for any person, firm or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk or other public way, except as may be specified by ordinance or by the City Engineer or Commissioner of Streets and Public Improvements.

### 3.0202 Destruction of City Property - Prohibited - Penalty

It shall be unlawful for any firm, person, or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City of Tioga or held by the City of Tioga for public use. Any person violating the provisions of this section shall be guilty of an offense and upon conviction due to violation of this section shall be guilty of a Class B misdemeanor and will be fined accordingly and/or be imprisoned.

### 3.0203 Encroachments

It shall be unlawful to erect or maintain any building or structure which encroaches upon any public street or property.

### 3.0204 Deposits

It shall be unlawful to deposit on any street or public place any material which may be harmful to the pavement or surface thereof or which may do injury to any person, animal or property or render the same unclean or a nuisance.

### 3.0205 Burning

It shall be unlawful for any person, firm or corporation to burn any leaves, paper, rubbish or other substances upon any of the public streets, sidewalks, or alleys in the City.

### 3.0206 Distributing Hand Bills, Etc.

The scattering, throwing, or placing of bills, posters, advertising matter, handbills, and other similar matter on lawns, porches, yards, sidewalks, steps, streets, alleys, public ways or in or upon automobiles while parked on the streets, alleys or public ways, or public parking lots in the City of Tioga, by any person, firm, co-partnership, association, or corporation, is hereby declared to be a nuisance and unlawful.

### 3.0207 Heavy Vehicles

No person, firm or corporation shall move, or cause to be moved, over the paved streets, sidewalks, crosswalks, culverts, bridges, and viaducts, within the City of Tioga, any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, crosswalk, culvert, bridge, or viaduct over which the same are transported.

### 3.0208 Removal of Snow and Ice from Sidewalk

It shall be, and hereby declared to be, the duty of the owner or occupant of each lot in the City of Tioga to remove from the sidewalk in front of or along the same, any ice or snow which forms, accumulates or obstructs the such sidewalk, within twenty-four (24) hours after the ice forms, or the snow ceases to fall thereon; provided, however, that where the ice accumulated is of such character as to make the removal thereof practically impossible, the sprinkling of ashes or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon, shall be deemed a compliance with the provisions of this article.

### 3.0209 Removal of Snow and Ice by City

In case the owner of any lot in the City refuses or neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the City Engineer or Street Commissioner of the City, or ashes or sand sprinkled thereon and the necessary expenses thereof shall be charged against the abutting property by special assessment thereof in the manner prescribed by law.

### 3.0210 Removal of Snow and Ice - Notice

Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the City there shall be designated by the City Engineer or Street Commissioner the area and streets to be cleared of snow or ice or cleaned as aforesaid and the time during which said snow and ice removal and street cleaning shall be done and posting of such information in the area affected.

### 3.0211 Blocking Streets

No driver of any vehicle shall stop the same on any street, avenue, lane, or alley of the City in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane, or avenue so as to prevent the free passage of persons traveling or passing on foot.

### 3.0212 Excavations - Permit and Fees

It shall be unlawful for any person, firm, or corporation to open up or make any excavation in or upon any of the streets, avenues, or alleys in the City for the purpose of making any connections or repairs to any sewer, water, or gas pipe or main or telephone conduit other buried facility. Constructing any sewer, water or gas pipe, telephone conduit, electrical cable or conduit, or other underground buried facility, without first having obtained a permit to do so as hereinafter provided.

Such fees shall be set from time to time by resolution of the City Commission.

### 3.0213 Excavations - Application

Whenever any person, firm, or corporation shall desire to open up or excavate any portion of any street, avenue, or alley for the purpose of connecting with or making repairs to any sewer, water, gas pipe or main, or telephone conduit and electrical cable, or other buried facility in such street, avenue, or alley or constructing any other underground conduit, he shall first make an application to the City Auditor, setting forth in detail the purpose for which said person, firm or corporation desires such an opening or excavation, kind of pavement, sidewalk, and curbing to be broken into and description of the property by lot, block, and addition opposite which such excavation or opening is to be made. Provided, however, that in the event of any emergency that happens while the Office of the City Auditor or Officer of the Director of Public Works is closed, such openings may be made and a permit for same secured on the next day when such office is open.

### 3.0214 Excavations - City Engineer to Direct Work

All excavations made as hereinbefore mentioned shall be made under the direction of the City Engineer, or street, sewer, or water department- and done in a most careful and workmanlike manner.

### 3.0215 Excavations - Bond Required

An individual contract, or utility company making any opening or excavation in any street, avenue or alley within the corporation limits of the City of Tioga, shall save the City harmless from all cost, loss and damages of every kind and nature by reason of such opening or excavation and conditioned further that the party making such opening or excavation shall keep the same in proper repair for a period of two (2) years.

### 3.0216 Regulating the Operation of a Sound System in a motor Vehicle within City Limits of Tioga

Any individual in operation of a sound system in a motor vehicle with in the City limits of Tioga, North Dakota:

1. Operation of Sound system in a motor vehicle
  - a. No person shall operate a sound system in a motor vehicle while the motor vehicle is on the public right of way or other public property so that the sound system is audible more than thirty (30) feet from the motor vehicle. As used herein the term “sound system” includes but is not limited to, any other device which is designed with the principal purpose of converting (with or without amplification) an electric current into sound waves, but excludes an auto horn used as a warning device.
  - b. The fine for violation of this section shall be twenty-five dollars (\$25.00) except that if the violation of the second violation by the defendant within the previous twelve (12) months, then the fine shall be one hundred fifty dollars (\$150.00) as will the subsequent violations by the defendant within a consecutive twelve (12) month period.

### 3.0217 The Keeping of a Disorderly House within the City Limits of Tioga

1. Disorderly House - Public Nuisance
  - a. An owner or lessee, or both, of a house or building that is used in a manner that habitually disturbs the peace, comfort, or decency of the immediate neighborhood is guilty of maintaining a public nuisance. A lessee is not guilty of an offense under this section unless the lessee is the cause of the nuisance.
  - b. Any person found to have committed a violation of this section shall be fined an amount of, not to exceed, one thousand dollars (\$1000.00)

## **ARTICLE 3 - Street Naming and Numbering**

### 3.0301 Naming and Numbering

The names of the streets and avenues of the City shall remain as they now are, and appear of record, and as reported in the Office of Register of Deeds of Williams County, North Dakota, and the name of no street shall be changed without an ordinance to that effect passed with the new name specified therein.

Any addition which may be made to the City which may be laid out into lots or blocks shall be so laid out, surveyed and platted so that the streets, alleys and avenues shall conform to the previously established streets, avenues and alleys, and no such plat shall be recorded without the approval of the City Engineer.

No plat or any portion of the City or any addition thereto shall be accepted or approved by the City Commission until all streets and avenues therein have been graded. The street grades in the City of Tioga shall be those as are on file in the Office of the City Engineer.

All buildings located in the City limits of the City shall be assigned a number by the City or other appropriate political entity authorized to assign physical addresses.

All buildings within the corporal City limits of the city shall have posted the address's assigned number. Said numbers shall be displayed in such a manner as to be easily identifiable from the street adjacent to the property. In the event any owner of any buildings within the limits of said City or other person having custody and control of said buildings shall refuse or neglect to cause to be placed thereon the number thereof, the City Commission shall have the power and authority to cause the number of the said building to be exhibited thereon as hereinbefore set forth, the cost for so doing to be collected of the owner or person having control thereof at the suit of the City.

#### **ARTICLE 4 - Sale, Exchange, or Donation of Property by City**

##### 3.0401 Sale, Exchange, or Donation of Property by City

The Sale, Exchange, or donation of City Property, including the terms of such sale, exchange or conditions on such donation, or the method of sale or exchange of the terms thereof have not been established, must be pre-approved or ratified by the City Commission if the property is real estate and has an estimated value in excess of five thousand dollars (\$5,000.00). This section shall supersede any state law to the contrary pertaining to the same subject matter. Cash or its equivalent shall not be considered property under this section.

## CHAPTER FOUR

### FIRE PROTECTION AND PREVENTION

#### **ARTICLE 1 - Organization and Regulation of the Fire Department**

##### 4.0101 Establishment

There is hereby created and established a fire department, and if hereto created, such department is hereby continued, consisting of a chief, and such other members of said fire department as may from time to time be provided for by the governing body. Members shall be appointed in the manner provided by law.

##### 4.0102 Supervision

The fire chief shall have the control, subject to the order and direction of the governing body, of the fire department and all fire apparatus belonging to the City; whenever any fire apparatus needs repairing said fire chief shall cause the same to be done without delay.

##### 4.0103 Volunteer Department

The Fire Department of the City of Tioga, North Dakota shall be composed of volunteer firemen who shall receive no wages or salaries therefor.

##### 4.0104 Chief of Fire Department - Powers of

The Chief of the Fire Department shall be a competent and experienced fireman who shall have entire charge and control of the department at all fires. He shall further have charge, supervision and control over all property, equipment and supplies of the Fire Department entrusted to his care during his tenure of office.

##### 4.0105 Duties

The fire chief shall have the following duties and powers:

1. To keep records. The chief of the department shall cause to be kept, in books for that purpose, a full and complete record of the organization of the department, its membership, the respective positions held by the firemen in the department, vacancies, appointments and dismissals, and of all notices issued by the department, and of all its transactions, of all fires occurring in the City, and the cause thereof when ascertainable, of the time lost by firemen, and of all property placed in his charge, and all expenditures made by his order and shall keep such other books and records as shall be required in the department, and such books shall always be open to the inspection of

any member of the City Commission.

2. To command and control. It shall be the duty of the chief of the department to preserve order and discipline at all times in the department, and to require and enforce a strict compliance with the ordinances of the City relating to their department and the rules and regulations pertaining thereto. At all fires they shall have sole and absolute control and command over all persons connected with the fire department of the City.
3. To make reports. The chief of the fire department shall report at the end of each year, and more often when required to do so to the City Commission. At the end of each calendar year, he shall make an annual report in writing, including a summary of his monthly reports. They shall report upon the condition of the fire department, the number of fires that have occurred in the City since their last report, and during the year in their annual report, and the cause of the same, so far as can be ascertained, the number of buildings destroyed or injured, the names of the owners or occupants of the same as nearly can be ascertained, and the amount of loss upon the buildings, and other property so destroyed or injured, which report shall be filed in the office of the City Auditor.
4. To make annual inventory. The Chief of the fire department shall, during the month of June in each year, make a complete itemized list and report of all property under their charge and belonging to the City, stating its condition. They shall also report as to such new apparatus or supplies as in their judgment may be needed to properly maintain their department.
5. To prepare a budget. To prepare a budget of the whole cost and expense of providing for and maintaining the fire department of the City during the succeeding fiscal year.
6. To keep property in good condition. To keep property in good condition to see that all apparatus and property committed to their car and the several buildings or portions thereof, are kept clean and in good sanitary condition.
7. To have charge of alarm system. To have charge of alarm system of the City.
8. To control crowds at fires. The Chief of the fire department may prescribe limits in the vicinity of any fire within which no persons, except those who reside therein, firemen, policemen, and those admitted by his order.
9. To order removal of property, when. To order the removal of property, whenever it shall become necessary for the preservation of such property from fire or to prevent the spreading of fire, or to protect adjoining property.
10. To command assistance. To command assistance from persons in attendance at any fire, not members of the fire department, for the extinguishing of fires.
11. To prescribe badge and uniform. To prescribe badge and uniform to be worn by the

officers and individuals of the department.

12. To arrange drills and training so that the fire department will include the proper and efficient use of all appliances and apparatus, the quick handling and rising of hose, handling of streams, use of shut-off nozzles, forcible entry tools, salvage work, ladder work, lifesaving, and modern methods of extinguishment.

#### 4.0106 Police Powers

All members of the fire department of the City, while on active duty, shall have the powers of policemen on duty and are authorized to arrest any person or persons who shall interfere or attempt to interfere with or to hinder any member of the department in the performance of his duty.

#### 4.0107 Unlawful to Hinder Department

It shall be unlawful for any person to prevent, interfere with, or in any manner hinder the fire department, or any member thereof, while engaged in the discharge of duty at a fire, or to disobey any lawful command of the chief or acting chief of the department.

#### 4.0108 Right of Way

Any engine, truck or apparatus belonging to the fire department shall, going to or returning from a fire, have the right of way in all streets, alleys and public places over any wagon, street car, automobile or other vehicle of any kind what so ever, and any person in charge of any vehicle must stop the same when necessary to permit any engine, truck or apparatus of the Fire Department to pass without hindrance or delay.

#### 4.0109 Driving Over Fire Hoses

No person shall drive any team, wagon, cart, street car, railroad car, steam engine, automobile or other vehicle of any kind what so ever, upon or over any hose belonging to the Fire Department while the same is laid in the streets and alleys of the City.

#### 4.0110 False Alarms

It shall be unlawful for any person knowingly to give or cause to be given any false alarm of fire, or to give or cause to be given, while a fire is in progress, a second or general alarm for the same fire, or tamper with or set off any fire alarm or signal box with like intent; or tamper, meddle, or interfere with any such fire alarm box; or intentionally cut, break, deface or remove any such box, or any of the wires of supports thereof, connected with the fire alarm system; or intentionally interfere with or injure any property of any kind belonging to or used by the fire department; or hinder or delay any apparatus or equipment or vehicle belonging to the fire department.



#### 4.0111 Taking Fire Equipment

No person shall take, receive or attempt to receive or take from the possession and control of any member of the Fire Department any of the apparatus, tools or property belonging to said department, without the written consent of the chief of the fire department.

#### 4.0112 Entering the Fire Department

No person shall occupy any rooms in any building which are used exclusively by the fire department, or enter such rooms or handle any apparatus used by the fire department without permission.

#### 4.0113 Service Outside Corporate Limits

Members of the fire department are authorized to go outside the corporate limits of the City for the purpose of rendering aid to other fire departments, or of extinguishing fires or rendering aid in the case of accidents. Provided, that the fire department shall not render such service outside the corporate limits excepting upon orders of the chief of the fire department, the assistant chief or presiding officer of the City Commission; excepting that where the City has undertaken by contract to render service to property outside the corporate limits the fire department may leave the corporate limits in the fulfillment of such contract.

### **ARTICLE 2 - Fire Limits**

#### 4.0201 Fire Limits

The fire limits of the City of Tioga are hereby established as follows:

All of Blocks 1, 2, 3, 4, and 6 of the Original Town; the west on-half of Block 5, Original Town; the east-half of Block 10, Simon's Addition; the east one-half of Block 13, Simon's Addition; the west one-half of Block 18, Simon's Addition; Block 19, Simon's Second Addition; Block 23, Simon's Second Addition; Gilbertson's Second Addition; Great Northern Railway Right-of-Way 300 feet east of and 300 feet west of Main Street.

### **ARTICLE 3 - Fires in Public Places**

#### 4.0301 Smoking

The smoking of cigars, cigarettes, pipes or tobacco in any form is hereby prohibited within any theater, or within any vestibule of any theater within the City of Tioga.

#### 4.0302 Chimneys - Burning, Cleaning

No person shall set to or burn out any chimney or flue, except in the day time and when it may be raining, or the roof of the building may be covered with snow; and any person using any chimney or flue shall cause the same to be cleaned or swept out at least once during each year, and as much oftener as may be necessary to prevent the dangerous accumulatio of soot.

### **ARTICLE 4 - Fire Prevention**

#### 4.0401 Adoption of Fire Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area, and maintenance of buildings or structures in the City of Tioga shall meet with the provisions of the rules and regulations of the North Dakota State Building Code, copies of which code are on file with the City Auditor and are hereby made a part of this chapter by reference with the exception of the sections hereinafter set forth affecting local conditions in the City, which are amended, deleted, or added to, for use and application in the City, and the City hereby adopts said code as so modified.

#### 4.0402 Storage of Flammable Liquids

Not to be allowed within the limits of the City of Tioga.

#### 4.0403 Storage of Liquefied Petroleum

Not to be allowed within the limits of the City of Tioga.

#### 4.0404 Modifications of Fire Code

The Chief of the Fire Department shall have power to modify any of the provisions of the code hereby adopted upon application in writing by the owner or lessee, or their authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the Chief of the Fire Department thereon shall be entered upon the records of the department and a signed copy shall be furnished to the applicant.

#### 4.0405 Appeals

Whenever the Chief of the Fire Department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to the Board of

the City Commissioners of the City of Tioga within thirty (30) days from the date of the decision appealed.

## **ARTICLE 5 - Firearms, Fireworks, and Explosives**

### 4.0501 Firearms not to be Furnished to Minors

It shall be unlawful for any person, firm or corporation to sell or rent firearms to minors within the limits of this City.

### 4.0502 Exploding Firearms

It shall be unlawful for any person or persons to fire or discharge within the City limits, any cannon, gun, pistol or firearm of any description, or fire or explode any firecracker, or other thing containing powder to combustible or explosive material except upon premises owned or occupied by him, her or them, without permission from the President of the Board of Commissioners.

### 4.0503 Blank Cartridges, Pistols, etc. - Manufacture, Use, and Sale of

No person shall manufacture, use, sell, or keep for sale within the City of Tioga, any blank cartridges, pistols, blank cartridge revolvers, or other blank cartridge firearms, blank cartridge caps, containing dynamite, or firecrackers exceeding three (3) inches in length and exceeding one-half (½) inch in diameter.

### 4.0504 Fireworks Defined

Fireworks shall be defined for the purpose of this ordinance as defined in Section 23-15-01 of the North Dakota Century Code which provisions, and subsequent amendments, are hereby adopted by the Board of City Commissioners of the City of Tioga.

### 4.0505 Fireworks - Sale of

No person, firm, or corporation shall offer fireworks for sale in the City of Tioga, Williams County, North Dakota, to individuals at retail before the twenty-seventh (27th) day of June and after the fifth (5th) day of July in any calendar year. No person, firm, or corporation shall offer fireworks for sale unless such person, firm, or corporation has operated a retail business wherein merchandise assessed by the City of Tioga taxing authorities on April first (1st) in the year immediately preceding the fireworks sale.

No person shall sell any of the permissible fireworks enumerated in Section 23-15-01 of the North Dakota Century Code to any person under the age of twelve (12) years.

#### 4.0506 Exceptions

Nothing in this article shall be construed to prohibit the sale or use of fireworks to airplanes, railroads and other transportation agencies for signal purposes or illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organization.

### **ARTICLE 6 - Adoption of Electrical Code**

#### 4.0601 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota adopted by the State Electrical Board and the whole thereof of which not less than one (1) copy shall be on file in the office of the City Auditor of the City, and the same is hereby adopted as fully as if it were set out in length herein.

### **ARTICLE 7 - Penalty for Violation of this Chapter**

#### 4.0701 Penalty

Any person who shall violate any provisions of this chapter or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the governing body or by a court of competent jurisdiction, within the time fixed herein, shall be guilty of a Class B misdemeanor.

Each and every such violation and notification respectively may be charged as a single violation. The imposition of the one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

## CHAPTER FIVE

### ZONING - LAND USE PLANNING

#### **ARTICLE 1 - Planning Commission**

##### 5.0101 Planning Commission Created

There is hereby created a Planning Commission consisting of five (5) members, who shall be appointed as hereinafter provided, and an additional three (3) members, namely, the President of the City Commission, the City Engineer, and the City Attorney, who shall act as ex-officio members of said Planning Commission.

##### 5.0102 Planning Commission - Terms, Compensation, Meetings

The terms of the members, their compensation, and meetings shall be as provided by Chapter 40-48 North Dakota Century Code.

##### 5.0103 Planning Commission - Confirmation of Appointments

The President of the City Commission shall solicit and request, by publication, letters of interest/applications for any vacancies and shall submit the names and letters of any interested parties to the City Commission at the next regular meeting; after such appointments, the names of persons appointed and the length of their terms and the City Commission shall, by a majority, confirm or reject such appointments. If such appointments are rejected the said President shall make other appointments for such appointees as may be rejected, which said appointments shall be approved or rejected in like manner. There shall be a term limit of five (5) years for the Planning and Zoning Commission. Each Commission seat can be re-appointed for unlimited terms with City Commission approval.

#### **ARTICLE 2 - Definitions**

##### 5.0201 Definitions

For the purpose of this chapter, the following words and phrases used in the present tense shall also be applied in the future. Words and phrases used in the singular shall also be applied in the plural. Meanings herein given:

1. "Shall" is taken to mean mandatory; "may" is taken as permissive.
2. "Person" is taken to mean any individual, group, firm, partnership, or corporation.

3. “Accessory Use or Structure” is a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
4. “Adult Bookstore” is an enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by the emphasis on matter depicting less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.
5. “Adult Cinema” is an enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, in which materials are distinguished or characterized by an emphasis on the depiction of less than completely or opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.
6. “Adult Entertainment Center” is an adult bookstore, adult cinema, or both.
7. “Agriculture” means all land and areas used for cultivating the soil, producing crops, and/or raising of livestock. Such areas include greenhouses and nurseries.
8. “Alley” is a platted public right-of-way providing vehicular service access to the back, side, or two or more properties.
9. “Amendments” are any change, revision, or modification of either the text of this ordinance or the district zoning map.
10. “Animal Hospital or Clinic” is an establishment where animals are admitted principally for examination, treatment, board, and care by a doctor of veterinary medicine.
11. “Apartment” is a dwelling unit that is located above or to the rear of a commercial business and is designed as a place of residence for a single family, an individual, or a group of individuals. Apartments can share a common ceiling or floor with an adjacent dwelling unit.
12. “Apartment Hotel/Rooming House” is any dwelling in which more than two (2) persons, individually or families, in are housed, or lodged for hire, with or without meals.
13. “Area of Special Flood Hazard” is the land in the flood plain within a community subject to one percent (1%) or greater chance of flooding in any given year.
14. “Assisted Living Facility” means a building or structure containing a series of at least five (5) living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to

the public as a place that provides or coordinates individualized support services to accommodate the individuals needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under Chapter 23-16 or 25-16 or section 50-11-01.4 (North Dakota Century Code 23-09)

15. “Aviation” refers to anything regarding or involving the operation of an airplane aircraft, including runways and aircraft hangers, as well as anything regulated under the Federal Aviation Administration (FAA).
16. “Base Flood” is a flood having one percent (1%) change of being equaled or exceeded in any given year.
17. “Basement” is a story of a multi-story structure which has a greater portion of its height below the ground surface.
18. “Basic Care Facility” means a residence, not licensed under chapter 23-16 by the State Department of Health, that provides room and board to five (5) or more individuals who are not related by blood or marriage to the owner or manager of the residence and who because of impaired capacity of independent living, require health, social, or personal care services, but do not require regular twenty-four-hour (24 hour) medical or nursing services and:
  - a. Make response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or
  - b. Is kept, used, maintained, advertised or held out to the public as an Alzheimer’s dementia or special memory care facility. (North Dakota Century Code 23-09.03-01)
19. “Bed and Breakfast Facility” means a private home that is used to provide accommodations for a charge to the public, with no more than two lodging units in addition to the private residence, in which no more the two (2) family-style meals per day are provided. (North Dakota Century Code 23- 09.01)
20. “Building Area” is the portion of a lot remaining after the required yards have been provided.
21. “Building” is any structure designed or intended for the enclosure, shelter, or protection of persons, animals, or property.
22. “Building Height” is the vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of a flat roof; and to the average height between the plat and ridge of a gable, hip, or gambrel roof.
23. “Caretaker’s Residence” is a dwelling unit necessary for the security and/or operation

requirements of an on-site industrial use.

24. “Concentrated Animal Feeding Operation” means any livestock feeding, handling, holding operation, or feed yard where twenty (20) or more animal units are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term Concentrated Animal Feeding Operation does include Animal Wintering Operations, which are defined as the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. Animal Wintering Operations include the weaned offspring of cattle and sheep, but it does not include:
- a. Breeding operations of more than twenty (20) animal units; or
  - b. Two (2) weaned offspring which are kept longer than one hundred- twenty (120) days and that are not retained for breeding purposes.
  - c. Animal Unit Equivalent

Animal	Animal Units	Animal	Animal Units
Horse	1	Cattle	1
Llama	1	Alpaca	1
Mule	1	Burro/Donkey	0.5
Sheep	0.5	Goat	0.5
Miniature Horse	0.5	Pony	0.5
Chicken	0.1	Duck	0.1

25. “Conditional Use” is such uses as are allowed by special permit only. Said permit shall be granted according to the provisions of this ordinance.
26. “Convenience Store” is a small retail store(s) and small service business(es) which do not employ more than four (4) persons per shift.
27. “Crew Camp” is specifically designed to provide lodging for temporary workers. In many cases, a crew camp will also offer meals, limited recreational activities, and other services for the benefit and well-being of its residents. Most crew camps will utilize pre-manufactured, individual housing units which are transported to the site. Some crew camps will utilize skid units. Others will utilize pre-manufactured modular components to assemble a housing facility at the approved location. Allowed dwelling types in a TCHF include manufactured homes. The majority of tenants of a crew camp are typically nonresidents with jobs in cyclical or



temporary industries such as the oil industry. A crew camp is not a conventional hotel, motel, recreational vehicle park, mobile home park, or campground. A crew camp is not a facility that provides parking and hookups for individually owned recreational vehicles, fifth wheels, camper trailers, pop-up campers, pickup trucks with on-board campers, or similar units. A crew camp is not a conventional “stick-built” on-site structure or group of structures. A crew camp is not for long-term or permanent habitation.

28. “Cultural Institution” is an establishment that provides cultural, intellectual, scientific, environmental, educational, or artistic enrichment to members of the community. Examples: museums, and zoos.
29. “Day Care Center” is an establishment, other than a public or parochial school, which provides daycare or education for four (4) or more unrelated children aged five (5) years and under, for a period of more than two months.
30. “Department Store” is an establishment, typically large in nature, which provides a wide range of consumer goods that are segmented into different departments within the facility. Examples: Macy’s, Shopko, Target, Wal-Mart.
31. “Development” is a building or portions thereof arranged or designed to provide living facilities for one or more families. The term “dwelling” shall not be deemed to include transient housing facilities.
32. “Dwelling” is a building or portion thereof arranged or designed to provide living facilities for one or more families. The term “dwelling” shall not be deemed to include transient housing facilities.
33. “Dwelling, Multi-Family” is a residential building designed for and occupied exclusively by more than two (2) families.
34. “Dwelling, Single-family” is a dwelling unit located on its own lot that is not attached to any other dwelling unit. Unless defined otherwise, a single-family dwelling is constructed entirely onsite and is not prefabricated offsite.
35. “Dwelling, Two Family” is a residential building designed for and occupied exclusively by two (2) families.
36. “Dwelling Unit” is a single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
37. “Family” is any number of individuals related by blood, legal adoption, or marriage, or a group of not more than two (2) persons who need not be related by blood or marriage, living together in a dwelling unit as members of a single housekeeping unit.

38. “Family Childcare” is a childcare operation performed out of a detached single-family dwelling, which also serves as the primary residence of the operator/provider, offering care, maintenance and supervision for hire or compensation for less than twenty-four (24) hours per day, for no more than twelve (12) children under the age of twelve (12) years, including any children of the operator/provider on the premises that are under the age of twelve (12) years, and generally licensed by the North Dakota Department of Human Services as an early childhood program. Family childcare is considered an accessory use to the principal use of the property as a single-family detached residential dwelling.
39. “Farm” is any parcel of land containing at least ten (10) acres which is used for gain in the raising of agricultural products, livestock, poultry, or dairy products. It includes necessary farm structures and the storage of equipment used. It excludes the raising of furbearing animals, riding academies, livery or boarding stables, dog kennels, and commercial feed lots.
40. “Farm Residence” is a dwelling whose occupant is a person who normally devotes a major portion of their time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products’ unmanufactured state.
41. “Flood or Flooding” is a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters; and/or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
42. “Funeral Home” is a facility used for pre-burial preparation of human remains including but not limiting to a mortuary, chapel, viewing area, vehicular storage, and parking. A funeral home may include a crematorium and/or burial facilities.
43. “Garage, Private” is an accessory building or portion of a main building on the same lot and used for the storage only of private motor vehicles, not more than two of which are owned by others than the occupants of the main building.
44. “Garage, Public” is a building, or portion thereof, other than a private garage, used for the storage of motor vehicles.
45. “Garage, Repair” is a building or space for the repair or maintenance of motor vehicles, but not including auto wrecking establishments or junk yards.
46. “Group Home - Disabled” is a group home for the disabled is a dwelling unit which is occupied as a single housekeeping unit in a family-like environment by up to (8) persons with disabilities plus support staff. Residents are supervised by a sponsoring entity or its staff, which furnishes habilitative services to the group home residents. A group home is owned or operated under the auspices of a nonprofit association, private care provider,

government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians. The group home constitutes a single housekeeping unit where residents share responsibilities, meals, and recreational activities as in any family. The group home staff is specially trained to help the residents achieve the goals of independence, productivity, and integration into the community.

A group home for the disabled is not a clinic or hospital where treatment is the principal or essential service provided. Residency in a group home is long term relatively permanent and measured in years, not months or weeks. A group home can house people with developmental disabilities (mental retardation, autism, etc.), mental illness or physical disabilities as defined by North Dakota Century Code 25-16-14(1.)

A group home for the disabled is not a group home facility for drug and alcohol treatment, treatment of sex offenders, and alternative or post incarceration.

47. “Group Home - Halfway House” is characterized as the residential occupancy of a structure by a group of people, who have been individually convicted of a felony, that do not meet the definition of “family”. A halfway house is for drug and alcohol treatment, treatment of sex offenders, and alternative or post incarceration facilities. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly or longer basis. Generally, halfway houses have a common eating area for residents. Uses commonly associated with halfway houses are group treatment and/or training, offices, recreational activities, and parking of vehicles for occupants and staff.
  - a. Exceptions to the halfway house definition include:
    - (1) Lodging where tenancy may be arranged for periods of less than (30) days.
    - (2) Lodging where the residents meet the definition of “family” and where tenancy is arranged on a month-to-month basis or for a longer period.
    - (3) Facilities for people who are under judicial detainment and under the supervision of sworn officers.
    - (4) The person was a minor when he/she committed the offense and was not convicted as an adult.
    - (5) The person is a minor or a ward under guardianship.
48. “Home Occupation” is an occupation conducted in a dwelling unit, provided that:
  - a. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation.

- b. There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation other than one sign, not exceeding six square feet in area, non-illuminated, and mounted flat against the wall of the principal building.
  - c. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
  - d. No equipment or process shall be used in such home occupation which creates noises, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in line voltage off the premises.
49. “Hotel/Motel” is a building in which lodging, with or without meals, is provided and offered to the public for compensation. Hotels include motels, but do not include group dwellings for the disabled.
  50. “In-Home Apartment” is a self-contained dwelling unit with no more than two bedrooms built within an existing residential structure which was not originally designed as a two-family dwelling unit.
  51. “Junk Yard” is a tract of land, structure, or part thereof, used for collecting, storage, or sale of scrap or discarded material or for the collecting, dismantling or storing and salvaging of machinery or vehicles not in running order.
  52. “Industrial, Heavy” is industrial uses which generate large volumes of vehicular traffic or create obnoxious sounds, glare, vibrations, dust, odor or smoke.
  53. “Industrial, Light” is industrial use which do not generate large volumes of vehicular traffic and do not create obnoxious sounds, glare, dust, vibrations, odor or smoke.
  54. “Lot” is a tract of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open space as herein required. Each lot shall have access to a public street or way.
  55. “Lot, Coverage” is the total area of buildings expressed as a percentage of the total lot, plot or tract.
  56. “Lot, Depth of” means the horizontal distance between the front and rear lot lines.
  57. “Lot, Frontage” is the front of a lot construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a

lot adjacent to streets shall be considered frontage.

58. “Lot, Width” is the distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the rear of the required front yard.
59. “Medical Clinic” is any building designed for use by one or more persons lawfully engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings; including, but not limited to, doctors of medicine, dentists, chiropractors, osteopaths, optometrists and podiatrists; and in which no patients are lodged overnight.
60. “Manufactured Home” is a federal housing and urban development (HUD) labeled structure, transportable in one or more sections that, in its traveling mode, is eight (8) body feet [2.44 meters] or more in width or forty (40) body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty(320) or more square feet [29.73 square meters]; that is built on a permanent chassis; that is designed to be used as a dwelling; that may or may not have a permanent foundation; is connected to the required utilities; and that contains the plumbing, heating, air-conditioning, and electrical systems; except that such term shall include any structure that meets the size requirements and for which the manufacturer has voluntarily filed a certification required by the secretary of housing and urban development and that complies with the manufactured home construction and safety standards. This definition should not be interpreted to include any type of recreational vehicle that may equal or exceed the body length or width specified herein. ND Admn. Rules 108-03-01- 03(10) Jan. 1, 2006
  - a. A manufactured home can be installed by a certified installer or by the homeowner.
  - b. Homeowners installing their own Manufactured Home must have the installation inspected by a certified inspector. Installer must notify the inspector for inspection.
  - c. All manufacturers’ installation instructions shall be followed. Manufactures Installation Manual must be available for the inspection.
  - d. Where site conditions are different from those described in the manufacturer’s installation instructions, the installation must be designed by a registered professional engineer or architect to meet the same goals as those in the manufacturer’s installation. If Alternative Installation methods are used, the supporting documents must be available for the inspection.
61. “Manufactured Home, Class A” is a manufactured home that must be installed on a permanent perimeter foundation. They must be at least twenty-four (24) feet across at the narrowest section when erected onsite and placed so that its longest measurement is parallel to an adjacent street, or if the lot is too narrow, fifty feet (50ft.) or less in width, the placement of the front entrance is parallel to an adjacent street. The roof should be

pitched rather than flat.

62. “Manufactured Home, Class B” does not have to be placed on a permanent perimeter foundation but must be installed per the manufacturer’s recommendation and is subject to the requirements for “manufactured home” as described above except for minimum size and roof pitch requirements.
63. “Mobile Home” is a transportable, factory-built structure that was manufactured prior to June 15, 1976, or otherwise does not comply with the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and that is designed to be used as a single dwelling unit. A mobile home is:
  - a. Constructed off-site
  - b. Equipped with the necessary utility service connections
  - c. Made so as to be readily movable as a unit or units on its own running gear
  - d. Designed to be used with or without a permanent foundation. (Note: After June 15, 1976, no mobile homes have been constructed.)

Existing mobile homes currently located in Tioga are allowed to remain but the importation of any additional mobile homes into the City is not allowed because they do not meet the current building code requirements.

64. “Mobile Home or Manufactured Home Park” is a parcel of land under single ownership that has been planned and improved for the placement of mobile homes or manufactured homes. Campers and Recreational Vehicles are not permitted. A single park must be at least five (5) gross acres or larger.
65. “Modular Home” is a dwelling unit which was constructed off site in a factory as separate modules which are joined together. The manufacturer of a modular residential or commercial structure shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the North Dakota Division of Community Services.
66. “Modular Home, Class A” is a modular home that must be installed on a permanent perimeter foundation. They must be at least twenty-four (24) feet across at the narrowest section when erected onsite and placed so that its longest measurement is parallel to an adjacent street. The main roof should be pitched, rather than flat. The placement, use, and occupation of a Class A Modular Home shall be subject to the provisions of this chapter, together with any other restrictions, conditions, regulation set forth in these

ordinances, to include, without limitation, those contained with the Recreational Vehicle Facility Park and Crew Housing Ordinances.

67. “Modular Home, Class B” is a modular home that does not have to be placed on a permanent foundation but shall be placed on a foundation per manufactures’ recommendations. The placement, use, and occupation of a Class B Modular Home shall be subject to provisions of this chapter, together with any other restrictions, conditions, regulations set forth in these ordinances, to include, without limitation, those contained with the Recreational Vehicle Facility Park and Crew Housing Ordinances.
68. “Motor Vehicles” as referred to in this ordinance include small passenger vehicles and other vehicles that do not exceed triple axle trucks in size. Examples include SUVs, passenger cars, sports cars, medium sized pickup trucks, and vans.
69. “Nonconforming Use” is any building or tract of land lawfully occupied by a use at the time of passage of this ordinance or amendments thereto, which does not conform with the provisions of this ordinance or amendments thereto.
70. “Non-Farmer” is any person who does not normally devote a major portion of his/her time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products’ unmanufactured state.
71. “Non-Farmer Residence” is a dwelling which is to be situated on a parcel of land and whose initial occupant is or may be a non-farmer or any other person who does not intend to farm such parcel or engage in upon such parcel the raising of livestock or other similar operations normally associated with farming or ranching.
72. “Off-premise Advertising Signs” are advertising signs that are not located on the property of the business that is being advertised. Examples: Billboards.
73. “Parking Space” is an area (9.5) feet by (18) feet, or greater which is sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile. Required off street parking shall be provided in a manner that vehicles do not approach on a public right-of-way.
74. “Permitted Use” is any use which complies with the requirements of a zoning district and is unconditionally allowed.
75. “Planning Commission” is the Planning and Zoning Commission of Tioga.
76. “Private Club” is a fraternal organization, or public service group is a non-profit organization which has regular or periodic gatherings of the members. The facility may be open to the public, and may include food and beverage sales and gaming activities. The facility may also be rented or leased to non-member groups for special events, including but not limited to wedding parties, class reunions, and family reunions.

Examples of private clubs include the Elks, Moose, Eagles, Lions, VFW, AMVETS, Masons, Freemasonry, Shriners, Kiwanis, Rotary International, Toastmasters, Salvation Army, and Odd Fellows.

77. “Production Facility” is an establishment that is industrial in nature, and provides for the manufacturing, production, and distribution of consumer goods. Examples: Manufacturing Facilities, Freight Movement Facilities, Wholesale Facilities, Production Facilities, Storage Facilities.
78. “Prohibited Use” is any use which does not comply with the requirements of a zoning district, and is not allowed under any condition. Prohibited uses are those uses in the Use Table (Section 5.0413) not labeled as permitted or conditional.
79. "Public Utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in North Dakota Century Code. Title 49. As a use, “public utility” includes the supply of homes, businesses, and other establishments with water, light, heat, power, sewage collection, treatment, or disposal for sanitary or drainage purposes, transportation of persons or property, and means of communication.
80. “Public Buildings” are structures principally of an institutional nature or serving a public need, such as: governmental buildings, public hospitals, public schools, public libraries, public museums, post offices, police and fire stations, public utilities, and other public services that do not constitute a commercial enterprise.
81. “Recreational Vehicle (RV)” is a vehicular type unit primarily designed as a temporary living quarter for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by a vehicle. Common types of RVs include motorhomes, travel trailers, fifth wheels, pop-up tent campers, over-the-cab or on-board pickup campers. A recreational vehicle campground or facility is not a crew camp or Temporary Crew Housing Facility.
82. “Recreational Campground” is a designated area under single ownership or management which has been planned, designed and improved to accommodate campsites for tents and/or sites for at least twenty (20) recreational vehicles and is open to the general public as temporary occupancy for recreational or vacation purposes.
83. “Repair Shops” are repair shops which service business machines, bicycles and household appliances.
84. “Retail Nursery and/or Greenhouse” is an establishment that provides for the cultivation, display, storage and sale of plants, shrubs, trees, as well as other associated materials and tools.
85. “Retail Shop” is an establishment primarily used for the sale of consumer goods, merchandise, and/or services to the general public.



86. “Right-of-Way” is the area, either public or private, over which the right of passage exists. The right-of-way shall not be considered as land area when computing lot size.
87. “Restaurant” is a public eating establishment at which the primary function is the preparation and serving of food.
88. “Rooming House” is any dwelling in which more than two (2) persons, either individually or as families, are housed or lodged for hire, with or without meals.
89. “Sand and Gravel Mining” involves the removal of sand, gravel, and/or scoria from the earth.
90. “Sand and Gravel processing” involves the refinement of sand, gravel, and/or scoria for the purpose of use or sale.
91. “Self-Service Storage Facility” is also known as “self-storage units” or “mini-warehouses”. These structures contain spaces, compartments or units which are individually rented or leased to clients for storage and retrieval of their goods. Storage Facilities are permanent structures, built on-site, with frost-protected foundation systems. Storage Facilities do not include shipping containers, cargo containers, roll-off containers, semi-trailers or other types of portable or non-permanent containers. Outdoor storage at Storage Facility sites is not allowed. Storage of fireworks or other flammable, combustible or hazardous materials is not allowed. Motor vehicles may be stored. Individual Storage Facilities may be used for storage of commercial goods but shall not be used for conducting any service, retail, merchandising, and wholesale or light industrial business activities.
92. “Service Station” is an establishment consisting of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced; such service shall not include tire recapping, body repairs or major overhaul.
93. “Setback” is the distance between the lot line and building line.
94. “Shopping Center” is a collection or group of retail shops or department stores, generally located in the same building or site, for the purpose of selling consumer goods, merchandise, and services. Examples: Strip Mall, Mall, Plaza.
95. “Sign” is any device which shall display or include any letter, word, model, banner, flag, pennant, insignia, device, or representation used as, or which is in the nature of, an advertisement or announcement which directs attention to an object, product, place, activity, person, institution, organization, or business, but shall not include and display an official notice or an official flag.
96. “Storage of Hazardous Materials” involves a building or container used primarily for the storage of hazardous materials. Examples: Storage of Explosive Materials, Storage of Flammable Materials.

97. “Street” is a public way for vehicular traffic which affords the principal means of access whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, alley, or however otherwise designated.
98. “Street, Thoroughfares” are arterial streets which are used primarily for heavy traffic and serving as an arterial traffic way between the various districts of the community, as shown on the Comprehensive Plan.
99. “Street, Collectors” are those that carry traffic from minor streets to the major system of thoroughfares and highways, including the principal entrance streets of residential districts as shown on the Comprehensive Plan.
100. “Street, Minor” are those which are used primarily to provide vehicular and pedestrian access to abutting properties.
101. “Street Width” is the shortest distance between lines of lots delineating the street right-of-way.
102. “Street, Private” is a private roadway affording access by pedestrians and vehicles, which is under individual rather than municipal control and ownership.
103. “Street, Service Road” is a minor street which is parallel and adjacent to thoroughfares and highways, and which provides access to abutting properties and protection from through traffic.
104. “Structure” is anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, but not including fences.
105. “Structural Alterations” are any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.
106. “Substantial Improvement” is any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
  - a. Before the improvement or repair is started, or
  - b. If the structure has been damaged and is being restored before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
107. “Telecommunications Tower” is a tower erected for the purpose of providing communication services, such as radio, television, or phone to the general public.
108. “Commercial Transmission Lines” includes any of the following:
- a. A regional or interstate electrical line.
  - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, or liquid hydrocarbon products for public commerce.
109. “Variance” is the relaxation of the terms of the Zoning Regulations in relations to height, area, size, and open spaces where specified physical conditions, unique to the site, would create an unreasonable hardship in the development of the site for permitted uses.
110. “Wind Energy Conversion System” is an apparatus for converting the kinetic energy available in wind to mechanical energy that can be used to power machinery and/or to operate an electrical generator. The major components of a typical wind energy conversion system include a wind turbine, a generator, interconnection apparatus, and control systems.
111. “Yard” is a space on the same lot with the principal building or structures, open, unoccupied, and unobstructed by buildings or structures from the ground upward.
112. “Yard, Front” is the yard extending across the full width of the lot from side lot lines, the depth of which is the least distance between the front lot line and the front building frame.
113. “Yard, Rear” is a yard extending across the full width of the lot from side lot lines, the depth of which is the least distance between the rear lot line and the rear face of the principal building.
114. “Yard, Side” is a yard extending from the rear line of the required front yard to the rear lot line, the depth of which is the least distance from the sides of the principal building and the side lot line.
115. “Zone District” is a portion, area or section of the City for which uniform regulations governing the use, height, area, size and intensity of use of buildings, land and open spaces about buildings as herein established.

## **ARTICLE 3 - Non-Conforming Uses and Structures**

### 5.0301 Non-Conforming Uses

The lawful use of a structure or a parcel of land existing at the time of adoption or amendment of this ordinance may be continued although the use does not conform with the provisions of this chapter, except that:

1. Extension. Only that portion of the land in actual use may be so continued and a non-conforming use may not be extended, enlarged, or substituted. Any public service (electrical, water, sewer, and etc.) does not constitute actual use of the land.
2. Damage or Destruction. If any building in which there is a non-conforming use is damaged by fire, flood, explosion, wind, or other calamity to the extent of more than fifty percent (50%) of its current assessed value, it shall not be restored except so as to comply with the provisions of this ordinance.
3. Repairs and Alterations. Total lifetime structural repairs or alterations to a structure containing a non-conforming use shall not exceed fifty percent (50%) of the structure's assessed value at the time of it becoming a non-conforming structure unless it is permanently changed to conform with the provisions of this ordinance.
4. Discontinuance. In the event of any non-conforming use ceases, for whatever reason, for one (1) year, any future use of the land, structure, or water shall be in conformity with the provisions of this ordinance.
5. Moving Building. Should any building, other than a mobile home, containing a non-conforming use be moved any distance whatsoever, the building shall thereafter be used only in conformity with the provisions of this ordinance.
6. A non-conforming use shall not be changed to any use other than those permitted within the district in which the building is located. Once so changed, it shall not revert back to a non-conforming use.

Single family dwelling units existing at the time of ordinance adoption or amendment may be continued as non-conforming uses without regard to the above exceptions.

Any use which is permitted as a conditional use in a district under the terms of this ordinance shall not be deemed a non-conforming use in such district but shall without further action be considered a conforming use.

## **ARTICLE 4 - Zoning Districts and Zoning Map**

### 5.0401 District Zoning Map

The boundaries of the zoning districts appear on a map designated as the District Zoning Map. The District Zoning Map and all notations, references and other information shown thereon were all fully set forth and described herein. A properly attested copy of the District Zoning Map is on file with the City Auditor.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the District Zoning Map, the following rules apply:

1. In unsubdivided property, the district boundary line shall be determined by the use of the scale or dimensions appearing on the map.
2. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines.
3. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
4. Boundaries indicated as approximately following City limits shall be construed as following such City limits.
5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

No building or structure shall be erected, and no existing building or structure shall be moved, altered, added to, or enlarged; nor shall any land, building, or structure be used, designed or arranged for use for any purpose or in any manner unless it meets both of the following conditions:

1. It is included in the district use regulations which follow as a use which is listed as a permitted use or listed among those used listed as a conditional use for which a conditional use permit has been obtained.
2. It is in conformance with the Special Provisions listed in article five (5) of this chapter.

### 5.0402 Zoning Districts

In order to classify, regulate and restrict the location of businesses, industries, residences, and the location of buildings designed for specified uses; to regulate and limit the weight and bulk of buildings; to regulate and limit the intensity of the use of lots; to regulate and determine the area of yards and other open spaces surrounding buildings; and to regulate and restrict the density of population; the area within the zoning jurisdiction of the City of

Tioga and the area within the extra-territorial boundary shall be divided into any of the following districts being known as:

R-1	R-2M	C-1	I-1	A-1
R-2A	R-3	C-2	I-2	MHD

All territory which hereafter comes into the jurisdiction of the City's extra-territorial zoning jurisdiction shall be in the A-1 district until or unless otherwise changed by ordinance.

5.0403 R-1 Use Regulations

1. Intent: It is the intent of this district to provide for very low-density residential neighborhoods. It is further intended that no uses be permitted that will interfere with health, safety, or general welfare or devalue the property for residential purposes.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

5.0404 R-2A Use Regulations

1. Intent: It is the intent of this district to provide an attractive residential neighborhood of a lower density. It is further intended that no uses be permitted that will interfere with the health, safety, general welfare, or devalue the property for residential purposes.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

5.0405 R-2M Use Regulations

1. Intent: It is the intent of this district to provide a lower-density residential neighborhood where a variety of residential dwelling unit types may be located.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

5.0406 R-3 Use Regulations

1. Intent: It is the intent of this district to provide attractive medium-density residential neighborhoods.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

5.0407 Use Regulations MHD (Manufactured Home District/Park)

1. Intent: It is the intent of this district to provide a lower density residential neighborhood of manufactured housing. This district is intended to provide reduced housing costs while providing for a pleasant and healthy residential environment protected from potentially

adverse neighboring influences. Manufactured Home District is intended for the sale of lots for residential occupancy by manufactured homes only. The tract of land shall not be less than five (5) acres.

2. A Manufactured Home Park is intended for those areas (separate from Manufactured Home District) where the owner proposes to develop and rent or lease individual sites. The tract of land shall be not less than five (5) acres.
3. In order to maintain a continuous minimum quality and standards of the manufactured homes brought into the City of Tioga, no manufactured home older than ten (10) years, singlewide or doublewide, shall be permitted to be installed in an MHD, with such age of structure being based upon in the year the application and permit are approved hereunder.
4. The building set back from property line is the same standards set forth in this ordinance.
5. Any accessory structure including eaves, fascia and soffit shall maintain a minimum five (5) feet from side yard lot line. A minimum of ten (10) feet between structures.
6. A singlewide unit shall be placed on the lot so as to maintain the maximum distance from the neighboring manufacture home.
7. The placement, use, and occupation of any manufactured or mobile discussed hereunder shall be subject to the provisions of this chapter, together with any other restrictions, conditions, regulation set forth in these ordinances, to include, without limitation, those contained with the Recreational Vehicle Facility Park and Crew Housing Ordinances, as applicable.
8. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0408 C-1 Use Regulation

1. Intent: It is the intent of this district to provide for the orderly development of low-density commercial activities which require extensive lot space and good vehicular access.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0409 C-2 Use Regulations

1. Intent: It is the intent of this district to provide for the orderly and efficient development of higher-density commercial areas.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0410 I-1 Use District

1. Intent: It is the intent of this district to provide an area for light industrial activity which will not adversely affect adjacent residential areas.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0411 I-2 Use District

1. Intent: It is the intent of this district to provide an area for uses not compatible with residential or commercial activity.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0412 A-1 Use District

1. Intent: This district is established to permit normal agricultural uses and to preserve the land until it is developed as part of the City.
2. Refer to Section 5.0413 for permitted uses, conditional uses, and uses not allowed.

#### 5.0413 Use Table

1. Intent: The following Use Table identifies where a specific use is located among the various zoning districts. The table has been broken into five (5) classifications: Residential, Commercial, Industrial, Institutional, and Communications. Each classification is then broken into "Use Categories" and then further broken down into "Use Examples." In addition, each zoning district is included at the top of the table. In order to determine if a use is permitted within a district, find the desired specific use and the corresponding zoning district. There are three available options the Use Table shows:
  - a. P - Permitted Use by Right: the use is allowed by right in the corresponding zoning district;
  - b. C - Conditional Use: the use is listed as a Conditional Use under the procedures in this ordinance and may be allowed in the corresponding zoning district upon approval by the City;
  - c. No Symbol - the use is prohibited in the corresponding zoning district.
2. How to use the table: First, identify the proposed use and locate it under the "Use Examples" column. Upon locating the desired use, identify the corresponding zoning district and determine whether it is a permitted, conditional, or not allowed. For example, a proposed hotel located in the C-1 zoning district is permitted by right, whereas a proposed hotel located in the R-3 zoning district is not allowed.



Use Table

P Permitted Use by Right		A-1	R-1	R-2A	R-2M	R-3	MHD	C-1	C-2	I-1	I-2
C Conditional Use											
Use Category	Use Examples										
<b>Residential</b>											
Group Living	Assisted Living Facilities		C	C	P	P	C				
	Group Home - Disabled		P	P	P	P	C				
	Basic Care Facilities		C	C	P	P	C				
Multi Family	Multi-family, 9 Dwelling Units and Above					C					
	Multi-family, 5-8 Dwelling Units					C					
	Multi-family, 3-4 Dwelling Units					P					
	Apartments					C		C			
	Apartment Hotel/Rooming House					C		C			
	Crew Camps	C									C
	Townhouse					P					
	Two Family Dwelling			P	P	P					
Single Family	Single Family Dwelling	P	P	P	P	P					
	Manufactured Homes, Class A	P	P	P	P		P				
	Manufactured Homes, Class B	P			P		P				
	Modular Homes, Class A	P	P	P	P	P					
	Modular Homes, Class B	P			P		P				
	Manufactured Home Park/District				P		P				
	Recreational Vehicles	C	C	C	C		C				
	<b>Commercial</b>										
Food and Beverages	Bakeries							P	P	P	
	Delicatessen/Butcher Shops							P	P	P	
	Dine-In Restaurants							P	P	P	
	Drive-Thru Restaurants							P		P	
	Mobile Food Vendor						C	C	C	C	C
	Liquor Stores							P		P	
	Taverns/Bars							P	P	P	
Motor Vehicle Sales Services	Car Wash							P	P	P	
	Motor Vehicle Sales							P		P	
	Motor Vehicle Repair and Services							P		P	
	Tire sales and services							P		P	

P Permitted Use by Right											
C Conditional Use											
Use Category	Use Examples	A-1	R-1	R-2A	R-2M	R-3	MHD	C-1	C-2	I-1	I-2
Other Services	Animal Hospitals/Veterinary							P		P	
	Animal Kennels	C						C		P	
	Barber Shop/Beauty Salon							P	P	P	
	Bed and Breakfast Facility	C	C	C					P		
	Business & Professional Offices					C		P	P	P	P
	Dental Offices							P	P	P	
	Hotel/Motel							P	P	P	
	Home Occupation	P	P	P	P	P			P		
	Laundromat							P	P	P	
	Medical Offices					C	C	P	P	P	
	Funeral Home							P	C	C	
	Temporary Office						C	C	C	P	P
	Photography/Art Studios					C		P	P		
	Self-Service Storage Facilities							P		P	
	Tattoo Parlor							P		P	P
Recreation, Commercial	Amusement Parks							P		P	
	Bowling Alleys							P	P	P	
	Health Club							P	P	P	
	Mini Golf							P		P	
	Private Clubs	C						P	P	P	
	Skating Rinks							P		P	
	Theaters							P	P	P	
Retail Sales and Services	Banks & Financial Institutions							P	P	P	
	Convenience Stores w/ Gas							P	P	P	P
	Convenience Stores w/o Gas							P	P	P	
	Department Stores							P	P	P	
	Drug Stores							P	P	P	
	Furniture Stores							P		P	
	Grocery Stores							P	P	P	
	Hardware Stores							P	P	P	
	Mattress Stores							P		P	
	Retail Shops							P	P	P	
	Shopping Centers							P	P	P	
	Roadside Stand for Sale of Products Grown On-site	P									

P Permitted Use by Right		A-1	R-1	R-2A	R-2M	R-3	MHD	C-1	C-2	I-1	I-2
C Conditional Use											
Use Category	Use Examples	A-1	R-1	R-2A	R-2M	R-3	MHD	C-1	C-2	I-1	I-2
Industrial											
Agriculture	Agricultural/Farming	P									
	Horse Boarding	P									
	Beehives and Beekeeping	P									
	Dairy processing plants	C								C	P
	Concentrated Animal Feeding Operation	C									P
	Grain Mills/Elevators	C									P
	Wholesale Nurseries & Greenhouses	P									
	Retail Nurseries & Greenhouses	C	C					P		P	
	Industrial Production	Chemical Fertilizer Plant	C								
Lumber Yard								C		P	
Junk Yard											P
Pipe Yards		C								C	P
Refineries & Petro-chemical Plant											C
Resource Extraction	Coal Mining	C									C
	Mineral Extraction	C									C
	Sand and Gravel Mining	C								C	P
	Sand and Gravel Processing	C								C	P
	Wind Energy Conversion	C									C
Other	Adult Entertainment Centers									C	C
	Aviation	C									
	Concrete and/or Asphalt Batch Plant	C								C	P
	Heavy Equipment Sales & Services							C		P	
	Games of Chance							C		P	
	Contractor Equipment and Materials Storage	C						C		C	P
	Production Facility/Truck Terminal/Manufacturing									P	P
	Storage of Hazardous Materials									C	C
	Warehouses									P	P
	Caretaker's Residence										C

P	Permitted Use by Right											
C	Conditional Use											
Use Category	Use Examples	A-1	R-1	R-2A	R-2M	R-3	MHD	C-1	C-2	I-1	I-2	
<b>Institutional</b>												
Education	Colleges	C	C	C	C	C			C			
	Primary Schools	C	C	C	C	C			C			
	Secondary Schools	C	C	C	C	C			C			
	Technical/Trade Schools	C	C	C	C	C		P	C	C		
Public Facilities and Services	Emergency Response Facilities	C	C	C	C	C	C	C	C	C	C	
	Public Buildings	C	C	C	C	C	C	C	C	C	C	
	Health Care Facilities							P	P	P		
	Public Utilities	P	P	P	P	P	P	P	P	P	P	
	Commercial Transmission Lines (Electric, Oil, & Gas)	C	C	C	C	C	C	C	C	C	C	
	Sewage Disposal Plants	C									C	
	Solid Waste Landfills	C									C	
Other	Commentaries	C	C	C	C	C	C	C	C	C	C	
	Community Centers	C	C	C	C	C	C	C	C	C		
	Day Care Centers			C	C	P	C	C	P			
	Family Child Care	P	P	P	P	P						
	Churches and Religious Institutions	C	C	C	C	C	C	C	C	C		
Recreation	Campground	C										
	Community Swimming Pools		P	P	P	P	P	C	P			
	Cultural Institutions		C	C	C	C		P	P			
	Golf Courses/Country Clubs	C										
	Libraries		C	C	C	C	C	C	C			
	Recreational Vehicle Park	C					C	C				
	Parks	C	P	P	P	P	C	C	P			
<b>Communications</b>												
	Off-Premise Advertising Signs	C						C		C	C	
	Towers <100 ft	C						C		P	P	
	Towers >100 ft	C								C	C	

**ARTICLE 5 - Special Provisions**

5.0501 Height, Area, and Setback Regulations

1. Except as otherwise specifically provided in this ordinance, no structure shall be erected which does not have the minimum setback or which exceeds the height limits specified below.

<u>District</u>	<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>	<u>Height Limit</u>
R-1	25 feet	w/alley 5 feet wo/ alley 10 ft	20 feet	30 feet
R-2A	25 feet	w/alley 5 feet w/o alley 10 ft	20 feet	30 feet
R-2M	25 feet	w/ alley 5 feet wo/alley 10 ft	20 feet	30 feet
R-3	25 feet	10 feet	20 feet	40 feet
MHD	20 feet	5 feet	15 feet	30 feet
C-1	25 feet	10 feet	20 feet	30 feet
C-2	none	none	5 feet/allow employee parking	40 feet
I-1	25 feet	10 feet	20 feet	40 feet
I-2	25 feet	10 feet	20 feet	100 feet
A-1	25 feet	10 feet	20 feet	50 feet

2. Where lots have a double frontage, the required front yard shall be provided on both streets. Where a lot is located at the intersection of two (2) or more streets, there shall be a front yard on each side street of a corner lot; the secondary front/side yard shall be reduced to twenty (20) feet. In all cases, the site must be reviewed by City staff to ensure proper sight triangulation in that the-buildable width of a single lot shall not be reduced to less than thirty-five (35) feet, except where necessary to provide a yard along the side street with a depth of five (5) feet.
3. The following shall be exempt from the maximum height regulations in all districts: antennas, chimneys, drilling rigs, flag poles, church steeples, water tanks, and other appurtenances usually required to be placed above roof level and not intended for human occupancy.

4. In all Residential Zones, no more than forty (40) percent of a lot can be developed. If a lot is to be more than forty (40) percent developed, a Variance must be applied for and approved.
5. No accessory structure or use of a vacant lot shall be constructed on that does not conform with the zoning use for that district.

#### 5.0502 Accessory Structures

1. Accessory structures may be built in the required rear yard setback, but such accessory structures shall not be nearer than three feet to any side or rear lot line.
2. One accessory structure (e.g., sheds, gardening shacks, or storage structures) up to one hundred twenty (120) square feet shall be allowed without a permit; any structure proposed to exceed that maximum square footage must be approved through the Community Planning and Zoning Director in accordance the relevant provisions of this Chapter.
3. All Residential accessory buildings shall conform to the style or décor of the principal building or neighborhood. No corrugated or sheet metal shall be used for siding. No shipping containers, Conex boxes, or the like are allowed in any residential zones.
4. Uncovered porches, steps, ramps, or decks to building entrances may not extend more than twelve (12) feet into any required front yard or not more than fifty (50) percent of any required front yard if less than the standard setback of twenty-five (25) feet. Side yard not closer than three (3) feet to the lot line.
5. Garage overhead doors facing alley must be set back 20 feet from the alley lot line.
6. No residential structure shall be erected which does not have the minimum lot size and lot width specified below. This provision shall not apply to any lot(s) and/or structure(s) that fail to meet the size limitations described in this subparagraph if such structures and/or lots existed in a non-compliant state at the time of the passage of this ordinance (i.e., February 1, 2023), then any such nonconforming existing structures or lots, together with their recorded plats, shall be deemed to have been afforded a variance for the said lots and structures that exist at that time.

		<u>Minimum Lot Area</u>	<u>Minimum Lot Width</u>
a.	Dwelling, Single Family	8400 sq. ft. w/alley 9000 sq. ft. w/o alley	60 ft.
b.	Dwelling, Two Family	8400 sq. ft. w/alley 9000 sq. ft. w/o alley	65 ft.
c.	Dwelling, Townhouse, Single Story	3000 sq. ft.	30 ft.
	Two Story	3000 sq. ft.	30 ft.
d.	Dwelling, Multi-Family Per Structure	6000 sq. ft	None
	Per Unit	2000 sq. ft.	None
e.	Dwelling, Manufactured (MHD)	6000 sq. ft.	50 ft

#### 5.0503 Fence Regulation

1. In R-1, R-2A, R-2M, R-3 and MHD residential district, no fence or closely grown hedge shall be more than six (6) feet in height in any rear or side yard. In addition, no fence or closely grown hedge shall be more than four (4) feet in height in any front yard. There shall not be any type of barbed wire, razor wire, electric wire fencing allowed in all Residential Zones, including Manufactured Home Districts.
2. All fence posts and supporting members shall be erected so that the finished side or sides of the fence shall face the adjacent property or public right-of-way. No more than two (2) types of related fencing materials shall be used in any fence or wall. Fences constructed of wood shall be resistant to decay. No fence shall be constructed of including but not limited to, chicken wire, rope, cable, barbed or razor wire, electric wire fencing, railroad ties, landscape timber, utility poles, pallets, used or discarded materials in disrepair or similar items.
3. Snow fences made of acceptable materials may be used from November through March and must be removed from April through October.
4. Fences in I-1, I-2, C-1 and C-2 shall not exceed ten (10) feet in height. Security fences over six (6) feet in height may barbed, razor type wire at above six (6) feet in height.
5. Fences erected upon school or park grounds shall be exempt from these height limits.
6. On corner lots in all districts, no fence or closely grown hedge in excess of three (3) feet

above the curb level shall be permitted within a triangular area defined as follows: beginning at the intersection of the projected curbing lines of two intersecting streets, thence thirty (30) feet along one curb line, thence diagonally to a point thirty (30) feet from the point of beginning on the other curb line, thence back to the beginning.

7. No fence may be placed within any street right-of-way or upon public easements.
8. No bush, shrub, tree, posts or fence shall be within three (3) feet of a fire hydrant or utility box.
9. Decorative, landscaped areas or landscape islands shall be permitted, provided that they have open designs or are not enclosed by fencing which is more than four (4) feet in height, and which may not exceed an area greater than eight (8) to twelve (12) feet in length/width; these areas may be located in front of the required building setback line and corresponding street curb, or public right-way. However, any landscaping improvements in the right-of-way may be subject to disruption, removal or relocation due to public or private utility, street, sidewalk improvements or maintenance. (The cost of replacement of such improvements shall be the property owner's responsibility.)

#### 5.0504 Intent of Sign Regulations

Signs have an impact on the character and quality of the environment as a prominent part of the scenery. They attract or repel the viewing public and impact the safety of the vehicular traffic. Their suitability or appropriateness helps to set the tone of the neighborhood.

It is the intent of this ordinance to promote the health, safety and welfare of the residents and visitors of the city by regulating and controlling the size, location, type, quality of materials, height, maintenance and construction of all signs and sign structures, and to prohibit signs of a commercial nature from districts in which commercial activities are not permitted in this ordinance; to limit signs in the more restricted commercial districts, except as otherwise permitted in this ordinance, to those of an on-site variety and to control the number and area of signs in certain other districts.

#### 5.0505 Definitions for Sign Regulations

1. "Abandoned sign": A sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity and for which no legal owner can be found.
2. "Awning": a roof-like cover often of fabric, plastic, metal or glass designed and intended for protection from weather or as a decorative embellishment, and which projects from wall or roof of a structure primarily over a window, doorway, walk or similar.
3. "Balloon sign": A sign consisting of a bag made of lightweight material supported by



helium or by hot or pressurized air, which is greater than twenty-four (24) inches in diameter.

4. “Banner”: A temporary sign device generally made of flexible materials such as cloth, plastic, or other non-rigid material with no enclosing framework.
5. “Billboard”: An off premise sign whose face is greater than seventy-two (72) square feet in size, but not greater than six hundred seventy-two (672) square feet, and advertises a business, commodity, good, service, entertainment or attraction, which is not sold, produced, manufactured, or furnished on the premises where the billboard is located. Billboards include either digital displays or static displays.
6. “Building Sign”: Any sign attached or supported by any structure used or intended for supporting or sheltering any use or occupancy.
7. “Canopy Sign”: Any sign that is part of or attached to a canopy, often of fabric, plastic, metal, or glass on a support, which provides shelter over a doorway.
8. “Clearance (of a sign)”: The smallest vertical distance between the grade of vehicular uses and the lowest point of any sign, including the framework and embellishments, extending over that grade.
9. “Construction Sign”: A temporary sign identifying parties involved in construction on the property on which the sign is located.
10. “Cabinet Sign”: A sign that contains all the text and/or logo symbols within a single enclosed cabinet.
11. “Digital Sign or Digital Billboard”: Electronic image displays that present multiple static advertising on a rotating basis through LED, or similar electronic technologies.
12. “Directional/Informational Sign”: An on-premise sign giving directions, or facility information and which may contain the name or logo of an establishment but no advertising, e.g., parking or exit and entrance signs may be located within the site or on building wall.
13. “Flag”: Any fabric or lightweight material at one (1) end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia or other symbolic devices.
14. “Freestanding Sign”: A pole, pylon, or monument (billboards exempt) sign supported by a permanent foundation upon the ground and not attached directly to any building.

15. “Height of Sign”: The height of a sign shall be computed as the vertical distance measure from the base of sign at grade to the top of the highest attached component of the sign.
16. “Illuminated Sign”: A sign, non-digital in nature, with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.
17. “Monument Sign”: Also known as a ground sign. A sign mounted directly to the ground not supported by exposed posts or poles, which is architecturally designed and located less than two (2) feet from base of sign to ground where the base width dimension is at least as wide as the sign and has not more than two (2) signs and not greater than six (6) feet in total height.
18. “Off Premise Advertising Sign”: Any sign used to advertise products, goods, services which are not exclusively related to the premises or owner of the property on which the sign is located.
19. “Pole Sign”: A freestanding sign in excess of six (6) feet in height that is detached from a building.
20. “Portable Sign”: Any sign which meets one or more of the following conditions: movable either by skids, wheels, truck, or other conveyance; any sign which does not have a permanent foundation or is otherwise permanently fastened to the ground and/or which is not wired for electricity in accordance with the sign code. When on a trailer, the removal of the wheels or undercarriage does not place the sign in another category; neither does the anchoring of the sign by means of concrete blocks, sandbags, or other types of temporary anchors. Portable sign is classified as temporary signs.
21. “Pylon Sign”: A free standing sign in excess of six (6) feet in height that is detached from a building and is supported by one or more structural elements which are architecturally similar in design to the primary structure.
22. “Real Estate Sign”: A temporary sign advertising the real estate upon which the sign is located as being for rent, lease or sale.
23. “Sandwich Board Sign”: A freestanding temporary sign with only two (2) sides that are situated adjacent to a business with the intent to attract traffic to businesses. Sandwich board signs are not meant to be read by vehicular traffic. A sandwich board sign does not fall under the requirements for temporary signage.
24. “Sign”: Any device, structure, fixture, or placard using graphics, symbols, and/or written copy for the primary purpose of identifying, providing directions, or advertising any

establishment, product, good, or service.

25. “Sign Area”: That area includes; (1) the smallest rectangle around each line copy for individually mounted letter signs. (2) the entire face of a sign including the advertising surface and any framing, trim, or molding but not including the supporting structure for all other signs.
26. “Temporary Sign”: A movable sign, poles, posts, or other structure or apparatus intended to be erected for short period of time and not permanently fastened to a foundation or other permanent structure.
27. “Wall Sign”: Shall mean a sign attached essentially parallel to and extending not more than twenty-four (24) inches from the wall of a building with no copy on the sides or edges. This definition includes painted, individual letter, and signs on a mansard.
28. “Window Sign”: Shall mean a sign installed inside or outside a window and intended to be viewed from the outside.

#### 5.506 General Provisions - On Premise Signage

1. No sign permitted by this title shall by reason of its location, color or intensity, lighting, glare, focus, animation or flashing, create a hazard to the safe, efficient movement of vehicular or pedestrian traffic. No private sign shall contain words which might be construed as traffic controls, such as “Stop”, “Caution”, “Warning”, etc., unless such sign is needed to direct traffic on the premises. No sign may be placed in a manner as to materially impede vision between a height of two and one-half (2 ½) feet and ten (10) feet above the center grade of the intersecting streets within thirty (30) feet to the point of curvature of the intersecting street curbs.
2. All signs and structures shall be properly maintained in a safe, orderly condition at all times, including the replacement of defective parts, cleaning and other items required for maintenance of the sign. Vegetation around, in front of, behind, and underneath the base of ground signs for a distance of ten (10) feet shall be neatly trimmed and free of weeds, and no rubbish or debris that would constitute a fire or health hazard under or near the sign.
3. All signs shall be constructed in accordance with the City of Tioga adopted Building and Electrical Codes.
4. On premise Sign Brightness: Digital or electronic signs shall come equipped with automatic dimming technology that adjusts the display’s brightness based on ambient light conditions.

5. No sign shall be erected, placed, or maintained on fences, trees, power and light poles or the supports thereof, except as allowed at special events. Signs on rocks shall be allowed if they use metal letters and numbers or the commercial message is etched into the surface of the rock.
6. No signs shall be erected, temporarily placed, or project within any easements or public rights of way.
7. Commercial message of the sign shall be neat, orderly and not obscene. The signs shall be professionally prepared.
8. Signs containing non-commercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.
9. Signs with external lighting shall have no exposed light sources or fixtures unless decorative fixtures are utilized and the light source is fully concealed and diffused.
10. The installation of electrical signs shall be subject to the State Electrical Code.
  - a. Electric service to such sign shall be underground.
11. All on premise signs shall be located on the property that contains the principal building in which the sign is advertising. No freestanding sign shall be installed on vacant property.
12. All signs shall be subject to the visibility triangle requirements as approved by the Building Official.

#### 5.507 Prohibited Signs

The following types of signs are prohibited in all Zoning Districts:

1. Signs imitating or resembling official traffic or governmental signs or signals which mislead or confuse persons traveling on public streets or which create hazards by obstructing the clear view of pedestrians or vehicles or which obscure signs or signals.
2. Any sign attached to a utility pole or structure, street light, tree, fence, fire hydrant, bridge, curb, sidewalk, park bench or other location on public property except as otherwise provided. This prohibition is not intended to include any tags, signs or other information signs required by utility companies.

3. Any sign placed in any public right-of-way except signs erected by the City or other authorized entity.
4. Abandoned signs (not in use, not containing a sign face) must be removed within six (6) months of abandonment. Removal shall include the structural components.
5. Signs which have been unlawfully or illegally erected and or maintained. Signs that are not clean or in substantially good repair or not affixed to a sound structure.

#### 5.508 No Fee Sign Permits

The following types of signs are allowed and are exempt from permit fees, but must be in conformance with all of the standards of this ordinance:

1. Signs used by religious institutions, libraries, non-profit public service organizations, museums or civic organizations.
2. Nameplate and address sign.
3. Works of graphic art painted on or applied to building walls which contain no advertising or business identification messages.
4. Political signs provided they do not exceed ten (10) sq. feet in all residential districts and thirty-two (32) sq. feet in other districts. Such signs shall not be erected more than forty-five (45) consecutive days prior to the pertinent election or referendum and shall be removed within ten (10) days following such election or referendum. Political signs may be placed only on private property.
5. Real estate signs for sale, rent, or lease provided they do not exceed ten (10) sq. feet for all residential zones and thirty-two (32) sq. feet for all other zones including Apartment Complexes. Signs shall be removed within one (1) week of closing.
6. Window signs, displays, and painted/vinyl or other substance window lettering, that generally cannot be read from the public right-of way. (e.g., menu board drive thru)
7. Temporary banners, pennants, balloons, tethered objects, streamers, inflated objects or any device intended as an attractant and that may be affected by movement of air. Such signs shall not be displayed for a period of more than six (6) weeks.
8. Portable/temporary signs shall be allowed for display for a maximum of forty-five (45) days prior to a special event or holiday.

9. Garage sale signs, special event, not to exceed four (4) sq. feet, and must be removed within two (2) days of the event.

#### 5.0509 Permitted Signs in Residential Areas

The following listed signs will be permitted in Districts "R-1," "R-2A", "R-2M", "R-3", and "MHD," except as otherwise provided in this ordinance.

1. Unilluminated "For Sale" and "For Rent" single or double-faced business signs subject to the following regulations:
  - a. Only one (1) sign shall be permitted per lot.
  - b. No sign shall exceed four (4) square feet in area.
  - c. Signs shall be located no closer than five (5) feet from any property line and shall not obstruct traffic.
  - d. When said sign is affixed to a building, it shall not project higher than ten (10) feet above ground level.
  - e. Ground signs shall not project higher than three (3) feet above ground grade.
2. Bulletin boards and signs for churches and other public institutions subject to the following regulations:
  - a. One (1) sign or bulletin board shall be permitted on each street side if located on the same site as the principal building.
  - b. If sign or bulletin board is illuminated, the lights shall be directed away from adjoining residential uses and digital signs shall have self-dimming technology.
  - c. No sign or bulletin board shall exceed thirty-two (32) square feet in area.
  - d. No sign shall be located closer than eight (8) feet from any side or rear property line.
  - e. A sign or bulletin board located in the front yard shall be no closer to the street line than one-half ( $\frac{1}{2}$ ) the front yard.
  - f. A sign, bulletin board, or cabinet sign affixed to a building, shall not project higher than ten (10) feet above the ground level.
  - g. Ground signs shall be permanently anchored to the ground and shall not exceed a height of six (6) feet above normal grade.

- h. Buildings constructed on the property line prior to the effective date of this ordinance, as defined in the definitions of this ordinance, shall be allowed one (1) identification sign providing said sign is a flat wall sign and permanently attached to the building.
- i. On corner lots, no sign shall be constructed or located that will obstruct the view of traffic approaching the street intersection.

#### 5.0510 Permitted Signs in Commercial, Agricultural, and Industrial Zones

In Districts "C-1", "C-2", "A-1", "I-1" and "I-2", single or double-faced business signs shall be permitted subject to regulations set forth in the Building Code and in this ordinance.

1. Flashing signs shall be permitted after it is first determined by the Building Official that the location and colors will in no way create a traffic hazard or confusion with traffic lights and with lights on emergency vehicles and that the direct rays of the sign will not be directed into any residential district.
2. Non-flashing signs shall be permitted when said sign is located adjacent a residential district; provided that where the sign is illuminated by a light or lights reflected upon it, direct rays of light shall not beam upon any residential building, or into any residential district or into any street in such manner so as to disturb other structures, individual or the character of the area.
3. Lighted signs in direct vision of a traffic signal shall not be in red, green or amber illumination.
4. The gross surface area, in square feet, on one (1) side of any business sign on a lot shall not exceed three (3) times the lineal feet of frontage of the building; each side of a lot which abuts upon a street shall be considered as a separate frontage, and the gross surface area of all signs located on each side of a structure shall not exceed three (3) times the lineal feet in the separate frontage. The total surface area shall not exceed four hundred (400) square feet for each face of the sign. Individual letters, with no background, shall be measured by the minimum rectangular area necessary to encompass such letters or by a combination of rectangles as are necessary to encompass letters of irregular dimensions.
5. No sign shall project over any alley right-of-way line.
6. Any sign located within three (3) feet of a driveway or parking area or within fifty (50) feet of the intersection of two (2) or more streets shall have its lowest elevation at least ten (10) feet above curb level.
7. In a shopping center, one (1) additional sign may be erected to identify the center. The sign may be free standing or attached to the building wall. Said sign shall display no more than the name of the shopping center and the business located on the lot. The sign shall not exceed thirty-five (35) feet in height and sixteen (16) feet in width and

its bottom edge shall be at least eight (8) feet above ground level.

8. In a shopping/business center; directional signs shall be permitted for common parking lots. Signs shall be no more than six (6) square feet with maximum width of three (3) feet and maximum height of two (2) feet. Maximum height above grade shall be five (5) feet to top of sign. Sign shall display no more than the tenants that do business on said property. All signs shall be placed so as not to create a traffic hazard. Refer to line 6 for all other signs in regards to the height requirements.
9. Signs within fifty (50) feet of a residential district shall be affixed to or be part of the building.
10. A maximum of two (2) signs one (1) on a facade with road frontage shall be allowed for a business or profession conducted on the premises. Where a business has two (2) street frontages a maximum of three (3) signs one (1) sign on a Monument, Free Standing or Pylon Sign and two (2) signs on the facade facing street frontages shall be allowed.
11. No sign shall be permitted in the road or highway right-of-way and no sign shall be located in a manner to constitute a traffic hazard, except as specified in subparagraph 13 below.
12. Where buildings or structures are established or are hereafter established on the property line, advertising and business signs shall conform with the following requirements, providing they are constructed and maintained in accordance with the Building Code of the City.
  - a. In Districts "C-1", "C-2", "A-1", "I-1", and "I-2" the advertising or business sign shall be affixed flat against the face of the building or the front edge of a marquee. The front edge of the marquee shall be considered that portion of the marquee which is parallel to the street. The sign can be mounted perpendicular to the building and overhang the sidewalk provided the following conditions are met:
    - (1) The gross surface area in square feet does not exceed the linear feet of frontage of the lot occupied by the building.
    - (2) The sign does not project any closer than three (3) feet from the front of the curb. The sign shall have a minimum set back of three (3) feet from the front face of the curb to the outside edge of the sign.
    - (3) The sign provides a minimum height clearance of seven and one-half (7.5) feet above the walking surface.
    - (4) The sign complies with all other provisions of this ordinance.
  - b. Where a sign is illuminated by light directed upon it, the direct rays of light shall not beam upon any part of any existing residential district.



- c. Lighted signs in the direct vision of traffic shall not be in red, green, or amber illumination.
  - d. Flashing signs shall be allowed only upon approval of the Building Official, providing it is first determined that the sign will in no way create a traffic hazard or confusion with traffic lights or with lights on emergency vehicles.
  - e. The gross surface area, in square feet, on one (1) side of any sign of an advertising or business sign shall not exceed three (3) times the lineal feet of separate frontage of the lot occupied by the building; each side of the lot which abuts upon a street shall be considered as a separate frontage, and the gross surface area of all signs located on each side of a building shall not exceed three (3) times the lineal feet in the separate frontage. The total surface area shall not exceed four hundred (400) square feet for each face of the sign. Individual letters, with no background, shall be measured by the minimum rectangular area necessary to encompass such letters or by a combination of rectangles as are necessary to encompass letters of irregular dimension.
  - f. Any sign located within three (3) feet of a driveway or parking area or within fifty (50) feet of the intersection of two (2) or more streets shall have the lowest elevation at least ten (10) feet above the curb level.
  - g. Where signs are affixed to canopies and marquees, the canopy or marquee shall be constructed and maintained in accordance with the Building Code of the City.
13. Where buildings have observed a setback of minimum of five (5) feet or more from the property line, signs may be erected in a required front yard but no sign shall overhang the public sidewalk, street, or street right-of-way line and said sign shall conform with the following requirements:
- a. All signs shall be permanently affixed to the ground, pole, or building or other permanent structure.
  - b. Only one (1) sign shall be allowed for each street frontage.
14. Signs hereafter erected, constructed or reconstructed, which are supported by the ground, shall have all posts or supporting structure embedded in concrete.
15. Free standing signs shall be constructed to withstand a pressure of thirty (30) pounds per square foot of sign area.

5.0511. Billboards

Billboards shall be allowed in the Oil Field Way/Highway 40 corridor (Commercial C-1 and Industrial I-1 and I-2 Zoning Districts) as Conditional/Permitted Uses and only if they conform to the following provisions:

1. Billboards shall not be located within Oil Field Way/Highway 40 Corridor.
2. Billboards shall be allowed only in Commercial C-1, I-1, I-2, and Agricultural Zones.
3. No billboard shall be erected, altered, constructed, reconstructed, or moved until an application and plans shall have been filed with and approved by the Community Service/Planning Director as to size, location, and construction.
4. Billboards shall not exceed forty-five (45) feet in height above ground.
5. There shall be a minimum of one thousand (1000) feet between billboards.
6. The owner, lessee or manager of such billboard, and the owner of the sign shall maintain and keep the ground area around the sign free and clean of weeds and debris.
7. No billboard shall exceed seven hundred (700) square feet in area (on a single face).
8. It shall be unlawful to construct or maintain, or cause to be constructed or maintained, any billboard in such a manner as to:
  - a. Obstruct the view of street or railroad crossings.
  - b. Be unable to stand a pressure of at thirty (30) pounds per square foot of advertising surface.
  - c. Be dangerous to the public by falling or blowing down.
  - d. Increase the danger or loss by fire or to increase fire insurance rates.
  - e. Billboards hereafter erected, constructed, reconstructed, altered, or moved in the City shall be constructed in accordance with the requirements of the Uniform Sign Code, 1997 or later editions, except as amended by this ordinance.

#### 5.0512 Deviations to Sign Regulations

The Planning Director shall have the authority to grant administrative approval for minor deviations to sign height and placement, provided:

1. The deviations do not exceed ten (10) percent of the basic requirement.
2. The deviation is based on a hardship problem with the site, existing building placements, poor visibility, and not based on economic factors or personal design preferences.
3. The deviation has been reviewed by the City Engineer and does not pose a threat to health and safety of the public.

4. The Planning Director, with copy to the City Engineer, will issue a written statement of approval or denial of the deviation request. If a request is denied by the Planning Director, the applicant may choose to file a variance pursuant to Article 6.
5. A request for adjustments beyond ten (10) percent shall be processed as a variance pursuant to Article 6.

5.0513 Application and Permit

An application for a sign shall be made on forms provided by the planning department. The application shall contain sufficient information and plans to permit review pursuant to this article, including, but not limited to, building elevations, photographs, proposed locations of signs on building elevation, sign design layout showing the number, types, and dimensions of all signs and a site plan showing the proposed location of all signs.

The permit fee for this application shall be fifty dollars (\$50.00) for signs affixed to buildings and one hundred dollars (\$100.00) for all other signs, monuments, pylon, free standing, pole, electronic, digital, and lighted signs. The fee shall be submitted with the application. After an application is deemed to contain the required elements and information, it shall be reviewed for compliance by the planning department. Once approved by the reviewing authority a permit shall be issued.

5.0514 Off Street Parking Requirements

There shall be provided off street parking for motor vehicles, and the minimum number of parking spaces is listed below.

<u>Dwelling Type</u>	<u>Spaces Required</u>
Dwelling, Single Family	2 per dwelling unit
Dwelling, Two Family	2 per dwelling unit
Dwelling, Townhouse	2 per dwelling unit
In-Home Apartment	1 per dwelling unit
Mobile/Manufactured Home	2 per dwelling unit
Dwelling, Multi-Family	2 per dwelling unit
Industrial	1 per employee on largest shift
Office and Commercial Use	1 per 400 sq. ft. of gross floor area
Apartments in C-2 District	1 per dwelling unit

5.0515 Off-Street Parking of Motorized Vehicle and Equipment Parking in Residential District

In order to allow for the parking of personal vehicles on a single lot in a residential district, such parking activities are subject to following conditions:

1. Personal vehicles are defined as Class D or M vehicles, which include: passenger cars, motorcycles, vans, pick-up trucks, campers, toppers, and other appurtenances intended for attachment to a personal vehicle, such as trailers and boats. Trucks, tractor cab units, trailers, recreational vehicles, and other vehicles over ten tons gross empty weight shall be defined as heavy commercial vehicles and not permitted.
2. Currently licensed personal vehicle or equipment parking on residential lots may be parked in the following described areas:
  - a. One (1) space in each garage stall, and one (1) space in driveway (length) per stall provided no vehicle extends into the public right-of-way including the sidewalk.
  - b. No parking on grass yard.
  - c. Improved parking surface shall consist of a durable surface to include concrete, asphalt, or gravel. Dirt or grass shall not constitute a durable surface.
  - d. Additional parking may occur on an improved surface in side yard adjacent to garage, or rear yard with access from an alley.

5.0516 Parking-Storage of Use of Major Recreational Equipment

For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pickup campers or coaches designed to be mounted on automobile vehicles, motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not:

1. No major recreational equipment shall be parked on any residential street for a period exceeding seventy-two (72) hours during loading or unloading.
2. No such equipment shall be used for living or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

5.0517 Outdoor Storage Residential Zones

Except as specifically provided for by this chapter, all materials and equipment shall be stored within a building.

Exceptions:

1. Laundry drying such as clothesline poles, swing set playground equipment and sandboxes. As intended seasonal lawn décor/ornaments, holiday décor.
2. Construction, landscape materials and equipment currently being used on the premises.
3. Garden equipment and materials if these are used or intended for use on the premises.
4. Firewood piles provided they are kept or stored as follows:
  - a. In neat secure stacks, of which shall be no higher than five (5) feet high by ten (10) feet wide by twenty-five (25) feet long.
  - b. The wood stacks shall not be infested with rats, vermin or insects noxious or dangerous to a person or property. (If so infested, remediation action shall take place).
  - c. The wood shall not be stored in front yard.
5. Outdoor storage shall be an accessory use of the property and shall occupy space other than the required front yard.
6. The outdoor storage shall be fenced and screened in compliance with provisions of 5.0503.
7. There shall be no outdoor storage of scrap or cannibalized motor vehicles, machinery or equipment.

5.518 Required Landscaping

The purpose of this section is to clearly express the City's intent for all properties to be landscaped and maintained with great care. Properties shall be landscaped to express sensitivity to environmental conditions as well as the aesthetic needs of the general public.

1. The requirements of this section are intended to guide landscaping within commercial, industrial, and residential zoning districts.
2. All landscaping must be designed to add to visual beauty to the property and provide a high level of aesthetic value. The quantity and quality of the design should be compatible with each zoning district and the intended use of the property.
3. All new development or full redevelopment of a site shall comply with the requirements of this chapter and incorporate sustainable landscape elements in the planting design to include, but not be limited to, the use of native species, shade trees, evergreen trees, rain garden/bioretenion systems, xeriscaping, and design elements such as public art,

fountains, plazas, and front yard/entrance landscaping. All silt fences or erosion controls must be maintained until turf is established. The boulevard is required to be seeded, sodded or landscape rock and maintained by the property owner.

4. All single-family and two-family lots shall have turf seeding, sod, or landscaped rock or mulch beds and shade trees or evergreen trees one (1) tree min. established within the front yard, including the boulevard, within 120 days of the issuing a certificate of occupancy (excluding time between October 1 and May 1 in which the turf shall be established within the next growing season). All silt fences or erosion controls must be maintained until turf is established. The boulevard is required to be seeded, sodded, or landscaped and maintained by the property owner.

#### 5.0519 Buffer Area

1. Buffer area/screening is required between adjacent zoning districts when a more intensive zoning district is abutting, directly visible from or faces toward the boundary of the less intensive zoning district.
2. A buffer area may be required by a permitted or conditional use to ensure all outdoor storage activity or other activities is not visible from surrounding properties or roads.
3. The landscaped area must be at least twenty (20) feet in width and shall abut the property line, shared in common with the residential property. An exception may be considered by the Planning Director to the minimum width requirement for a fully landscaped buffer screen.
4. The landscaped area must include any combination of shade trees, shrubs, ornamental trees, evergreen trees or any combination of plant material that provides a suitable screen. A fence may be included as a part of the screening.

#### 5.0520 Seismographic Exploration

The provision of this section shall in no way restrict or interfere with the normal digging, drilling, or excavation for agricultural purposes, the operation of coal mines, coal and subsurface exploration operations, oil and gas drilling, transportation, and production facilities.

All seismic exploration, either explosive or nonexplosive, is prohibited in all districts within the corporate limits of the City of Tioga and within the surrounding extraterritorial area that is under the zoning jurisdiction of the City of Tioga, subject state law and regulation to the contrary.

#### 5.0521 Adult Entertainment Center Regulations

An adult entertainment center shall be permitted only in the I-2 District and in no other district, and then only if the center meets the following conditions:

1. The center is located no closer than one thousand two hundred fifty feet (1,250) feet from any preexisting church, dwelling unit, or property zoned R-1, R2A, R-2M, or R-3.
2. The center excludes from its premises those persons less than eighteen (18) years of age.
3. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore or adult cinema, or both.
4. The manager and owners of the center are registered with the City Police and have provided them with such information as they reasonable may require with respect to their identities, including fingerprints and prior criminal records, if any.
5. The business premises of the center which are generally open to its patrons are open equally at the same time without charge to members of the City Police Department who may wish to enter thereon provided the entry is in the course of the discharge of the policeman's duties.

## **ARTICLE 6 - Variances**

### 5.0601 Variances

1. The City Commission may authorize a variance from the terms of this ordinance. The Commission must find that the granting of such a variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable or unusual hardship or difficulty. All of the following conditions must exist:
  - a. The property has exceptional value, unique or special characteristics different from other property, particularly adjacent property.
  - b. Enforcement of the ordinance, with regard to properties having said characteristics, results in unnecessary and undue hardship.
  - c. Granting of the variance would have no adverse effect on the public interest, safety, health and welfare.
  - d. Granting of a variance would have no adverse effect on neighboring property.

Under no circumstances shall the City Commission grant a variance allowing a use within a district not permissible under the terms of this ordinance, nor shall the Commission use the variance for a change affecting a large number of properties.

2. Applications for variances shall be submitted to the Planning Commission Secretary by the property owner. The application shall include:

- a. Name and address of applicant.
- b. Date of application.
- c. Special conditions or circumstances which are peculiar to the applicant's land or structure.
- d. Payment of a fee in the amount of three-hundred dollars (\$300.00).

The Planning Commission Secretary, upon receipt of an application for variance shall fix a reasonable time for a public hearing. Notice of the time, place and subject of the hearing shall be published once in the official newspaper at least ten (10) days prior to the date fixed for the public hearing.

After the public hearing, the Planning Commission shall make its recommendation to the City Commission although its decision may be deferred for up to thirty (30) days for gathering of evidence.

3. After receiving the recommendation of the Planning Commission, or if the Planning Commission has not acted within thirty (30) days after the public hearing, the City Commission shall hold a public hearing on the request for a variance. The City Commission shall notify the person requesting the variance of its decision by mail.

## **ARTICLE 7 - Conditional Use Permits**

### 5.0701 Conditional Use Permits

A conditional use permit may be granted following compliance with the procedure set forth in this section if the conditional use is one set forth in the District Regulations, provided that no application for a conditional use shall be granted unless all of the following conditions are found to be present:

1. The conditional use will not be detrimental to or endanger the public health, safety, or general welfare;
2. The existing permitted uses in the neighborhood will not in any manner be substantially impaired or diminished by the establishment of the conditional use;
3. The conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district;
4. Adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided;



5. Adequate measures have or will be taken to provide access and exit so designed as to minimize traffic congestion in the public streets; and
6. The conditional use shall conform to all special provisions of the district in which it is located.

Application for Conditional Use Permit shall be submitted by the property owner to the Planning Commission Secretary. The application shall include:

1. The name and address of the applicant.
2. The date of application.
3. A description of the site and its relationship to the surrounding area.
4. A preliminary map showing boundary lines and location of structures to be developed on the site.
5. Location of existing structures on adjacent property.
6. Parking plan showing off-street parking areas and/or loading areas.
7. Names and addresses of adjacent property owners.
8. Any reasonable information the Planning Commission deems necessary.

The Planning Commission Secretary, upon receipt of an application for a conditional use permit shall present the same to the Planning Commission at its next regular or special meeting, at which time a date within the next forty-five (45) days shall be set for the hearing of the proposed conditional use.

The Secretary shall notify the applicant of the date of the hearing and of the applicant's obligation to give public notice of the hearing.

Notice of the hearing shall be the obligation of the applicant and shall be published at least fifteen (15) days before the hearing and mailed to those persons designated by the Planning Commission. Notice shall include the time, place and purpose of the hearing and shall be approved by the Secretary. Proof of publication of the notice shall be filed with the Secretary, along with proof of mailing, if required, prior to the hearing, and shall be maintained as a permanent record of the Planning Commission.

Following the hearing, the Planning Commission shall consider the application and evidence presented and shall render its decision within fifteen (15) days. The Commission shall notify the applicant of its decision and its reasons therefore by mail. The decision of the Planning Commission may be appealed to the City Commission within thirty (30) days.

## **ARTICLE 8 - Amendments**

### 5.0801 Amending

The City Commission may from time to time amend, supplement, or change the district boundaries or regulations contained in this zoning ordinance. A proposal for an amendment or a change in zoning may be initiated by the City Commission, by the Planning Commission, or upon application of the owner of the property affected. All such proposed changes shall be submitted to the Planning Commission for recommendation and report. The Planning Commission shall prepare final written findings which shall be submitted to the City Commission within sixty (60) days after the time of referral of the proposed amendment to the Planning Commission.

### 5.0802 Applications

The party desiring any change in zoning district boundaries or regulations contained in this zoning ordinance as to any lot, tract or area of land, shall file with the City Auditor an application upon forms provided, and such application shall be accompanied by such data and information as may be prescribed by the Planning Commission. At the time of filing said application with the City Auditor, the applicant shall provide the City with the names and addresses of all owners of any land located within two hundred (200) feet of the outer limits of said area to which the applicant desires change of zoning.

### 5.0803 Public Hearing and Notice

Before the Planning Commission shall, by proper action, formulate its recommendation to the City Commission on any such proposed or requested change of zoning district boundary or regulation, whether initiated by the City Commission, the Planning Commission or by the property owner, the Planning Commission shall hold a public hearing on such proposal. The Secretary of the Planning Commission shall cause a notice of public hearing to be published once a week for two successive weeks prior to the time set for the said hearing in the official City newspaper. Such notice shall contain:

1. The time and place of the hearing.
2. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
3. A description of the nature, scope, and purpose of the proposed regulation, restriction or boundary.
4. A statement of the times at which it will be available to the public for inspection and copying at the office of the City Auditor.

In addition to such publication notice, written notice of such proposed change shall be

mailed to all the owners of property within the area proposed to be changed and to owners of any land located within two hundred (200) feet of the outer limits of the area in which the zoning is to be changed.

#### 5.0804 Protest

If a protest against a change, supplement, modification, amendment or repeal is signed by the owners of twenty percent (20%) or more:

1. Of the area of lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty (150) feet (45.72 meters) from the area to be changed, excluding the width of streets;

The amendment shall not become effective except by the favorable vote of three-fourths of all members of the City Commission, provided that protests in writing must be filed with the City Auditor prior to the time set for the hearing. If no protest is filed, a majority decision to the City Commission shall be sufficient.

### **ARTICLE 9 - Floodplain Management**

#### 5.0901 Authorization

1. Statutory Authorization

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the Commission Board of the City of Tioga, North Dakota does ordain as follows:

2. Findings of Fact
  - a. The flood hazard areas of The City of Tioga are subject to periodic (local unit) inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
  - b. Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the

flood loss.

### 3. Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in special flood hazard areas.
- f. To help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;
- g. To ensure that potential buyers are notified that property is in a special flood hazard area;
- h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

### 4. Methods of Reducing Flood Losses

In order to accomplish its purposes, this ordinance includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- d. Controlling filling, grading, dredging, and other development which may increase

flood damage; and,

- e. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

#### 5.0902 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

1. "Appeal" means a request for a review of the Community Director's interpretation of any provision of this ordinance or a request for a variance.
2. "Base Flood or 100-year Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.
3. "Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet above mean sea level.
4. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
5. "Best Available Data" (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high-water mark).
6. "Conveyance or Hydraulic Conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
7. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the special flood hazard area.
8. "Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30, or A-99.
9. "Flood Insurance Study" (FIS) means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.
10. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or from the unusual and rapid accumulation or runoff of surface waters from any source.

11. “Floodproofing” (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two (2) feet above the base flood elevation with walls that are substantially impermeable to the passage of water.
12. “Floodway or Regulatory Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
13. "Lowest Floor" means the lowest floor of a structure including the basement.
14. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”, but does include “mobile home”.
15. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
16. "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.
17. “Reasonably Safe from Flooding” means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
18. “Recreational Vehicle” means a vehicle which is:
  - a. Built on a single chassis;
  - b. For Hundred (400) square feet or less when measured at the largest horizontal projection;
  - c. Designed to be self-propelled or permanently towable by a light duty truck;
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
  - e. Travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
19. "Special Flood Hazard Area” (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.
20. "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair,

reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

21. "Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.
22. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
23. "Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
  - a. Before the improvement or repair is started; or
  - b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
24. "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

#### 5.0903 General Provisions

1. Lands to Which this Ordinance Applies

This ordinance shall apply to all special flood hazard areas within the jurisdiction of the City of Tioga.

2. Basis for Establishing the Special Flood Hazard Areas

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for \_\_\_\_\_ the City of Tioga, dated April 5, 1988," with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at City Hall 16 1<sup>st</sup> Street N.W. Tioga, ND 58852

3. Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

a. Greater Restrictions

This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

b. Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

4. Warning and Disclaimer or Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Tioga, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.



## 5.0904 Administration

### 1. Establishment of Development Permit

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 5.0903.2. Application for a development permit shall be made on forms furnished by the Community Director and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor of all structures;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.0905.2b; and,
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

### 2. Designation of the Community Director

The Community Director is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

### 3. Duties and Responsibilities of the Community Director

Duties of the Community Director shall include, but not be limited to:

- a. Permit Review
  - (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
  - (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
  - (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.0905.3(1) are met.

b. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 5.0903.2, BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, the Community Director shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 5.0905.2, SPECIFIC STANDARDS.

c. Information to be Obtained and Maintained

(1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(2) For all new or substantially improved floodproofed structures:

(a) obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed;

(b) maintain the floodproofing certifications required in Section 5.0904.1c.

(3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

d. Alteration of Watercourses

The responsible person shall:

(1) Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,

(3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

e. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 5.0904.4.

4. Variance Procedure

a. Appeal Board

- (1) The City of Tioga Planning and Zoning Board as established by Commission Board shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The City of Tioga Planning and Zoning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Community Director in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the City of Tioga Planning and Zoning Board, or any taxpayer, may appeal such decision to the Williams County District Court, as provided in North Dakota Century Code 40-47-11, 11-33-12, or 58-03-14.
- (4) In passing upon such applications, the City of Tioga Planning and Zoning Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:
  - (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location, where applicable;
  - (f) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
  - (g) The compatibility of the proposed use with existing and anticipated development;

- (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acres to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 5.0904.4a(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of Section 5.0904.4a(4) and the purposes of this ordinance, the City of Tioga Planning and Zoning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) The Community Director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

b. Conditions for Variances

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:

- (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 5.0904.4a(4), or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### 5.905 Provisions for Flood Hazard Reduction

##### 1. General Standards

In all special flood hazard areas, the following standards are required:

- a. Anchoring
  - (1) All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.
  - (2) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Construction Materials and Methods
  - (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - (3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

d. Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

2. Specific Standards

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 50903.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section 5.0904.1, Use of Other Base Flood Data, the following provisions are required:

a. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.

b. Nonresidential Construction

Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one

foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

- (1) Be floodproofed to at least two (2) feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 5.0904.1c.

c. **Manufactured Homes**

- (1) Manufactured homes shall be anchored in accordance with Section 5.0905.1a (2).
- (2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least one (1) foot above the base flood elevation and is securely anchored to an adequately anchored foundation system.

3. **Floodways**

Located within the special flood hazard areas established in Section 5.0903.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- a. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- b. If Section 5.0905.3a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 5.0905 Provisions for Flood Hazard Reduction.

**ARTICLE 10 - Recreational Vehicles Facility Parks**

5.1001 Purpose and Findings

The City Commission finds and declares that it is necessary and desirable for the purposes of maintaining and bettering the community preservation and improvement that Chapter 5 (“Zoning - Land Use Planning”) be supplemented with the following regulations pertaining to conditional use permitting of and the operations surrounding recreational vehicle facility park within the City of Tioga and its extraterritorial zone.

Except as expressly supplanted, modified or repealed in this supplemental Article 11 of Chapter 5, the regulations contained in said Chapter 5 remain in full force and effect.

#### 5.1002 Short title

This ordinance shall be known as the “Recreational Vehicle Facility Park Ordinance.”

#### 5.1003 Recreational Vehicle Facility Park Conditional Use Permit

A “Recreational Vehicle Facility Park Conditional Use Permit” (“RVFPCUP”) is a permit issued by the City of Tioga authorizing a campground facility for the parking and temporary occupation of “recreational vehicles” as the term is defined in Chapter 5, Article 2, Section 5.0201.81. Crew housing is not permitted within a Recreational Vehicle Facility Park and does fall within the definition of a Recreational Vehicle Facility Park.

A Recreational Vehicle Facility Park Conditional Use Permit may not issue for a period in excess of five (5) years from the date of issuance of the same, or, in the alternative, five (5) years from the effective date as stated in the said RVFPCUP. The City of Tioga may approve a RVFPCUP for a period of less than five (5) years but in no event shall such RVFPCUP issue for any period greater than five (5) years. At the expiration of the time granted under a said RVFPCUP, another application for a RVFPCUP may be made by the same applicant for the same campground.

A Recreational Vehicle Facility Park Conditional Use Permit may not be transferred to another individual or entity once approved even in circumstances under which time still exists in relation to an existing RVFPCUP. Such permits are deemed personal to the applicant/recipient of the same and are not subject to assignment, conveyance, or other transfer.

#### 5.1004 Minimum Design Standards for Recreational Vehicle Facility Park

1. All recreational vehicle park facilities permitted shall meet the following minimum design standards:



- a. Provide all ordinary urban services, to include municipal water, municipal wastewater, and street lighting; exception may be requested and, in the discretion of the Planning and Zoning Commission Board, a recommendation for approval may be made to the City Commission for a waiver or variance of this requirement under circumstances in which the recreational vehicle park at issue lies within the City's extraterritorial zone or in areas of the City for which such municipal utilities are not offered and municipal street lighting does not yet exist for any existing conditionally-permitted recreational parks which existed prior to the passage of this ordinance, provided that the applicant demonstrates that adequate water and sewer/septic utilities exist which otherwise meet the standards and regulations imposed by the State of North Dakota.
  - b. Provide adequate parking for each recreational vehicle and accessory vehicles.
  - c. Provide for adequate fire suppression.
  - d. Provide trash containers.
  - e. Provide for adequate access for emergency vehicles.
  - f. Meet all design standards required by any building code, fire code, subdivision code, or zoning code adopted by the City of Tioga.
  - g. An applicant whose facility shall have pre-existed this Ordinance, and who at the time of the passage of the passage of this Ordinance shall possess an existing and active conditional use permit for a recreational vehicle park issued under prior ordinance and shall fail to meet one or more of the above-described minimum design standards, may request a variance for such deficiency. The Planning and Zoning Commission Board may, in its sole discretion, recommend the issuance of such variance or any part of a request for the same. Likewise, the City Commission may, in its discretion, approve all or part of such a request for variance. The variance may also be limited in time or scope. If a request for variance is made under the circumstances described herein, such deficiency shall be fully described by the applicant in his/her/its request for variance. Such a variance shall be deemed to expire at the termination of the conditional use permit, or earlier time if otherwise specified in the said variance, if so granted. No variance shall issue if such variance shall constitute a violation of existing state law or regulation even if the same would be otherwise permissible under this section. A request for such a variance shall not be deemed to incur any fee beyond that required in connection with the application fees set forth hereunder.
2. Setbacks shall be as follows when Recreational Vehicle Park Facility is adjacent to the respective district:

a. Residential districts- R-1, R-2A, R-2M, R-3.

(1) Fifty (50) feet (15.2 m).

b. Commercial and Agricultural districts-

(1) Twenty (20) feet (6.1m).

#### 1.1005 Permitting Process and Suspension or Revocation of Permit

1. Application: The application for a special use permit for a recreational vehicle park facility shall be signed by the owner of the entity desiring the development of the facility, as well as by the owner of the land on which the facility is to be located. The application shall include the following information:
  - a. A complete statement of the type of business contemplated and a complete statement or other submittal providing compliance in planning with the requirements set forth in Section 5.1004 (“Minimum Design Standards”)
  - b. Consent to a background investigation of the owner(s) of the recreational vehicle park facility.
  - c. Identify any vendors who are expected to provide services at the recreational vehicle park facility.
  - d. The applicant’s history of residency, employment, and business ownership for five years prior to the date of the application. If the applicant is a partnership, this information shall be furnished for all the partners; and, if a corporation, whether such corporation, and, if so, the name of the parent corporation, the purposes of which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation.
  - e. Whether the applicant has ever engaged in the business of owning or operating a recreational vehicle park facility before; and, if so, the dates and locations of such ownership or operation.
  - f. Whether during the five (5) years preceding the date of the application, the applicant has never been convicted of a violation of any law of the United States or of any state; and, if so, the dates, names of places and courts in which such

convictions were obtained.

- g. Whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant; and, if so, the names and addresses of such persons and the conditions of such agreements.
- h. A statement that roads to be constructed within the facility will be designed to allow emergency vehicle access through the facility.
- i. A copy of the applicant's deed and/or lease to the real property on which the recreational vehicle park facility would be located.
- j. A copy of plot plans, drawn to scale, showing the location of parking spots, additional structures, setbacks, utilities, drainage, guest/visitor parking, ingress, egress, screens, buffers, and fencing.
- k. A copy of the facility's house rules and regulations.
- l. A copy of the facility's on-site emergency management plan, to include contingencies for fire, tornado, and other natural disasters.
- m. Any additional information deemed necessary by the Planning and Zoning Commission, City Commission or their designee.

Any applicant who is granted a conditional use permit in accordance with this ordinance shall be required to file with the City, in writing, any changes that may occur in relation to the content of application initially filed as soon as such information becomes available to the conditional use permit holder. A failure to update such information may result in sanctions, revocation, or suspension of the said permit in accordance with the provisions of this ordinance.

2. Grant of Recreational Vehicle Facility Conditional Use Permit: Any application for a Recreational Vehicle Facility Conditional Use Permit as provided under this Article shall be denied to any applicant who, in the determination of the City Commission, is a person of questionable character or for any other cause which would, in the opinion of the City Commission, render either the applicant or the premises to be licensed, improper or unfit for a recreational vehicle park facility, or which would, in the City Commission's judgment, make the granting of the permit contrary to the best interests of the City of Tioga and its citizens. In granting any conditional use permit under this Article, the City Commission shall have the authority to limit the number of recreational

vehicle parking spots or total number of persons to be housed in such units within the recreational vehicle park facility.

3. Revocation of Permit: The City Commission may review the status of any permit issued pursuant to this Ordinance and take appropriate action to suspend or revoke the same, as provided herein:

a. Suspension and Revocation for Cause. Any permit issued pursuant to this Article may be revoked or suspended for cause by the City Commission, which may include, among other grounds, the following:

(1) When the applicant is adjudged bankrupt.

(2) When the applicant has made any false statement or statements in an application for the issuance of such permit.

(3) When the applicant, in the case of a corporation or other entity, or manager of a licensee has been convicted of a violation of any felony crime under the laws of the United States or of any state.

(4) When the business of the applicant at the location permitted has been conducted in violation of the health or sanitary regulations of the City or of the State.

(5) When in the judgment of the City Commission, the applicant has conducted his/her business or permitted his/her business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.

(6) When the applicant or an agent or employee of the applicant violates any term or condition of the permit or any provision of this Ordinance.

(7) When an applicant fails to timely remit the permit fees required under this ordinance.

b. Notice - Public hearings. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the applicant. Upon written notification by the City of Tioga to the applicant/owner of the said park that a penalty is being sought under this section, the applicant/owner may notify the City office within ten (10) days of the date of such written notification and request

a hearing on the proposed penalty. Failure to notify the City within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing. A hearing shall be set before the City Commission specifying the time and place of the hearing and shall be mailed to the applicant at the address set forth in the application. A record of any hearing shall be made by electronic recording device.

- c. If, upon such hearing, it appears to a majority of the City Commission that sufficient cause (i.e. a preponderance of the evidence) exists for the penalty or sanctions, the City Commission shall make its order in accordance with the provisions of this ordinance. The City Commission shall further issue its findings, conclusions and order which shall be mailed to the applicant.
- d. In lieu of seeking sanctions, the City, in its sole discretion, may notify the applicant/owner a notice to correct or comply, advising the applicant/owner of existing deficiencies or needed compliance in a recreational vehicle facility park and setting forth a time in which such corrections or compliance must be had. The City, in its sole discretion, shall determine the appropriate length of time for which the applicant/owner shall have to make such corrections or come into compliance with the items set forth in the said notice. Such notice shall be mailed to the owner/applicant at the address indicated in the application. If the applicant/owner fails to correct or comply in a timely manner, the City may elect to pursue sanctions in accordance with the provisions of this section.

#### 5.1006 Prohibited Activities

1. No parking shall be allowed on the roads in the recreational vehicle park unless they have been designed to accommodate such.
2. The site is to be maintained free of garbage and junk.
3. The operator of the recreational vehicle park facility shall be responsible for establishing and enforcing any restrictions related to possession or use of alcohol on the recreational vehicle park facility premises.
4. The operator of the recreational vehicle park facility shall be responsible for establishing and enforcing any restrictions related to possession or use of firearms and other weapons on the premises.
5. No enclosures shall be erected at entry(s) to campers/recreational vehicles.
6. Skirting shall be compatible to the camper. (i.e., no bales or exposed Styrofoam or like

materials).

7. No “crew housing,” as the term is defined under City Ordinance, shall be permitted on the grounds of a recreational vehicle facility park.

#### 5.1007 Additional Conditions and Reporting Requirements

1. The City Commission may attach any conditions or reporting requirements to the grant of the special use permit that it deems necessary and prudent.
2. In addition to the terms, regulations and conditions set forth in this ordinance, recreational vehicle park facilities must meet all state regulations and requirements and obtain all necessary state permitting and licensing that may apply prior to receiving approval from the City. Further, it is a condition to any permit issued under this ordinance that a recreational vehicle park facility shall be required to comply with all local, state and federal laws during the period in which the same is permitted.

#### 5.1008 Application and Permitting Fees

Any application for a recreation vehicle facility conditional use permit made under this section shall be accompanied by a non-refundable \$300.00 (Three hundred and no/100ths Dollars) application fee. Applications which are not accompanied by such application fee shall be summarily rejected. If the application is granted, the application fee shall be counted towards the payment of the first year’s annual fee.

If the City approves an applicant’s application for a recreational vehicle facility park conditional use permit, the applicant shall pay a permit fee immediately upon issuance of the said conditional use permit and shall pay an annual fee each year thereafter for the life of the said conditional use permit, which shall come due on the anniversary date of issuance of the said conditional use permit or the anniversary date of the effective date of the said conditional use permit as may apply in accordance with the following schedule:

For a recreational vehicle facility park authorized to house:

1. 3-45 recreational vehicle units, the first annual fee shall be the sum of \$300.00, for each year thereafter, the annual fee shall be \$200.00 per year; or
2. 46 or more recreational vehicle units, the annual fee shall be \$400.00 per year.

A failure to timely pay the annual permit fee for a recreational vehicle facility park as described herein shall subject the applicant/owner to suspension or revocation in accordance with

the provisions contained herein.

#### 5.1009 Inspections

It is a condition of every recreational vehicle facility park conditional use permit issued under this ordinance that any agent of the City, or any regulatory agent of the State of North Dakota or any other governmental body or agency having jurisdiction, to include law enforcement, shall be entitled to inspect any recreation vehicle park facility, with or without notice to the applicant or owner, to ensure compliance with the provisions of this ordinance.

#### 5.1010 Prohibition Against “Crew Housing” Facilities within a Recreational Vehicle Facility Park

The City of Tioga does not permit, authorize, or allow for any form of “crew housing” facilities, as the term is defined within the City of Tioga Municipal Ordinances and municipal zoning regulations, within a Recreational Vehicle Facility Park. No party shall be permitted to construct, maintain, renovate, occupy or otherwise keep or offer any “crew housing” facilities within a within a Recreational Vehicle Facility Park located in the City of Tioga or its extra-territorial zone. “Crew housing” is controlled and governed by separate ordinance.

#### 5.1011 Scope of Ordinance

Except as expressly supplanted and modified in this Article 11 of Chapter 5, the regulations contained in said Chapter 5 remain in full force and effect.

#### 5.1012 Penalties for RV Violations

In addition to the suspension or revocation provisions contained herein, a violation of the provisions of this ordinance may result in the imposition of a civil fine of up to five hundred dollars (\$500.00) per day, for each and every day a violation of this ordinance may occur.

### **ARTICLE 11 - Crew Housing Facilities**

#### 5.1101 Purpose and Findings

The City Commission finds and declares that it is necessary and desirable for the purposes of maintaining and bettering the community preservation and improvement that Chapter 5 (“Zoning - Land Use Planning”) be supplemented with the following regulations pertaining to conditional use permitting of and the operations surrounding temporary crew housing facilities within the City of Tioga and its extraterritorial zone.

Except as expressly supplanted, modified or repealed in this supplemental Article 12 of Chapter 5, the regulations contained in said Chapter 5 remain in full force and effect.

### 5.1102 Short Title

This amendment and supplemental ordinance shall be known as the City of Tioga “Temporary Crew Housing Ordinance”.

### 5.1103 Definitions

1. “Temporary Crew Housing” (also referred to as “work camp housing” or “man camps”) Modular residential structures used to house workers on a temporary basis for a specified period of time. A temporary crew housing facility may include one or more lodging units which are not mobile homes, as defined in North Dakota Century Code. Section 57-55-01. This shall include but is not limited to recreational vehicles classified only as park home models.
2. “Crew Housing Permit” A permitted and temporary right of use granted by the City to construct, operate and maintain temporary housing facilities for workers within the jurisdiction of the City and to enjoy attendant services and facilities provided by the City with regard to the same.
3. “Skid Units” A structure or group of structures, either single or multi-sectional, which is/are not built on a permanent chassis and is/are ordinarily designed for human living quarters, or a place of business, on a temporary basis for the purposes of completing the work at issue and overseeing the crew housing.

### 5.1104 Conditional Use Permit for Temporary Crew Housing

A Temporary and Conditional Crew Housing Permit (“TCCHP”) authorizes a conditional use of property for the purpose allowing “temporary crew housing”, “work camp housing” and “man camps” as the terms are defined in Section 5.0413 above, the issuance of which is subject to the procedures and regulations contained herein and all other applicable provisions contained within Chapter 5 (“Zoning - Land Use Planning”), together with applicable state and federal law and regulation as the same may apply. Temporary Crew Housing is allowable as a conditional use only in lands classed as Agricultural (“Ag”) and Industrial (“I-2”) districts.

A Temporary Crew Housing Permit shall issue for a period not to exceed two (2) years from the date of the issuance of the same. The Zoning Board may recommend the issuance of and the City Commissions may approve and issue a Temporary Crew Housing Permit for a period of less than two (2) years, but in no event shall a Temporary Crew Housing Permit issue for a greater period of time than the said two (2) consecutive year period. At the expiration of an applicant’s first permit, the City may issue a subsequent permit on application of the applicant, but in no event shall such permit exceed a period longer than four (4) cumulative or consecutive years. The maximum and cumulative time under which TCCHP or renewed TCCHP may exist shall not exceed two consecutive two (2) year terms or cumulative four (4) years, whichever is shorter.



### 5.1105 Application Procedure

An application for a Temporary and Conditional Crew Housing Permit shall be signed by the applicant or authorized representative and shall include the following information:

1. A description and diagram/map of the units together with the numbering system for the same.
2. A description of how the proposed units are set/and or anchored.
3. A statement that roads and/or any approaches for the same that are to be constructed within the facility meet City specifications and a diagram showing the proposed or existing locations of the same and further stating that such roadways and ingress and egress is sufficient and safe for use by emergency vehicles.
4. The name, physical and mailing address(es) of the applicant(s) and telephone and email contact information for each applicant.
5. The name and address of the onsite manager and contract information for that individual.
6. Consent to a background investigation of the owner(s), operators, and onsite managers of the facility at issue.
7. A statement explaining whether the applicant has ever engaged in the business of owning or operating a crew housing park facility prior to the application at issue, and, if so, the dates and locations of such ownership or operation.
8. Whether during the five (5) years preceding the date of the application, the applicant and onsite manager(s) have never been convicted of a violation of any law of the United States or of any state; and, if so, the dates, names of places and courts in which such convictions were obtained.
9. Whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant; and, if so, the names and addresses of such persons and the conditions of such agreements.
10. A copy of the applicant's deed and/or lease to the real property on which the temporary crew housing facility would be located.
11. In the event that a premises is leased for such facilities, a copy of lease to be used for the premises, which shall include a provision allowing law enforcement, emergency vehicles, and other City and/or state agencies to enter upon the premises used for the temporary crew housing for the purposes of patrol, the rendering emergency services, and for inspection of the premises to ensure compliance with applicable zoning provisions. In

the event that the lands are owned by the applicant in fee simple (rather than held through lease or other contract), a statement of the owner-applicant accompanying the application under which the owner-applicant consents to law enforcement, emergency vehicles, and other City and/or state agencies entering upon the premises used for the temporary crew housing for the purposes of patrol, the rendering emergency services, and for inspection of the premises to ensure compliance with applicable zoning provisions.

12. A statement that an occupancy list shall be maintained by the applicant and provided to the City 911 emergency coordinator on a current basis.
13. Plot plans drawn to scale showing housing units, additional structures, setbacks, utilities, drainage, ingress and egress, parking plans, screens, buffers and fencing.
14. Unit spacing adequate to accommodate emergency services.
15. A copy of housing rules and regulations prepared and to be maintained by the applicant in connection with the proposed crew housing (see Section 6.1007(h)).
16. On site security plan.
17. Fire and emergency evacuation plan.
18. Copy of permit(s) or approval(s) issued by the North Dakota State Health Department, the applicable water authority and applicable district health unit including fresh water, refuse disposal plan, and septic or sewer discharge plan.
19. Pay a Planning and Zoning Application Fee in the amount of one dollar (\$1.00) per square foot, bi-annually (every two years) of the area encompassing the footprint of buildings and/or structures constituting crew housing units, but no less than three hundred (\$300), whichever is greater. Square footage shall be calculated based upon the exterior dimensions of the respective structure(s), inclusive of staircases, breezeways, sheds, and any other temporary structures located in, upon or around the subject premises.
20. A copy of closure and reclamation plans.
21. Off-street parking shall be provided on a one-to-one ration, one parking space per bed and per one employee/worker so housed.
22. Any additional information deemed necessary by the City's named agent or administrator, the Planning and Zoning Board, or the City Commission.

#### 5.1106 Prohibited Housing Types

Recreational vehicles, campers, mobile homes, and tents are prohibited as units in a crew housing facility. Such recreational vehicles, campers, tents, and mobile homes are controlled by separate zoning ordinances.

#### 5.1107 Prohibited Activities

1. The operator of the temporary crew housing facility shall be responsible for establishing and enforcing any restrictions related to animals on the premises of a crew housing facility.
2. The site is to be maintained free of garbage, junk, and debris.
3. The operator of the temporary crew housing facility shall be responsible for establishing and enforcing any restrictions related to possession or use of alcohol on the temporary crew housing facility premises.
4. The operator of the temporary crew housing facility shall be responsible for establishing and enforcing any restrictions related to possession or use of firearms and other weapons on the premises.
5. Any skirting shall be compatible to the units (i.e., no bales or exposed Styrofoam or like material).
6. No recreational vehicles (as the term is defined in Ordinance number 5.0201.81, tents, or campers shall be permitted on the grounds of a crew housing facility. The term “recreational vehicle” as used herein shall not be deemed to include ATVs, UTVs, side-by-sides, dirt bikes, and the like.
7. As stated above, the applicant/operator shall create rules and regulations addressing the possession or consumption of alcohol on the premises at issue and shall create housing rules and regulations regarding the possession of firearms and weapons on the premises as well. Violations of said housing rules and regulations, in addition to violations of the provisions of this Ordinance and the applicable provisions of Chapter 5 (“Zoning - Land Use Planning”), together with applicable state and federal law and regulation as the same may apply, may all be deemed a basis for the suspension or revocation of a TCCHP issued hereunder in accordance with the procedures set forth herein.
8. A Temporary Crew Housing Permit is a conditional use permit subject to review by the Planning and Zoning Board and City Commission at any time. The permit may be revoked or suspended by the City Commissioners at any time the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the City Commission for the issuance of the permit.

#### 5.1108 Suspension or Revocation of Permit

Any applicant who is granted a TCCHP in accordance with this ordinance shall be required to file with the City, in writing, any changes that may occur in relation to the content of application initially filed as soon as such information becomes available to the TCCHP holder. A failure to update such information may result in sanctions, revocation, or suspension of the

said permit in accordance with the provisions of this ordinance.

1. Grant of Temporary and Conditional Crew Housing Permit. Any application for a TCCHP as provided under this Article shall be denied to any applicant who, in the determination of the City Commission, is a person of questionable character or for any other cause which would, in the opinion of the City Commission, render either the applicant or the premises to be licensed, improper or unfit for such a facility, or which would, in the City Commission's judgment, make the granting of the permit contrary to the best interests of the City of Tioga and its citizens. In granting any conditional use permit under this Article, the City Commission shall have the authority to limit the number of housing units or total number of persons to be housed in such units within such a temporary crew housing facility.
2. Revocation of Permit. The City Commission may review the status of any permit issued pursuant to this Ordinance and take appropriate action to suspend or revoke the same, as provided herein:
  - a. Suspension and Revocation for Cause. Any permit issued pursuant to this Article may be revoked or suspended by the City Commission for cause, which may include, among other grounds, the following:
    - (1) When the applicant is adjudged bankrupt.
    - (2) When the applicant has made any false statement or statements in an application for the issuance of such permit.
    - (3) When the applicant, in the case of a corporation or other entity, or manager of a licensee has been convicted of a violation of any felony crime under the laws of the United States or of any state.
    - (4) When the business of the applicant at the location permitted has been conducted in violation of the health or sanitary regulations of the City or of the State.
    - (5) When in the judgment of the City Commission, the applicant has conducted the business or permitted the business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.
    - (6) When the applicant or an agent or employee of the applicant violates any term or condition of the permit or any provision of this Ordinance.
    - (7) When the applicable housing rules and regulations of the facility are found to have been violated on two (2) or more occasions.
    - (8) When an applicant fails to timely remit any fees or to submit or maintain any bond required under this ordinance.

- b. Notice - Public Hearing. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the applicant. Upon written notification to the applicant/owner of the said facility by the City of Tioga that a penalty is being sought under this section, the applicant/owner may notify the City office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing. In the event that the applicant requests a hearing on the proposed sanctions, a hearing shall be set before the City Commission specifying the time and place of the hearing and shall be mailed to the applicant at the address set forth in the application. A record of any hearing shall be made by electronic recording device.
- c. If, upon such hearing, it appears to a majority of the City Commission that sufficient cause (i.e., a preponderance of the evidence) exists for the penalty or sanctions, the City Commission shall make its order in accordance with the provisions of this ordinance. The City Commission shall further issue its findings, conclusions and order which shall be mailed to the applicant.
- d. In lieu of seeking sanctions, the City, in its sole discretion, may notify the applicant/owner a notice to correct or comply, advising the applicant/owner of existing deficiencies or needed compliance in the facility and setting forth a time in which such corrections or compliance must be had. The City, in its sole discretion, shall determine the appropriate length of time for which the applicant/owner shall have to make such corrections or come into compliance with the items set forth in the said notice. Such notice shall be mailed to the owner/applicant at the address indicated in the application. If the applicant/owner fails to correct or comply in a timely manner, the City may elect to pursue sanctions in accordance with the provisions of this section.

#### 5.1109 Renewal of Conditional Use Permit

Any Temporary Crew Housing Permit granted in accordance with this section shall expire at a time no longer than four (4) consecutive or cumulative years from the date of issuance of the original TCCHP. At the expiration of the said four (4) year period. The maximum and cumulative time under which TCCHP may exist shall not exceed four (4) consecutive or cumulative years, whichever is shorter.

#### 5.1110 Guidelines to be Considered by the Zoning and Planning Board

In addition to the contents of the application described above, the Planning and Zoning Board, together with the City Commission, shall be permitted to consider the impact of a prospective temporary crew housing facility by examining the proposed facility's proximity to businesses, homes, and schools. Further, the Planning and Zoning Board, together with the City Commission, shall consider the impact of such a facility on the prospective development of

adjacent or near properties. The Planning and Zoning Board may also consider the impact of such facility as such impacts relate to roadway usage, hazards, or other traffic matters. Finally, consideration and investigation may be made as to the existing availability (or lack thereof) of other housing that may be utilized by temporary workers/employees in lieu of the crew housing sought by the applicant.

#### 5.1111 Additional Conditions and Reporting Requirements

1. The City Commission may create any conditions or reporting requirements to the grant of the TCCHP that it deems necessary and prudent in each instance.
2. All temporary crew housing facilities shall be fully fenced, by means of a fence no less than six (6) feet tall, with typical setbacks in place.
3. In addition to the terms, regulations and conditions set forth in this ordinance, temporary crew housing facilities must meet all state regulations and requirements and obtain all necessary state permitting and licensing that may apply prior to receiving approval from the City. Copies of such permits and approvals must be delivered to the City. Further, it is a condition to any permit issued under this ordinance that a temporary crew housing facility shall be required to comply with all local, state and federal laws during the period in which the same is permitted.

#### 5.1112 Inspections

It is a condition of every temporary crew housing permit issued under this ordinance that any agent of the City, or any regulatory agent of the State of North Dakota or any other governmental body or agency having jurisdiction, to include law enforcement, shall be entitled to inspect any temporary crew housing facility, with or without notice to the applicant or owner to ensure compliance with the provisions of this ordinance.

#### 5.1113 Scope of Ordinance

Except as expressly supplanted and modified in this Article 12 of Chapter 5, the regulations contained in said Chapter 5 remain in full force and effect.

#### 5.1114 Penalty for Violations of Crew Hosing

In addition to the suspension or revocation provisions contained herein, a violation of the provisions of this ordinance may result in the imposition of a civil fine of up to five hundred dollars (\$500.00) per day, for each and every day a violation of this ordinance may occur.

## **ARTICLE 12 - Subdivision Regulations**

### 5.1201 Purpose

This ordinance is adopted in order to safeguard the best interests of the City of Tioga and to assist the subdivider in harmonizing his interests with those of the City at large. Because each new subdivision becomes a permanent unit in the basic structure of the expanding community to which the community will adhere, and because piecemeal planning of subdivisions will bring on undesirable disconnect patchwork of pattern and poor circulation of traffic unless its design and arrangement is correlated to the Comprehensive Plan and the Street and Highway Plan of the City, aiming at a unified scheme of community interests, all subdivisions of land hereafter submitted for approval to the Planning Commission shall comply with the regulations hereinafter set forth in this Ordinance. These regulations are hereby adopted for the following purposes:

1. To establish standard procedures, requirements and conditions for the preparation, submission and approval of plats of the subdivision of land within the City and its unincorporated jurisdiction thereof, as provided in the North Dakota Century Code, and to enable the City Planning Commission exercise the authority granted therein, and
2. To require that such plats conform satisfactorily to the comprehensive plan for the territorial jurisdiction of the City Planning Commission and other plans for such jurisdiction or part thereof, including the land use plan and other portions. of the Comprehensive plan.

### 5.1202 Title of Chapter

These regulations shall be known as the "Subdivision Regulations of the City of Tioga."

### 5.1203 Conformity with Chapter

Hereafter all subdivisions made within the City and within the designated areas outside of the corporate limits thereof, and not located in any other municipality, shall be subject to and shall conform to these regulations and shall conform to the major thoroughfare plan and other plans for such territory, or part thereof, including the land use plan and other portions of the Comprehensive Plan.

### 5.1204 Definitions

For the purpose of this ordinance certain words used herein are defined as follows:

1. "Alleys" alleys are minor public ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.
2. "Block" is an area of land within a subdivision that is entirely bounded by streets, or by streets and the exterior boundary or boundaries of the subdivision, or a combination of the above with a physical land barrier such as a river.

3. “Board” Board of Adjustment.
4. “Building Line” a line extending across the full width of a lot in front of which no building may be constructed other than Steps.
5. “Building Permit” is the permit to allow for structural construction as required under the Building Code of the City of Tioga.
6. “City” City of Tioga, North Dakota.
7. “City Auditor” City Auditor of the City of Tioga, North Dakota.
8. “City Commission” the Board of City Commissioners of the City of Tioga, North Dakota.
9. “City Engineer” the professional engineer or the director of Public Works ordinarily retained by the City of Tioga for the recommendations, advice and prosecution of engineering work as requested by the City.
10. “Comprehensive Plan” a general plan for the improvement and development of Tioga, North Dakota as adopted by the City Planning Commission and the City Commission.
11. “Cul-de-sac” a short street having one end open to traffic and being terminated by a vehicular turn-around.
12. “Dead End Street” a street which has only one outlet for vehicular traffic and terminates without a vehicular turn around.
13. “Depth of Lot” the depth of a lot shall be the average distance from the front lot line to the rear lot line. The front lot line is the lot boundary abutting a street. (In the case of a corner lot abutting two streets, the front lot line is the boundary aligned with or an extension of predominate front lines of lots in the remainder of the block.) The rear lot line shall be the boundary opposite (or most nearly opposite) the front lot line.
14. “Double Frontage Lots” double frontage lots are those which extend continuously between two parallel (or approximately parallel) streets bounding a block. A block containing double frontage lots is composed of one rather than two tiers of lots.
15. “Dwelling Unit” a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
16. “Easement” a grant by a property owner of the use of a strip of land for such public use as constructing and maintaining utilities, including but not limited to, sanitary sewers, water mains, electric lines, telephone lines, T.V. or F.M. transmission lines, storm sewer or storm drainage ways, gas lines and roadways.



17. “Family” an individual or two (2) or more persons related by blood, marriage, or adoption or a group of not more than four (4) persons (excluding servants) who need not be related by blood, marriage, or adoption living together in a dwelling unit.
18. “Final Plat” a drawing or map of a subdivision, meeting all the requirements of the City of Tioga and in such form as required by the County of Williams for purposes of recording.
19. “Improvements” street grading, sheet surfacing and paving, curb and gutters, street lights street signs, sidewalks, crosswalks, water mains and lines, water meters fire hydrants, sanitary sewers, storm drainage facilities, culverts, bridges, public utilities, and other such installations as designated by the Planning Commission.
20. “Intersection, Street” a point of crossing or meeting of two or more streets.
21. “Lot” one unit of a recorded plat or subdivision or a portion or parcel of land considered as a unit and occupied or to be occupied by a building and its accessory buildings and including as a minimum such open spaces required by other City ordinances and having frontage on a public street.
22. “Lot or Property Pin” a monument established by certified land survey and set by a registered land surveyor to provide for accurate location of property lines.
23. “Market Value” an estimate of the property worth, in terms of money, in the free and open market.
24. “Monument” an identification marker established by certified land survey and set by a registered land survey at each section corner, angle point, block corner, lot corner, street centerline or other point.
25. “Owner” includes the plural as well as the singular, and where appropriate shall include a natural person, partnership, firm, association, public, or quasi-public corporation, private corporation or a combination of any of these.
26. “Parcel” a Contiguous quantity of land under separate ownership.
27. “Parks and Playgrounds” are public land and open spaces in the City of Tioga, dedicated or reserved for recreation purposes.
28. “Percentage of Grade” the rise or fall of a slope in feet and tenths of a foot for each one hundred (100) feet of horizontal distance. The center line of a street shall be used to determine the street rise of grade.
29. “Pedestrian Way” a public or private right-of-way across a block or within a block to provide access to be used by pedestrians and which may be used for the installation of utility lines.

30. “Planning Commission” City Planning and Zoning Commission of Tioga, North Dakota.
31. “Plat” (also referred to as Subdivision Plat) a map which defines the subdivision of land. A plat commonly shows lots, blocks, streets, and other features relevant to the development and improvement of the property prepared in accordance with the North Dakota Century Code.
32. “Preliminary Plat” a tentative drawing or map proposed subdivision meeting requirements herein enumerated.
33. “Protective Covenants” are contracts made between private parties as to the manner in which land may be used, with the objective of protecting and preserving the physical and economic integrity of any given area. If the provisions of the City's ordinances or regulations impose a greater restriction than imposed by covenants, the provisions of the City’s ordinances and regulations will control. If the provisions of a valid, enforceable private agreement impose greater restrictions than City ordinances and regulations, the provisions of the covenants will control. The City does not enforce covenants or maintain a record of such.
34. “Recreational Area, Public” an area of land open to the public for recreational purpose with no user fees charged.
35. “Recreational Area, Semi-Public” an area of land open to the public for recreational purpose with user fees charged.
36. “Reverse Frontage Lot” a corner lot the rear of which abuts upon the side of another lot whether across an alley or not.
37. “Sidewalk or Walkway” that portion of a dedicated right-of-way or easement intended for pedestrian use only.
38. “Street” a public way for vehicular traffic which affords the principal means of access whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, alley, or however otherwise designated.
39. “Street, Thoroughfares” are arterial streets which are used primarily for heavy traffic, and serving as an arterial traffic way between the various districts of the community, as shown on the Comprehensive Plan.
40. “Street, Collectors” are those that carry traffic from minor streets to the major system of the throughfares and highways, including the principal entrance streets of residential districts as shown on the Comprehensive Plan.
41. “Street, Minor” are those which are used primarily to provide vehicular and pedestrian access to abutting properties.

42. “Street, Width” the shortest distance between lines of lots delineating the street right-of-way,
43. “Street, Private” a private roadway affording access by pedestrians and vehicles, which is under individual rather than municipal control and ownership.
44. “Street, Service Road” are minor streets. which are parallel and adjacent to thoroughfares and highways, and which provide access to abutting properties and protection from through traffic.
45. “Subdivider” a person corporation partnership, association or any other group who prepares or causes to be prepared a subdivision plat.
46. “Subdivision” the division of a tract or parcel of land into lots for the purpose, whether immediate or future, or a sale of or building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces. However, the division of land for agricultural purposes into parcels of three (3) or more acres not involving any new street or easement of access, shall be exempted from these regulations.
47. “Swales” a drainage system for storm run-off which approximates natural drainage patterns. For example, shallow drainage ways are provided beside streets and, if necessary, a ponding area is provided. Thus, use of a natural percolation is emphasized, the need for conventional curb, gutter and storm drains is minimized or eliminated. The net result is lower initial cost to home buyers because of lower original costs and lower maintenance costs. This system may be used when internal pedestrian ways are provided in subdivisions.
48. “Tangent” a straight line departing from a curve which is perpendicular to the radius of that curve.
49. “Tract” a parcel of land intended for division or development of a subdivision.
50. “U.S.G.S. Datum” refers to United States Geodetic Survey Datum.
51. “Vertical Curve” the surface curvature on a street centerline located between lines of different percentage of grade.
52. “Width of Lot” the width of a lot shall be the average distance between side lot lines. Side lot lines are those which are neither front nor rear lot lines.
53. “Subdivision Administrator” the person or department designated to administrate subdivision regulations.

### 5.1205 Approval of Plats

Recommendations on subdivision plats as required herein and in conformity with statutory authority within the City's territorial jurisdiction, shall be by the Planning Commission, with final determinations made by the City Commission. In all cases where land is offered for dedication for streets or other public purposes, the governing body affected shall act to accept or reject the offer of dedication and the deed for the fee to such lands.

### 5.1206 Procedure for Approval of Plats

All subdivision plats, preliminary and final, shall be prepared in conformance with the provision of this ordinance and in accordance with the Tioga Comprehensive Plan. The subdivider shall be responsible for such conformance.

#### 1. Preliminary Steps:

- a. Before preparing the general plan of a subdivision, the subdivider shall consult informally with the Subdivision Administrator, City Engineer, and Department of Public Works Director concerning the relation of the subject property to existing conditions future plans, and community facilities, utilities, and services.
- b. It will be the duty of the Planning Commission to discourage the subdividing of the lands that are far in advance of the needs of the community; or that by their location cannot be efficiently served by public utilities, schools, fire protection, police protection or other municipal service; or that are located in areas subject to flooding or that are topographically unsuitable for development; or that for any other reason are unwisely or prematurely subdivided. It shall also be the duty of the Planning Commission to encourage the replating of lands deemed to be unsatisfactorily subdivided or are underdeveloped.
- c. It shall also be the duty of the Planning Commission to encourage the coordinated platting of adjacent small parcels of land.

#### 2. Preliminary Plat Approval:

- a. The subdivider shall apply in writing to the Planning Commission for tentative approval of the preliminary subdivision plat.
- b. Eight (8) prints of the preliminary subdivision plat shall be submitted to the Subdivision Administrator for the Planning Commission at the City Hall at least fourteen (14) days prior to the Planning Commission meeting at which the same shall be considered. The preliminary plat shall comply with provisions of Section 10 of these regulations. Fees charged for the filing of the preliminary subdivision plat shall be paid in full, on the basis of the estimated number of lots created, at the time of application for tentative approval. The Subdivision Administrator shall prepare a report thereon, setting out whether or not said plat meets the

requirements of the City Ordinances, and the City of Tioga Comprehensive Plan. The Subdivision Administrator shall present said report together with recommendations thereon to the next meeting of the Planning Commission, filing as herein set out.

- c. After receipt of the application for preliminary plat approval, the Administrator shall give notice of a public hearing on such proposed subdivision by advertising the time and place of such hearing in a newspaper of general circulation in the City of Tioga or in the county concerned at least ten (10) days prior to the date of such hearing. The subdivider will furnish the name and address of the owner of the land, or his agent at the time of application, and the secretary of the Planning Commission shall send to said address by registered mail a notice of the time and place of such public hearing not less than five (5) days before the date fixed for the hearing. The public hearing may be held at a regular meeting or special meeting of the Planning Commission.
- d. Due to scheduling and calendar considerations, a subdivision plat may not be finally approved within 30 days as per North Dakota Century Code Section 40-48-21. Applicants will be asked to waive said requirements in return for expeditious consideration by the City of the application. The grounds upon which any plat is disapproved shall be stated upon the records of the commission.
- e. Upon the making of its determination, the Planning Commission shall embrace the same within a motion, which shall include all conditions it requires for approval, or conditions upon which approval will be granted, and shall set forth the reasons for the approval given. A copy of the motion shall be sent forthwith to the subdivider and a copy thereof to the City Commission together with the plat if it is approved, conditionally or otherwise.
- f. Approval shall be effective for a maximum period of twelve months, unless upon application by the developer, as extension is granted. If the plat or portion thereof has not been omitted for final approval within the time limit, a preliminary plat must again be submitted for approval.
- g. The City Commission shall review the preliminary plat and the recommendations of the Planning Commission at their next regular meeting following the action of the Planning Commission and shall take action on such plat and recommendations within sixty (60) days. Failing to do so, shall be considered an approval of the plat and a certificate to that effect shall be issued by the City Commission on demand. Procedures for approval, approval with conditions, or denial shall be as prescribed by the Planning Commission.

### 3. Final Approval:

- a. After the preliminary plat has been approved and the subdivider determines to proceed to secure final approval of all or a plat thereof as a final plat, the final plat

shall be submitted to the Planning Commission with a letter requesting such approval and describing the proposed development schedule for the subdivision.

- b. Eight (8) prints of the final plat shall be submitted to the Subdivision Administrator at least eight (8) days prior to the Planning Commission meeting at which the same shall be considered. The application shall be accompanied by such other documents and materials as may be required by these regulations or by the City Engineer or Director of Public Works. The Administrator shall prepare a report there on setting out whether or not said final plat is in substantial agreement with the preliminary plat and if not, in what particulars it varies therefrom; whether or not it conforms to the requirements of State law and the City Ordinance, and that the final plat meets all the conditions as attached to the approval of the preliminary plat. At this time an adjusted filing fee shall be determined and any additional fee shall be paid.
- c. If the Planning Commission approves the subdivision, such approval will be entered upon the original and copies of the plat and will be signed by the Chairman of the Planning Commission if the Planning Commission disapproves the subdivision, such action, together with the reasons therefore, will be entered in the official records of the Planning Commission and a copy of such record will be sent to the subdivider. If it shall determine that it cannot approve it unless certain conditions are attached, it shall by motion set forth the conditions for approval and forthwith send a copy of such conditions to the subdivider, and all further action on the plat shall be suspended until the subdivider shall respond thereto, provided that if no further action is taken by the subdivider within a thirty (30) day period, the plat shall be deemed to be disapproved.
- d. Upon final approval of a subdivision involving the creation of new streets, the widening, decreasing or vacation of existing streets or alleys, or the creation enlargement or decreases of other lands devoted to public use, the Planning Commission shall thereby and without further public hearing have approved such change in streets, alleys, or public lands as an amended to the Comprehensive Plan. The Planning Commission will transmit notice of such action to the City Commission together with appropriate recommendations concerning the acceptance of dedicated streets and alleys, or the vacation thereof, and of the acceptance of other dedicated lands. In the case of streets, alleys and public lands lying outside the City of Tioga, notice of the action of the Planning Commission and appropriate recommendations will be transmitted to the board of County Commissioners of Williams County, the Township Board, and other bodies having jurisdiction.
- e. Final action by motion on the final plat shall be communicated forthwith to the subdivider by the Subdivision Administrator for the Planning Commission, and a copy of the motion shall be sent to the City Commission, together with the plat, and such other data as the Commission shall determine.

4. Submittal to the City Commission:
  - a. Upon the adoption of the motion of approval or disapproval by the Planning Commission, the final plat shall come before the City Commission for review.
  - b. The Commission shall have the authority to hold such hearings on the formal plats it shall determine and upon such notice as it shall provide.
  - c. If the Commission is not satisfied with the final plat as presented, it may:
    - (1) disapprove the same;
    - (2) set forth such conditions and requirements as it shall require to be fulfilled before the same is approved; or
    - (3) refer the same to the Planning Commission which shall act thereon at the next meeting and report back to the City Commission no later than thirty (30) days after the said action of the City Commission; or
    - (4) table the plat to allow time for further information to be gathered.
  - d. If the City Commission shall determine to accept the plat, it shall by resolution so determine, and the resolution shall provide for the acceptance of all streets, alleys, easements or other public ways, parks, and other spaces dedicated to public purposes.
  - e. The action of the City Commission finally determining the matter shall be communicated to the subdivider, and if the plat be disapproved, reasons given by the Commission for such determination shall be set forth.
  - f. A final plat that is approved by the City Commission shall be filed by the subdivision administrator for record with the Recorder of Williams County, within thirty (30) days after approval Recording of the plat is contingent upon payment of any back taxes owed on the properly.

#### 5.1207 Plats Outside Corporate Limits

Procedure for approval of preliminary and final plats of land outside of the corporate limits of Toga shall be the same as set forth in Section 6 of this Ordinance, except that one (1) copy of the preliminary plat shall be referred to the Williams County Planning Commission, and one copy to the affected townships with a request for their recommendations to be submitted to the Tioga Planning Commission. The Tioga Planning Commission shall take into account such recommendations prior to taking action on the plat. If no such recommendations are received by the Tioga Planning Commission Within thirty (30) days, the plan shall be deemed approved by the County and the township.

#### 5.1208 Vacation of a Plat of Record

1. Conditions: A subdivider or owner may make application to the Planning Commission to vacate any plat of record under the following conditions:
  - a. The plat to be vacated is a legal plat of record.
  - b. Vacation of the subdivision will not interfere with development of nor deny access via public thoroughfare to, adjoining properties or utility services or other improvements.
  - c. Vacation of the subdivision will not be contrary to the Tioga Comprehensive Plan.
2. Procedure: Shall comply with vacation proceedings as outlined in Chapter 40-50 of the North Dakota Century Code. The land owner owners shall present a proposal to the Planning Commission, containing the legal description and plat of the subdivision and calling for vacation thereof, The Planning Commission shall study the proposal and shall send recommendations to the City Commission. The City Commission shall approve or deny the proposal. If the proposal is approved, it shall then be recorded in the office of the County Register of Deeds. All fees for the recording of such vacation shall be paid by the subdivider.

#### 5.1209 Professional Assistance

The City Commission or the Planning Commission may request such professional assistance as it deems necessary to properly evaluate the plats submitted, expenses to be paid by the owner or subdivider.

#### 5.1210 Specifications for Plats

1. Specifications for Preliminary Plats:
  - a. The following data regarding identification and description of the preliminary plat shall be provided:
    - (1) Proposed name of subdivision, which name shall not duplicate or too closely approximate the name of any plat or existing subdivision heretofore recorded in the County except when such plat is an addition to an existing plat of record. The name of a rearrangement of an existing plat may be shortened from a complete legal description of the rearrangement by stating “(said reengagement) hereafter to be known as \_\_\_\_\_.”
    - (2) Location by section, township and range, to the quarter section, or by other legal description



- (3) Names and addresses of the owners, subdividers, and developers having control of the lands included in said preliminary plat, the designer of the plat, the surveyor and his registration number.
  - (4) Graphic scale, not less than one (1) inch to one hundred (100) feet, or other scale as approved by the Subdivision Administrator.
  - (5) North point.
  - (6) Date of preparation.
- b. The following data regarding existing conditions shall be provided for preliminary plats:
- (1) Boundary line survey, including measured distances and angles which shall close by latitude and departure with an error of closure not exceeding one (1) foot in ten thousand (10,000) feet.
  - (2) Total acreage in said preliminary plat computed to one tenth (1/10) of an acre.
  - (3) Total square footage of each lot.
  - (4) Location and names of existing or platted streets or other public ways, parks and other public open spaces, building and structures, easements and section and corporate lines within the tract and to a distance of one hundred (100) feet beyond the tract at the time of submission of the plat.
  - (5) If the proposed subdivision is a rearrangement or a replat of any former plat the lot and block arrangement of the plat of record along with its original name shall be indicated by dotted or dashed lines. Also, any revision or vacated roadway of the original plat of record shall be so indicated.
  - (6) Location and size of existing surfaced streets shall be shown, as well as all railroads, sewer, water mains, gravel pits, culverts, or other underground facilities within and to a distance of one hundred (100) feet beyond the tract.
  - (7) Boundary lines of adjoining platted or unplatted land, within one hundred (100) feet beyond the tract.
  - (8) Complete topography map that extends one hundred (100) feet beyond the subdivision boundary line with contour intervals not greater than two (2) feet, water courses, high water elevation, and date thereof (of parts of platted area that are wet or have been wet, or have been subject to flooding), marshes, rock outcrops and other significant features; all superimposed on

at least one point of preliminary plat. United States Geodetic Survey datum NAVD88 shall be used for all topographic mapping.

- (9) In the case of a subdivision where no new streets are involved the prescribed topographical map requirements shall be left up to the discretion of the City Engineer or the Department of Public Works Director.
  - (10) Existing zoning of proposed subdivision property and existing zoning of adjacent property.
  - (11) Location of any corporate boundary within or adjacent to the proposed plat.
  - (12) Location and identification of any section lines within or adjacent to the proposed subdivision.
- c. The following data regarding proposed development design features of the preliminary plat shall be provided:
- (1) Layout of proposed streets, alleys, pedestrian ways and easements, showing right-of-way widths and proposed names of streets. The name or number of any street similar to or heretofore used in the City of Tioga shall not be permitted unless the proposed street is an extension of an already named street in which event that name or number shall be used. All street names or numbers shall be subject to the approval of the Planning Commission.
  - (2) Layout, numbers and approximate dimensions of lots, square footage area of each lot, and the number or letter of each block.
  - (3) Proposed Public Improvements: Highways or other major improvements planned by public authorities for future construction on or near the tract.
  - (4) Location and size of proposed parks, playgrounds, churches or school sites, or other special uses of land to be considered for dedication to public use, or to be reserved by deed of covenant for the use of all property owners in the subdivision and any conditions of such dedication or reservation.
  - (5) Vicinity sketch, at a scale of one (1) inch equals one thousand (1,000) feet or less for an area one-half (0.5) miles in radius of the tract, to show the relation of the plat to its surroundings.
  - (6) A statement of proposed improvements to be installed by the subdivider.
  - (7) Profiles showing existing ground surface and proposed street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision; typical cross sections of the proposed grading, roadway, and sidewalk.

- (8) A preliminary stormwater management plan which includes:
  - (a) The proposed preliminary grading plan shown at contours as required to clearly indicate the relationship of the proposed changes to existing topography and remaining features;
  - (b) A preliminary drainage plan of the developed site delineating the direction and rate stormwater runoff will be conveyed from the site and setting forth the areas of the site where stormwater will be collected; and
  - (c) Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the preliminary review of the project.
- (9) For a proposed subdivision plat within or adjacent to the corporate limits, a preliminary utility servicing plan is also required. This preliminary utility servicing plan shall include:
  - (a) The location of any existing municipal utilities within or adjacent to the plat; and
  - (b) The proposed location of sanitary sewer mains and watermains within the subdivision how these mains are proposed to connect to the existing utility systems, and any easements on adjacent property required to accommodate connections.

2. Specifications for Final Plats:

- a. The final plat shall contain the following:
  - (1) The final plat prepared for recording purpose shall be prepared in accordance with provisions of North Dakota State Statutes and applicable City and County regulations.
  - (2) Name of subdivision: Names shall not duplicate or too closely approximate the name of any existing subdivision in Williams County except when such plat is an addition to an existing plat of record. The name of a rearrangement of an existing plat may be shorted from a complete legal description of the rearrangement by stating "(said rearrangement) hereafter to be known as \_\_\_\_."
  - (3) Location by quarter section, township, range, county and state, and including descriptive boundaries of the subdivision based on an accurate traverse, giving angular and linear dimensions which must mathematically close. The allowable error of closure on any portion of a final plat shall be one (1) foot in ten thousand (10,000) feet. The plat must indicate that all

outside boundary monuments have been set and indicate those interior monuments that have been set. Location of such monuments shall be shown in reference to existing official monuments or to the nearest established street lines, including true angles and distances to such reference point or monuments. Permanent monuments shall be placed at each corner of each block or portion of a block, points of curvature and points of tangents on street lines, and at each angle point on the boundary of the subdivision. A permanent marker shall be deemed to be a street rod, at least one-half (0.5) inch in diameter and eighteen (18) inches long extending at least two (2) feet below the finished grade. In situations where conditions prohibit the placing of monuments in the location described above, offset markers will be permitted.

- (4) The monuments for the boundary line of the subdivision must be placed prior to recording the final plat, the monuments for block corners and the points of curvature and tangency of each curve in a street line on both sides of the street must be placed upon completion of roadway and municipal utility improvements, and monuments for lot corners and each point of deflection in the interior lot lines must be placed prior to obtaining a building permit for that lot.
- (5) Locations of lots, streets, public highways, alleys, parks, and other features with an accurate dimension in feet and hundreds of feet, with the length of radii and/or arcs of all curves, and with all other information necessary to reproduce the plat on the ground. Dimensions shall be shown from all angle points and points of curve to lot lines.
- (6) One hundred (100)-year floodplain and floodway elevations and topographic contours with a minimum contour interval of two (2) feet for the portion of the plat lying within the designated floodplain, with an indication of datum used.
- (7) Boundary lines and description of boundary lines on any areas other than streets and alleys which are to be dedicated or reserved for public use.
- (8) Lots shall be numbered clearly and the square footage of each lot shall be shown. Block numbers shall be shown clearly in the center of the block and all streets shall be named.
- (9) Names and addresses of owners, subdividers and developers, designer of the plat, surveyor and his registration number making the plat.
- (10) The scale of the plat shall be not less than one (1) inch to one hundred (100) feet or other scale as approved by the City Engineer or Director of Public Works to be shown graphically, north point, and date of preparation. For plats requiring more than one (1) street an index shall be provided.

- (11) Statement dedicating all easements as follows: Easements for installation and maintenance of utilities and drainage facilities are reserved over, under and along the strips marked "utility easements".
- (12) Statement dedicating all streets, alleys, and other public areas not previously dedicated as follows: Streets, alleys, and other public areas shown on this plat and not heretofore dedicated to public use are hereby also dedicated.

b. Certification Required on Final Plats:

- (1) All signatures (except the surveyor preparing the plat) shall be notarized in black ink (not ballpoint pen).
- (2) Notarized certification by owner and by any mortgage holder of record of their consent of the plat and the dedication of streets and other public areas.
- (3) Notarized certification by registered land surveyor, to the effect that the plat represents a survey made by him and that monuments and markers shown therein exist as located and that all dimension and geodetic details are correct. The Surveyor's Certification must also state that the surveyor holds a valid registration in North Dakota.
- (4) Space for Certificates of Approval to be filled in by the signatures of the owner(s), surveyor, President of the Planning Commission, City Auditor, President of the City Commission, and Notary Publics for each as well as the Williams County Recorder. The form of approval by the Planning Commission is as follows:

(a) Certification of Registered Surveyor

I, \_\_\_\_\_,  
 BEING A REGISTERED NORTH DAKOTA LAND  
 SURVEYOR, DO HEREBY CERTIFY THAT I HAVE  
 SURVEYED AND MAPPED THE PROPERTY SHOWN  
 HEREIN AND THE WITHIN MAP IS A TRUE AND CORRECT  
 REPRESENTATION OF THE LAND SURVEYED, AND THAT  
 I HAVE FULLY COMPLIED WITH THE PROVISIONS OF  
 THE NORTH DAKOTA CENTURY CODE AND THE CITY OF  
 TIOGA SUBDIVISION ORDINANCES TO THE BEST OF MY  
 KNOWLEDGE AND BELIEF.

---

Registered Land Surveyor

State of North Dakota  
County of Williams

Be it known that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally appeared \_\_\_\_\_ and acknowledged the execution and signing of the above Certification of Registered Land Surveyor to be his voluntary act and deed.

---

Notary Public  
Williams County, North Dakota

My Commission Expires: \_\_\_\_\_

(b) Owners Consent and Dedication

We, the undersigned, being all the owners and mortgage holders of the lands platted herein, do hereby voluntary by consent to the execution of said plat, and do dedicate the streets, alleys, parks, and public grounds as shown thereon, including all sewers, culverts, bridges, water distribution lines, sidewalks, grounds, whether such improvements are shown or not, to the public use forever.

We agree not to vacate any portion of this plat without consent of the Planning Commission and the City of Tioga. We also hereby dedicate easements, to run with the land, for water, sewer, gas electric, telephone or other public utility lines or services under, on, or over those certain strips of land designated hereon as "utility easements".

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Owner

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Owner

State of North Dakota  
County of Williams

Be it known that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, and acknowledged the execution and signing of the above Consent and Dedication to be his (her, their) voluntary act and deed.

---

Notary Public  
Williams County, North Dakota

My Commission Expires: \_\_\_\_\_

(c) Planning Commission Approval

The subdivision of land shown hereon has been approved by the Planning Commission of the City of Tioga, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in accordance with the laws of the State of North Dakota, ordinances of the City of Tioga, and regulations of said Planning Commission.

---

President

State of North Dakota  
County of Williams

Be it known that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ before me personally appeared President of the Planning Commission of the City of Tioga and acknowledged the execution and signing of the above.

---

Notary Public  
Williams County, North Dakota

My Commission Expires: \_\_\_\_\_

(d) Approval by City Commission

By virtue of Ordinance No. \_\_\_\_\_ the City Commission of the City of Tioga, North Dakota; has approved the subdivision of land shown hereon; has accepted the dedication of all streets, alleys, and other public ways shown hereon lying within the corporate limits of the City of Tioga; has accepted the dedication of all parks and other public areas shown hereon (except those public areas specifically dedicated to other public bodies); and has ordered the vacation of streets, alleys, and public ways of a subdivision previously recorded with the Recorder of Williams County in Book \_ Page \_\_\_, more particularly described as follows:

NOTE: Use only that part of this paragraph that is applicable to the

subdivision.

Further, said City Commission has approved the streets, alleys, and other public ways and grounds as shown hereon as an amendment of the Comprehensive Street and Highway Plan and any other appropriate portion of the Comprehensive Plan of the City of Tioga

ATTEST: \_\_\_\_\_  
City Auditor President, City Commission

Be it known that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ and known to me to be the persons who executed the above certificate and acknowledged to me that they execute the same.

\_\_\_\_\_  
Notary Public  
Williams County, North Dakota

My Commission Expires: \_\_\_\_\_

NOTE: A similar form will be required for acceptance of any streets or public lands dedicated to any governing body other than, the City of Tioga.

(e) Certification of the Williams County Recorder

This plat was filed for records in the office of the Williams County Recorder, in the State of North Dakota at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A.D., \_\_\_\_\_, and was duly entered in the Book Page \_\_\_\_\_.

\_\_\_\_\_  
Williams County Recorder

- 3. The following information shall accompany the final plat and shall be filed therewith at the time the final plat is submitted to the Planning Commission.
  - a. Plan and profiles of streets showing grades approved by the City Engineer. The profiles shall be drawn to City standard scales and elevations and shall be based on a datum plane approved by the City Engineer or Director of Public Works.
  - b. A certificate by the City Auditor certifying that the subdivider has complied with one of the following alternatives:



- (1) All improvements as described in Section 14 of these regulations have been installed in accord with the requirements of these regulations and with the action of the Planning Commission giving approval of the preliminary plat, or
  - (2) A bond or certified check has been posted, which is available to the City, and in sufficient allotment to assure such completion of required improvements.
- c. Restrictive covenants in form for recording.
  - d. A current title opinion stating the name of the owner of record or an attorney's option of title, running to the benefit of the governing body affected by the plat, stating the name of the owner of record. "Current" means the title opinion or attorney's opinion has been prepared within six months prior to the date of application for the approval of a subdivision.
  - e. Other Data: Such other certificates, affidavits, endorsements or deductions as may be required by the Planning Commission in the enforcement of this ordinance.

#### 5.1211 Design Standards

##### 1. Streets and Alleys:

- a. The arrangement of thoroughfares and collector streets shall conform as nearly as possible to the Tioga Comprehensive Plan. Except for cul-de-sacs, streets normally shall connect with streets already dedicated in adjoining or adjacent subdivision, or provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets to the nearest subdivided tracts. The arrangement of thoroughfares and collector streets shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to run-off of stormwater, to public convenience and safety, and in their appropriate relation to the proposed use of the area to be served.
- b. Minor streets should be so planned as to discourage their use by non-local traffic. Dead-end streets are prohibited, but cul-de-sacs will be permitted where conditions justify their use. Street cul-de-sacs shall normally not be longer than five hundred (500) feet, including a terminal turn-around which shall be provided at the closed end, with an outside right of-way radius of not less than fifty-five (55) feet.
- c. Where the plat to be submitted includes only part of the tract owned or intended for development by the subdivider, a tentative plan of a proposed future street system for the unsubdivided portion shall be prepared and submitted by the subdivider.

- d. When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and openings of future streets and appropriate resubdivision, with provision for adequate utility connections for such resubdivision.
- e. Under normal conditions, streets shall be laid out so as to intersect as nearly as possible at right angles except where topography or other conditions justify variations. The minimum angle of intersections of streets shall be eighty (80) degrees. Street intersection jogs with an offset of less than one hundred fifty (150) feet shall be avoided.
- f. Wherever the proposed subdivision contains or is adjacent to the right-of-way of a limited or controlled access U.S. or State Highway or a thoroughfare, the Planning Commission shall determine which provision shall be required:
  - (1) for a service road approximately parallel and adjacent to the boundary of such right-of-way,
  - (2) for a street at a distance suitable for the appropriate use of land between such street and right-of-way, or
  - (3) for double frontage lots and a reservation strip along the rear or thoroughfare property line with a screen planting. Such distance shall be determined with due consideration of the minimum distance for approach connections to future grade separations, grade crossings, or for lot depths.
- g. Alleys shall be provided, except this requirement may be waived where other definite and assured provisions are made for emergency vehicles (police, fire, and ambulance) and service access, such as off-street loading, unloading, and parking consistent with and adequate for uses proposed. Alleys, where provided, shall not be less than twenty (20) feet wide for residential alleys and not less than twenty-five (25) feet for commercial and industrial alleys. Dead-end alleys will not be permitted, except that this requirement may be waived where an adequate turn-around for emergency vehicles (fire, police, and ambulance) is provided.
- h. Dedication of half streets will not be approved, except where it is essential to the reasonable development of the subdivision and in conformity with the other requirements. Of these regulations, where it is found that it will be practical to require the dedication of the other half when the adjoining property is subdivided, or where it becomes necessary to acquire the remaining half by condemnation so it may be improved in the public interest. If a half street right-of-way is approved, parking shall be prohibited on such half street until a full right-of-way is provided.
- i. For all public ways hereafter dedicated and accepted, the minimum right-of-way widths for streets shall be as shown in the Comprehensive Plan for Tioga, and where not shown herein, the minimum right-of-way for streets, alleys, or

pedestrian ways included in any subdivision shall not be less than the minimum dimensions for each classification as follows:

<u>Right-of-way</u>	
Major Arterial Street	100 feet
Minor Arterial Street	80 feet
Collector Street	60 feet
Minor Street	50 feet
Service Road	30 feet
Residential Alley	20 feet
Industrial-Commercial Alley	25 feet
Pedestrian Way	10 feet

Where existing or anticipated traffic or utilities warrant greater widths of street right-of-way, these shall be required.

- j. All proposed streets shall be offered for dedication as public streets.
- k. Reserve strips in private ownership controlling access to streets shall be prohibited.
- l. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.
- m. When collecting street lines deflect from each other at any one point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to ensure a sight distance of not less than four hundred (400) feet for collector streets, and of such greater radii as the Planning Commission shall determine for special cases.
- n. Pavement widths shall measure from the back of the curbs of roadways and shall not be less than the following:
  - (1) Major arterial streets - 48 feet
  - (2) Minor arterial streets - 44 feet
  - (3) Collector streets - 44 feet
  - (4) Local street - 34 feet
  - (5) Cul-de-sacs radius of cul-de-sac shall be the same as street width with a minimum radius of 40 feet.
  - (6) Alleys - 20 feet

(7) Sidewalks - 5 feet

(8) The Swale concept is approved where internal pedestrian walks and bikeways are provided.

o. No street names or numbers shall be used which will duplicate or be confused with the names of existing streets. Street names or numbers shall be subject to the approval of the Planning Commission.

p. Street grades, wherever feasible, shall not exceed the following, with due allowance for reasonable vertical curves:

(1) Arterial streets - 6 percent

(2) Collector streets - 8 percent

(3) Local streets 10 percent

q. No street grade shall be less than four tenths (4/10) of one (1) percent.

r. Flat grades are preferred from fifty (50) to one hundred (100) feet away from an intersection, but in no case shall grades exceed four (4) percent for a distance of at least fifty (50) feet from all intersections.

s. General considerations:

(1) Intersections of more than two (2) streets at a point shall not be permitted.

(2) Alleys or other appropriate access shall be provided in commercial and industrial districts.

(3) Dead-end streets as permanent features shall be prohibited.

(4) The quality of construction (materials and workmanship) shall conform with project standards and specifications.

2. Easements:

a. Where alleys are not provided, an easement for utilities at least ten (10) feet in width shall be provided along each rear lot line and along any other line as may be deemed necessary by the City Engineer to form a continuous right-of-way of at least twenty (20) feet in width, said greater or lesser width shall be specified by the City Engineer or Director of Public Works and provided accordingly upon the plat.

b. Utility easements shall connect with easements established in adjoining

properties. These easements, when approved, shall not thereafter be changed without the approval of the City Commission, by resolution upon the recommendation of the City Planning Commission.

- c. Additional easements for pole guy-wires should be provided at the outside of turns. Where possible, lot lines shall be arranged to bisect the exterior angle so that pole guy wires will fall alongside lot lines.
- d. Where a subdivision is traversed by a water course, coulee, drainage way, channel, or stream, a stormwater easement, drainage right-of-way, or park dedication whichever the Planning Commission may deem the most adequate, conforming substantially with the lines of such water course shall be provided, together with such further width or construction, or both, as will be adequate for the stormwater drainage of the area. The width of such easements shall be determined by the City Engineer or Director of Public Works.
- e. The use of underground installation of all utilities (including power, gas, telephone and cable television) is strongly encouraged in the new subdivisions.

3. Blocks:

- a. Block length - in general, intersecting streets, determining block length, shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets. Where no existing plats control, the blocks in residential subdivisions normally shall not exceed thirteen hundred and twenty (1,320) feet in length, except where topography or other conditions justify a departure from this maximum. In blocks longer than eight hundred (800) feet, pedestrian ways and/or easements through the block may be required. The width and location of such pedestrian ways shall be subject to No. 2 below and to the approval of the City Engineer or Director of Public Works and the Planning Commission. Blocks for business or industrial use should normally not exceed seven hundred (700) feet in length.
- b. Block Width - The width of the block shall normally be sufficient to allow two (2) tiers of lots of appropriate depth, except in such cases where lots fronting on service roads are necessary for traffic control. Blocks intended for business or industrial use shall be of such width as to be considered most suitable for their respective use, including adequate space for off-street parking and deliveries.

4. Lots:

- a. The minimum lot area, width and depth shall not be less than that established by the Tioga Zoning Ordinance, except that in those areas in which the public sewer facilities are not likely to be available before development, the Planning Commission may require lot size to accommodate adequate land use density and sewage disposal systems, in accordance to the Comprehensive plan of Tioga and

- the City Zoning Ordinance.
- b. Corner lots for residential use shall have additional width to permit appropriate building setback from both streets as defined in the Tioga Zoning Ordinance.
  - c. Side lines of lots shall be approximately at right angles to street lines or radial to curved street lines.
  - d. Where a subdivision is traversed by a water course, coulee, drainage way, channel, or stream, a stream water easement, drainage right-of-way or park dedication, whichever the Planning Commission may deem the most adequate, conforming substantially with the lines of such water course shall be provided, together with such farther width or construction, or both, as will be adequate for the storm water drainage of the area. The width of such easements shall be determined by the City Engineer or Director of Public Works.
  - e. The use of underground installation of all utilities (including power, gas, telephone and cable television) is strongly encouraged in new subdivisions.

5. Public Sites and Open Spaces:

- a. In subdividing land or resubdividing an existing plat, due consideration shall be given by the subdivider to the dedication or reservation of suitable sites-for schools, parks, playgrounds, conservation areas, or other public or semi-public recreational areas or open spaces. Areas so dedicated or reserved, shall conform as nearly as possible to the Comprehensive Plan, as determined by reasonable discretion of the City Commission upon recommendation of the Planning Commission. All areas to be reserved for or dedicated to public use shall be indicated on the preliminary plat in order that it may be determined when and in what manner which areas will be dedicated to or acquired by the appropriate agency.
- b. Residential Subdivisions. The subdivision of any tract of land which is to be developed for residential uses shall dedicate to the public for public use as parks, playgrounds, public open space, or storm water holding areas or ponds, that percentage of the net tract to be subdivided which corresponds with the applicable density of the subdivision in the following schedule:

<u>Density</u>	<u>Percentage</u>
0 to 6 dwelling units per acre	6
7 to 12 dwelling units per acre	7
13 to 20 dwelling units per acre	8
Subdivisions of 3 acre lots or larger shall not have to dedicate for parts of parking spaces	

If the density of the proposed residential subdivision exceeds twenty (20) dwelling units per acre; the City Commission shall require the dedication of such

percentage of the proposed subdivision as it deems reasonable and in the public interest, which percentage shall in no event be less than eight (8%) percent nor more than ten (10%) percent.

- c. Commercial, Industrial, and Other Developments. In accordance with the purpose and intent of this subparagraph, the developer of any tract of land for any uses enumerated in this subparagraph shall dedicate to the public for public use as parks, playgrounds, public space, or storm water holding areas or ponds, such portion of this development shall not to exceed six percent (6%) thereof, as the City Commission deems to be reasonable and in the public interest, taking in consideration the locale of the development tract, its accessibility, serviceability, and zoned use.
- d. Dedications of land or cash in lieu of dedication of land for public sites and open space shall be based on the net usable land, that is, the amount of land left after dedication of public streets and alleys, as indicated by the square footage on the preliminary plat.
- e. Delineation of Area to be Dedicated. The actual area to be dedicated for public use as parks, playgrounds, public open space, or storm water holding areas or ponds shall be delineated on the preliminary and final plat. Copies of such preliminary plat or site plan shall be referred to the Park Board for its scrutiny and report to the Commission of its findings, conclusions, and recommendation, this referral being in addition to the referral to the Planning Commission.
- f. Cash in Lieu of Dedication of Land. In lieu of dedication of land, the City Commission, upon recommendation of the Planning Commission and, or Park Board, may require the subdivider to pay an amount in cash equal to the estimated market value. Market value shall be the purchase price of the land if the land was purchased within twelve (12) months prior to application for the preliminary plat. If the purchase or ownership of the land is prior to twelve (12) months before application, the land will be appraised by an appraiser selected by the City and the subdivider at the time of application for the preliminary plat, if agreement cannot be reached by this method, three (3) appraisals will be obtained. The three (3) appraisals will be independent of each other and provided by the City of Tioga and the subdivider, as noted in the first method, the City of Tioga, and the subdivider. To obtain a final estimated market value a correlation of the three (3) appraisals will be made by the City Commission and the subdivider or agents thereof.
- g. The amount due will be determined by dividing the market value by the number of square feet in the parcel to arrive at a price per square foot. The price per square foot will be taken times the number of usable square feet to arrive at a net market value. The net market value will be taken times the appropriate percentage, as defined in Subsections 2 and 3, to arrive at the amount due for Cash in Lieu of Dedication. Cash in Lieu of Dedication must be agreed on and

paid prior to acceptance of the Final Plat by the City Commission.

- h. Restriction on Use of Cash in Lieu of Dedication. All Cash in Lieu of Dedication received by the City pursuant to Paragraph 6 in this Section shall be placed in a special fund and used only for acquisition of land for parks, playgrounds, public open space, and storm water holding areas or ponds, development of existing park and playground sites, public open space, and debt retirement in connection with land previously acquired for such public purposes, all within the general location of the subdivision from which the Cash in Lieu of Dedication is received or for any community park facilities that would serve the same subdivisions.

6. Planned Unit Development:

- a. The subdivision of land in a Planned Unit Development (P.U.D.) shall follow the development agreements as determined by the City Planning Commission and City Commission. Any variance required of this ordinance for the adoption of the P.U.D. shall herein be considered as a part of the approval of the P.U.D.

5.1212 Schedule of Fees

- 1. The City Commission shall establish a schedule of fees and a collection procedure to cover the cost of examining plans, advertising, and holding public hearings, and other expenses incidental to the processing, review and approval on subdivision. The schedule of fees shall be posted in the office of the Subdivision Administrator and may be altered or amended only by the City Commission.

All applicable fees shall be paid in full at the time of application for tentative approval of a preliminary plat. If because of the failure of the subdivider to submit a final plat within twelve (12) months after receiving tentative approval of the preliminary plat, it will be necessary to re-submit a preliminary plat for tentative approval, the subdivider shall be required to pay a new fee based upon the fee rates in effect at the time of such re-submission.

- a. That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land when compared to the reasonable use of land as enjoyed by neighboring landowners.
  - b. The Variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
  - c. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or property values in the territory in which said property is situated.
- 2. Applications Required. Applications for any such variance shall be submitted in writing



by the subdivider at the time when the preliminary plat is filed for consideration by the Commission, stating fully and clearly all facts relied upon by the petitioner and shall be supplemented with maps, plans, or other additional data which may aid the Commission in the analysis of the proposed project. The plans for such development shall include such covenants, restrictions or other legal provisions necessary to guarantee the full achievement of the plan.

#### 5.1213 Required Improvements

##### 1. Statement of Policy

- a. It is hereby declared to be the policy of the City to require installation of Sanitary Sewer, Storm Sewer, Watermain, Street Grading, and Street Surfacing in all new subdivisions within the City boundaries, and storm sewer street grading, street surfacing, and approved sewage disposal and water systems within the general jurisdiction of this Ordinance.
- b. The following improvements shall be installed at the sole expense of the developer:
  - (1) Storm sewers culverts, storm water inlets, and other drainage facilities will be required where they are necessary to insure adequate storm water drainage for the subdivision. Such drainage facilities shall be constructed in accordance with the standards and specifications for street construction as approved by the City Engineer or Director of Public Works.
  - (2) The full width of the right-of-way shall be graded, including the sub-grade of the areas to be paved, in accordance with standards and specifications for street construction as approved by the City Engineer or Director of Public Works.
  - (3) Sanitary Sewer in the City limits to serve the entire subdivision including service connection extended to the property line for each lot or in areas outside the City, sufficient percolation tests to insure proper function of independent systems.
  - (4) Watermain in the City limits to be provided where the City deems it to be reasonably available to serve the entire subdivision including valves, fire hydrants and service connections (extended to the property line) to serve each lot or, in areas outside the City, adequate insurance that individual water systems will function in the subdivision.
  - (5) Street Identifications Signs. Street identification signs of the standard design approved by the City Commission shall be installed at each street intersection.

- c. In the case of the improvements set forth below, the developer shall install the same at his own expense or, as an alternative, shall submit a legally sufficient petition for the installation of the same. Such petition must be submitted prior to, or at the time of, the request for final plat approval in accordance with Section 6 of this Ordinance.
    - (1) Street surfacing. All streets shall be improved with surfacing to overall width in accordance with City standards.
    - (2) Street Trees. Street trees shall be planted in residential areas of subdivisions in conformance with City standards and specifications for Street Tree Planting as established by the City Forester.
    - (3) Curbs, Gutters and Sidewalks. Curbs, gutters, and sidewalks shall be provided in conformance with the standards and specifications as approved by the City Commission.
2. No Final Plat Shall be Approved by the City Unless the Owner or Subdividers:
- a. Shall have installed survey monuments at all block corners, angle points, points of curves in streets, and at intermediate points as shown on the final plat;
  - b. Shall have installed approved iron monuments, at each corner or angle on the outside border, minimum one-half (0.5) inch diameter and eighteen (18) inches long;
  - c. Shall have preserved in precise position, all United States, State, County or other official benchmarks, monuments or triangulations, stations in or adjacent to the property, all as required by the City Engineer or Director of Public Works;
  - d. Shall have furnished a cash deposit or corporate surety bond conditioned that the applicant will faithfully perform all requirements by him undertaken with reference to the proposed plat and will install all required improvements;
  - e. Shall have approved plans and specifications as listed below:
3. Plans and Specifications. A developer or subdivider shall have the option of developing his subdivision under option A or B below, except that a subdivision outside of the corporate City limits shall be required to follow option B only.
- a. City Development Option
    - (1) Plans and specifications for the construction of required improvements shall be prepared by a registered and licensed engineer or subject to his approval. All construction shall be in accordance with such plans and specifications and subject to the City Engineer's or Director of Public Works' inspection

and approval. Required bond amounts shall be determined by the City Engineer or Director of Public Works.

- (2) Upon completion of all improvements ordered to be made in the subdivision, the City Commission shall direct that the assessable cost thereof be levied less any portion of the cost contributed or paid by the owner or subdivider, and after required hearing, the City Commission will proceed as provided by law to levy said assessed costs.

b. Private Development Option

- (1) Before a final plat is approved by the City, the owner and subdivider of the land covered by the said plat shall execute and submit to the City an agreement which shall be binding to his or their heirs, personal representatives and assigns that he will cause no private construction to be made on said plat or file or cause to be filed any application for building permits for such construction until all improvements required under this Ordinance have been made or arranged for in the manner following, as respects the streets to which the lots sought to be constructed have access.
  - (2) Prior to the making of such required improvements, the owner or subdivider shall deposit with the City an amount equal to one and one-half (1.5) times the City Engineer's or Director of Public Works' estimated cost of such improvements, either in cash or an indemnity bond, with sureties satisfactory to the City conditioned upon the payment of all construction costs incurred in making of such improvements and all expense incurred by the City for engineering and legal fees and other expense in connection with the making of such improvements.
  - (3) The subdivider shall submit with the final plat or at the time of completion of improvements, if bonded, a certificate of completion of required improvements. Such certificates shall be prepared by a registered engineer and shall include a statement of the inspection and approval of the same by the City Engineer. Drawings showing all improvements built shall be filed with the City.
4. Building Permit. No building permit shall be issued for the construction of any building, structure or improvement on any land required to be subdivided by these Regulations until all requirements of these Regulations have been fully complied with.
  5. No final plat shall be approved by the City Commission on land subject to flooding or containing poor drainage facilities and on land which would make adequate drainage of the streets and lots impossible. However, if the subdivider agrees to make improvements which will, in the opinion of the City Engineer, make the area completely safe for occupancy, and provide adequate street and lot drainage, the final plat of the subdivision may be approved.

6. All of the required improvements to be installed under the provisions of this ordinance shall be inspected during the course of the construction by the City Engineer or Director of Public Works. All of the inspection costs pursuant there to shall be paid by the owner or subdivider in the prescribed manner. All required improvements shall be installed by the developer at no cost to the City.

#### 5.1214 Enforcement

1. Validity
  - a. No plat or subdivision of the City of Tioga or within the extra territorial limits thereof shall be recorded or filed with the Williams County Recorder, nor shall any plat or subdivision have any validity until it complies with the provision of this ordinance and has been approved by the City Commission and the applicable Planning Commissions, as prescribed herein.
2. Building Permits
  - a. Not more than one building permit shall be issued for each separate tract existing at the effective date of these regulations unless the tract shall have been platted in accordance with the provisions of these regulations.
3. City Funds Expended
  - a. No public improvements over which the City Commission has control shall be made with the City funds, nor shall my City funds be expended for street maintenance, street improvements, or other services in any area that has been subdivided after the date of the adoption of these regulations unless such subdivision and streets have been approved in accordance with the provisions of this ordinance and the street accepted by the City Commission as a public street.

#### 5.1215 Penalty

Any owner, or the agent of any owner, of land located within a subdivision who transfers, sells, agrees to sell, or negotiates to sell any such land by reference to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the Planning Commission and governing body and recorded as approved in the office of the appropriate Register of Deeds, shall forfeit and pay a penalty as provided by Section 40-48-23 of the North Dakota Century Code, one hundred dollars (\$100.00) for each lot or parcel transferred or sold or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section, The municipality may enjoin such transfer, sale, or agreement by an action for injunction, or it may recover the penalty by civil action.

#### 5.1216 Amendments

Changes in these regulations, as amendments, may be adopted by the City Commission after a public hearing on any such change with ten (10) days' notice thereof. Each proposed change shall be submitted to the Planning Commission for a report thereon. Failure to report within thirty (30) days shall be deemed to be approval, unless an extension of time is agreed to by both parties.

#### 5.1217 Repeal of Conflicting Ordinances and Regulations

From and after these regulations take effect, all regulations, ordinances, and part of the City of Tioga and the City Planning Commission in conflict herewith are hereby repealed.

#### 5.1218 Validity

If any section, subsection, sentence, clause or phrase of this ordinance be declared unconstitutional or void, such decision shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so declared invalid.

#### 5.1219 Effective Date

This ordinance shall be in effect from and after its adoption and publication as followed by law.

### **ARTICLE 13 - Enforcement**

#### 5.1300 Enforcement

The administration and enforcement of this ordinance (Chapter 5) is hereby vested in the Tioga City Commission, the Tioga Planning Commission, the Building Inspector/Community Service Director and the City Auditor.

The duty of the Tioga City Commission or its appointed representative is to investigate the violations of the provisions of this ordinance (Chapter 5). If the City Commission finds a violation of this ordinance, they shall order in writing the correction of the violation.

The City Commission may institute appropriate action or proceedings for the purpose of:

1. Prosecuting any violation.
2. Restraining, correcting, or abating such violation.
3. Preventing the occupancy of any building, structure, or land in violation of this ordinance.

4. Preventing any illegal act, conduct, business, or use in or about any buildings, structure or land in violation of this ordinance.
5. Penalties for Violations
  - a. Violation of the provisions of this ordinance (Chapter 5) or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
  - b. Nothing herein contained shall prevent the Commission Board from taking such other lawful action as is necessary to prevent or remedy any violation.

## CHAPTER SIX

### WATER AND SEWER

#### **ARTICLE 1 - Utility Established**

##### 6.0101 Water and Sewer Utility Created

The waterworks and sewerage facilities now owned by this City or hereafter acquired, were and are hereby declared to be and to constitute a public utility of the City, to be held, operated, maintained, improved, extended, and administered as a single undertaking to be known as the "water and sewer utility." The properties of said utility shall include all plants, systems, works, instrumentalities, equipment, materials, supplies, lands, easements, rights in land, water rights, contract rights, franchises, dams, reservoirs, sewage disposal plants, intercepting sewer, trunk connections, sewer and water mains, filtration works, pumping stations, and all parts and appurtenances of the foregoing which are used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses and/or useful in connection with the collection, treatment, and disposal of sewage, waste and storm waters.

##### 6.0102 Scope of Utility

The properties of said utility and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Utility Fund and all monies to be derived thereafter from the services, facilities, products, and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety, and welfare by furnishing and making available water and sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the governing body of the City and shall by it be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is compatible with the plan of operation herein described.

##### 6.0103 Service Charges - Use Of

Said utility shall at all times be so operated and maintained, and rates and charges for its services, facilities, products, and by-products shall be such as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the City incurred for the improvement, extension, and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net

revenues, and to establish and maintain adequate reserves for the security of said obligations; and to produce surplus net revenues, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the governing board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law.

The foregoing appropriations shall not, however, be deemed or construed to preclude the City from defraying any part or all of the expense of any improvement, enlargement or extension of the water and sewer utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the governing body.

#### 6.0104 Utility Fund

All monies received by the City in respect of the services, facilities, products, and by-products furnished and made available by said utility, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipts, and returns received from any investments or such earnings, shall be paid into the treasury of the City and kept in a special fund which shall be permanently maintained on the books of the City, separate and distinct from other funds, and designated as the Water and Sewer Utility Fund, in the records of which funds all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the monies from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other City funds.

The City Commission may establish such accounts as may be necessary from time to time when required by law or by such contracts entered into by the City for the improvement of its sewer and water system.

### **ARTICLE 2 - Water Service**

#### 6.0201 Water System

All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections, and all other property used for the purpose of furnishing a water supply to this City, and the inhabitants thereof, now owned or to be owned by this City, whether acquired by the issue of general obligation bonds, special assessment warrants, or other obligations of this City, shall constitute and be known as the waterworks system.



#### 6.0202 Water Service - Construction of - Maintenance of by Owner

The cost of original installation of all plumbing between the main and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the consumer, although such plumbing and services as well as the meters shall at all reasonable times be subject to inspection by duly authorized representatives of the municipality. Any repairs found to be necessary by such representatives shall be made promptly, or the municipality will discontinue service.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. Services means the service line running from the point of connection with the City main to owner's premises.

#### 6.0203 Water Meters

Every consumer of water shall provide a suitable place where a water meter can be installed. Water meters will be furnished by the City to the consumer upon the payment of a water deposit in an amount which shall be set from time to time by resolution of the City Commission.

#### 6.0204 Restriction of Use of Water

The City Commission of the City of Tioga may from time to time declare that water may not be used for specific purposes or may only be used in certain parts of the City on certain days for certain purposes. The City shall have the right to prohibit the watering of lawns and gardens, the washing of cars, or other uses of water as may be necessary to preserve for the general public an adequate supply of water for consumption and use by the general public.

### **ARTICLE 3 - Regulation of Sewer Use**

#### 6.0301 Purpose

It is the purpose of this article to provide ordinances regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system, and to provide penalties for violations thereof, in the City of Tioga, North Dakota.

#### 6.0302 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in

this ordinance shall be as follows:

1. “BOD” (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter.
2. “Building Drain” shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.
3. “Building Sewer” shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.
4. “Combined Sewer” shall mean a sewer intended to receive both wastewater and storm or surface water.
5. “Easement” shall mean an acquired legal right for the specific use of land owned by others.
6. “Floatable Oil” is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pre-treated and the wastewater does not interfere with the collection system.
7. “Garbage” shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.
8. “Industrial Waste” shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.
9. “Natural Outlet” shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
10. “Person” shall mean any individual, firm, company, association, society, corporation, or group.
11. “pH” shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution. The concentration is the weight of hydrogen ions in grams per liter of solution.
12. “Property Shredded Garbage” shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will

be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

13. "Public Sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
14. "Sanitary Sewer" shall mean a sewer that carried liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
15. "Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present. The preferred term is "wastewater."
16. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
17. "Shall" is mandatory; "May" is permissive.
18. "Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty- four (24) hour concentration or flows during normal operation.
19. "Storm Drain" (sometimes called "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.
20. "Superintendent" shall mean the Superintendent of Wastewater Facilities, and/or Wastewater Treatment Works, and/or Water Pollution Control of the City of Tioga, or his authorized deputy, agent, or representative.
21. "Suspended Soils" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue.
22. "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.
23. "Unpolluted Water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

24. “Wastewater” shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any ground water and stormwater that may be present.
25. “Wastewater Facilities” shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
26. “Wastewater Treatment Works” shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with “wastewater treatment plant” or “water pollution control plant.”

#### 6.0303 Use of Public Sewers Required

1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Tioga, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.
2. It shall be unlawful to discharge to any natural outlet within the City of Tioga, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.
4. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the City is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within sixty (60) days after date to official notice to do so, provided that said public sewer is within three hundred (300) feet (61 meters) of the property line.

#### 6.0304 When Private Sewage Disposal Permitted

1. Where a public sanitary or combined sewer is not available under the provisions of section 6.0303.4, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article.
2. Before commencement of construction of a private sewage disposal system the owner

shall first obtain a written permit signed by the City Commission. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the City. A permit and inspection fee of twenty-five dollars (\$25.00) shall be paid to the City at the time the application is filed.

3. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City. The City shall be allowed to inspect the work at any stage of construction and in any event, the applicant for the permit shall notify the City when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within twenty-four (24) hours of the receipt of notice by the City.
4. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of North Dakota, and such additional requirements enacted from time to time by the Department of Public Health of the State of North Dakota. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than twenty thousand (20,000) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
5. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided by section 6.0303.4, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned, filled with suitable material with adequate precautions taken to render such safe from cave-ins and harm to other persons.
6. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.
7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

#### 6.0305 Use of Public Sewers

1. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.
2. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the City and the North Dakota State Department of Health. Industrial cooling water or unpolluted process waters may be discharged, on approval of the City, to a storm sewer, combined sewer, or natural outlet.

3. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
  - a. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
  - b. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant. Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge or the wastewater treatment works shall pay for such increased costs.
  - c. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.
  
4. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the City that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the City will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, material of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:
  - a. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 Celceus).
  - b. Wastewater containing more than twenty-five (25) milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin.
  - c. Wastewater from industrial plants containing floatable oils, fat, or grease.
  - d. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.

- e. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the City for such materials.
  - f. Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the City as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
  - g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.
  - h. Quantities of flow, concentrations, or both which constitute a “slug” as defined herein.
  - i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving water.
  - j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.
5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated and which in the judgment of the City, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the City may:
- a. Reject the wastes;
  - b. Require pretreatment to an acceptable condition for discharge to the public sewers;
  - c. Require control over the quantities and rates of discharge; and/or
  - d. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 6.0303.1 of this article.

If the City permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City and subject to the requirements of all applicable codes, ordinances and laws.

6. Grease, oil, and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and the North Dakota Plumbing Code, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the City. Any removal and hauling of the collected materials not performed by the owner(s) personnel must be performed by currently licensed waste disposal firms.
7. Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
8. When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with the necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
9. The City may require a user of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:
  - a. Wastewater's discharge peak rate and volume over a specified time period.
  - b. Chemical analysis of wastewaters.
  - c. Information on raw materials, processes, and products affecting wastewater volume and quality.
  - d. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
  - e. A plot plan of sewers of the use's property showing sewer and pretreatment facility location.
  - f. Details of wastewater pretreatment facilities.



- g. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.
10. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest addition of “Standard Methods for the Examination of Water and Wastewater” published by the American Public Health Association. Sampling methods, locations, times, durations, and frequencies are to be determined on an individual basis subject to approval by the City.
  11. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore, by the industrial concern.

#### 6.0306 Damage to Sewer Works Prohibited

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest.

#### 6.0307 Powers and Authority of Inspectors

The Superintendent or other duly authorized employees of the City are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system.

#### 6.0308 Penalties

1. Any person found to be violating any provision of the ordinance shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
2. Any person who shall continue any violation beyond the time limit provided for by the City shall be guilty of an infraction. Each day in which such violation shall continue shall be deemed a separate offence.

## **ARTICLE 4 - Sewer Surcharge**

### 6.0401 Purpose

The purpose of this ordinance shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system. The costs shall be distributed to all users of the wastewater system in proportion to each user's contribution to the total loading of the treatment works. Factors such as strength (BOD and TSS), volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user or user class.

### 6.0402 Determining the Total Annual Cost of Operation and Maintenance

The City of Tioga, or its City Engineer, shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works were designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, power, sampling, laboratory tests, and a reasonable contingency fund.

### 6.0403 Determining Each User's Wastewater Contribution Percentage

The City of Tioga, or its City Engineer, shall determine each user's average daily volume of wastewater, which has been discharged to the wastewater system, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system, to determine each user's Volume Contribution Percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The City of Tioga, or its City Engineer, shall determine each user's average daily poundage of five (5) day, twenty (20) degree Centigrade Biochemical Oxygen Demand (BOD) which has been discharged to the wastewater system which shall then be divided by the average daily poundage of all five (5) day BOD discharged to the wastewater system to determine each user's BOD Contribution Percentage.

The City of Tioga, or its City Engineer, shall determine each user's average daily Total Suspended Solids (TSS) poundage which has been discharged to the wastewater system which shall then be divided by the average daily poundage of all Suspended Solids discharged to the wastewater system, to determine the user's Suspended Solids Contribution Percentage. Each user's Volume Contribution Percentage, BOD Contribution Percentage and Suspended Solids Contribution Percentage shall be multiplied by the annual operation and maintenance costs for wastewater treatment of the total volume flow, of the total five (5) day, twenty (20) degree centigrade BOD and of the Suspended Solids, respectively.

#### 6.0404 Determining a Surcharge System for Users with Excess BOD and SS

The City of Tioga, or its City Engineer, will determine the average suspended solids (SS) and biochemical oxygen demand (BOD) daily loadings for the average residential user. The City of Tioga, or its City Engineer, will assess a surcharge rate for all non-residential users discharging wastes with BOD and SS strengths greater than the average residential user. Such users will be assessed a surcharge sufficient to cover the costs of treating such users' above normal strength wastes. Normal strength wastes are considered to be two hundred parts per million (200 p.p.m.) BOD, and two hundred fifty parts per million (250 p.p.m.) SS. The surcharge rate structure for such normal strength waste dischargers is attached.

#### 6.0405 Determining Each User's Wastewater Service Charge

Each non-residential user's wastewater treatment cost contributions as determined in sections 6.0403 and 6.0404 shall be added together to determine such user's annual wastewater service charge. Residential users may be considered to be one class of user and an equitable service charge may be determined for each user based upon an estimate of the total wastewater contribution of this class of user. The governing body may classify industrial, commercial, and other non-residential establishments as a residential user, provided that the wastes from these establishments are equivalent to the wastes from the average residential user with respect to volume, suspended solids, and BOD. Each user's wastewater treatment cost contribution will be assessed in accordance with the attached rate schedule.

#### 6.0406 Wastewater Facilities Replacement Fund

A reserve fund called the Wastewater Facilities Replacement Fund is hereby established within the wastewater utility fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed.

#### 6.0407 Payment of the User's Wastewater Service Charge and Penalties

Billing shall be made once each month for two months and meters shall be read on the third month. The first two billings in each quarter shall be made on a minimum basis and the quarterly billing will show the overrun of gallons of water used over and above the minimum allowance for the three-month period of the quarter, and the overrun shall be billed at the current price per one thousand (1,000) gallons in effect at that time.

#### 6.0408 Review of Each User's Wastewater Service Charge

The City shall review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentage not less often than every two years and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the

wastewater treatment works. The City shall apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry, has completed in-plant modifications which would change that user's Wastewater Contribution Percentage, the user can present at a regularly scheduled meeting of the governing body, such factual information and the City shall then determine if the user's Wastewater Contribution Percentage is to be changed. The City shall notify the user of its findings as soon as possible.

#### 6.0409 Notification

Each user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services.

#### 6.0410 Wastes Prohibited from Being Discharged to the Wastewater Treatment System

The discharge of any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works is hereby prohibited.

### **ARTICLE 5 - Adoption of State Plumbing Code**

#### 6.0501 Adoption

To promote and protect the public health there is hereby adopted the State Plumbing Code, which has been adopted by the State Plumbing Board and approved by the State Health Department, consisting of rules and regulations governing plumbing work, and the whole thereof, of which not less than one (1) copy is on file in the office of the City Auditor, and the same is hereby adopted as fully as if set out at length herein and all plumbing work in the City of Tioga shall comply with said code.

#### 6.0502 Plumbing Code - Enforcement of Provisions

All plumbing work and all private sanitary drains and cesspools now existing, or hereafter to be installed, altered, or repaired in any building or in or under any private property within the corporate limits shall be under the supervision and regulation of the Commissioner of Water and Sewers, whose duty it shall be to enforce all the provisions of this code relating thereto and from time to time to make such rules and regulations as may be appropriate for the execution of the same.

#### 6.0503 Plumbing Code - Changes in Existing Installations

The Superintendent of the Water and Sewer Department is hereby given authority to order the repair, alteration, or removal of any sanitary sewer connection or plumbing, any connection to stormwater sewer, or any private sanitary drain, cesspool, or privy which in his judgment is so installed or is in such condition as to be unsanitary, or to constitute a public nuisance or menace to health. In case of such repair, alteration, or removal, if the plumbing code is not observed and connections not properly executed by the owner or owners thereof, in accordance with his directions, he may cause the same to be discontinued from any source of water supply. It shall thereafter be unlawful for any person in any manner to use any such installation, or to supply water thereto, until the same shall have been put in a safe and sanitary condition according to his directions.

#### 6.0504 Plumbing Code - New Installations

All plumbing work and all excavations in the public streets or alleys, the cutting and replacing of pavement, laying of water and sewer connections, and connections to stormwater sewers, and all construction of private sanitary drains and cesspools, within the corporate limits shall be undertaken and executed only by a master plumber, or other persons, as have obtained a general license for such work, together with a permit for each separate job, provided that the tapping of water mains and the placing of ball corporations therein shall be done only under the direction of City employees.

#### 6.0505 License Fees

All licensed plumbers shall be required to pay a license fee of twenty-five dollars (\$25.00) per year for the renewal of any such license. Said renewal fee must be paid within fifteen (15) days of expiration of license or license hereto for issued shall be revoked. All plumbing licenses shall expire on the 30th day of June, after the issuance of said license.

### **ARTICLE 6 - Grease Trap**

The City operates and maintains a sanitary sewer system to control detrimental discharges into the environment for the health, safety, and welfare of its residents.

Deposits of fat, oil, and grease from restaurants and other non-domestic users accumulate in the pipelines and facilities comprising the sanitary sewer system resulting in blockages that cause sanitary sewer overflows and has a detrimental effect on the Publicly Owned Treatment Works.

Such blockages increase the amount of financial and personnel resources the City of Tioga must expend to maintain the integrity of its sanitary sewer system and Publicly Owned Treatment Works.

In order to reduce the frequency of sanitary sewer overflows, reduce the detrimental effect on the Publicly Owned Treatment Works and to reduce the amount of financial and personnel resources expended by the City of Tioga to maintain the integrity of the sanitary sewer system and wastewater treatment system, it is necessary to establish regulations by ordinance governing the discharge of fats, oils and grease by restaurants and other non-domestic users into the sanitary sewer system.

6.0601 Definitions.

Terms in this division have the following meaning unless otherwise specified:

1. “Act” means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et. seq.*
2. “BOD” means the value of the five-day test for Biochemical Oxygen Demand, as described in the latest edition of “Standard Methods for the Examination of Water & Wastewater.
3. “COD” means the value of the test for Chemical Oxygen Demand, as described in the latest edition of “Standard Methods for the Examination of Water & Wastewater.”
4. “Director” means Director of Water/Wastewater Utilities or the Director’s authorized representative.
5. “EPA” stands for the United States Environmental Protection Agency.
6. “Fats, Oils, and Greases (“FOG”)” means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."
7. “Generator” means any person who owns or operates a grease trap/grease interceptor, or whose act or process produces a grease trap waste.
8. “Grease Trap or Interceptor” means a device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases prior to the wastewater entering the sanitary sewer collection system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection system. Grease traps and interceptors are also referred to herein as "grease traps/interceptors.”
9. “Grease Trap Waste” means material collected in and from a grease trap/interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering processes.

10. “Health Department” means the North Dakota Department of Health.
11. “Indirect Discharge or Discharge” means the introduction of pollutants into a POTW from any non-domestic source.
12. “Interference” means a discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal, or is a cause of a violation of the city’s TPDES permit.
13. “pH” means the measure of the relative acidity or alkalinity of water and is defined as the negative logarithm (base 10) of the hydrogen ion concentration.
14. “POTW or Publicly Owned Treatment Works” means a treatment works which is owned by a state or municipality as defined by section 502(4) of the Clean Water Act. This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes all sewers, pipes, and other conveyances that convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. For purposes of this ordinance, the terms “sanitary sewer system” and “POTW” may be used interchangeably.
15. “Receiving Facility” means a facility having written authorization by permit or registration issued by the Health Department to receive wastes in accordance with NDAC § 33.
16. “Transporter” means a person who is registered with and authorized by the appropriate entity to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste in accordance with NDAC section § 33.
17. “TSS” the value of the test for Total Suspended Solids, as described in the latest edition of “Standard Methods for the Examination of Water & Wastewater.”
18. “User” any person, including those located outside the jurisdictional limits of the city, which contributes, causes or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources.

#### 6.0602 Applicability and Prohibitions

This ordinance shall apply to all non-domestic users of the POTW.

1. Grease traps or grease interceptors shall not be required for residential users.
2. Facilities generating fats, oils, or greases as a result of food manufacturing, processing,

preparation, or food service shall install, use, and maintain appropriate grease traps or interceptors as required by this ordinance. These facilities include but are not limited to restaurants, food manufacturers, food processors, hospitals, hotels and motels, prisons, nursing homes, and any other facility preparing, serving, or otherwise making any foodstuff available for consumption.

3. No user may intentionally or unintentionally allow the direct or indirect discharge of any petroleum oil, non-biodegradable cutting oil, mineral oil, or any fats, oils, or greases of animal or vegetable origin into the POTW system in such amounts as to cause interference with the collection and treatment system, or as to cause pollutants to pass through the treatment works into the environment.
4. Prohibited discharge standards:
  - a. General Prohibitions. No user shall discharge, or cause to be discharged, into the POTW, any pollutant or wastewater which causes interference or pass through. These general prohibitions in this section apply to all users of the POTW.
  - b. Specific Prohibitions. No user shall discharge or cause to be discharged in the POTW the following:
    - (1) Solid or viscous pollutants in amounts which may cause obstruction to the flow or other interference in the POTW;
    - (2) Any pollutant released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, may cause the POTW's effluent or any product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and recycling. or interfere with the reclamation process. In no case, shall a substance discharged to a POTW cause the POTW to be in noncompliance with applicable local, state or federal sludge use or disposal guidelines; or
    - (3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference of pass through.

#### 6.603 Installation and Maintenance Requirements

1. Installations.
  - a. New Facilities. Food processing or food service facilities which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a food processing or food service facility, where such facility did not previously exist, shall be required to design, install, operate and maintain a grease trap/interceptor in accordance with locally adopted plumbing codes or other applicable ordinances. Grease traps/interceptors shall be installed and inspected prior to issuance of a certificate of occupancy.



- b. Existing Facilities. Existing grease traps/interceptors must be operated and maintained in accordance with the manufacturer's recommendations and in accordance with the requirements of this ordinance, unless specified in writing and approved by the Director. A change in ownership of an existing facility or a circumstance that creates the need for the reapplication for a certificate of occupancy of an existing facility will require verification in writing of the adequacy of any existing grease trap or grease interceptor. If any such grease trap or grease interceptor at the existing facility is found to be inadequate based upon the standards in this ordinance the existing facility will be required to design, install, operate and maintain a grease trap/interceptor in accordance with the standards in this ordinance, locally adopted plumbing codes, or other applicable ordinances.
  - c. All grease trap/interceptor waste shall be properly disposed of at a facility in accordance with federal, state, or local regulation.
2. Cleaning and Maintenance
- a. Grease traps and grease interceptors shall be maintained in an efficient operating condition at all times.
  - b. Each grease trap pumped shall be fully evacuated unless the trap volume is greater than the tank capacity on the vacuum truck in which case the transporter shall arrange for additional transportation capacity so that the trap is fully evacuated within a twenty-four (24) hour period.
3. Self-Cleaning
- a. Grease trap self-cleaning operators must receive approval from the Director annually prior to removing grease from their own grease trap(s) located inside building, provided:
    - (1) The grease trap is no more than fifty (50) gallons in liquid/operating capacity;
    - (2) Proper on-site material disposal methods are implemented (e.g., absorb liquids into solid form and dispose into trash);
    - (3) The local solid waste authority allows such practices;
    - (4) Grease trap waste is placed in a leak proof, sealable container(s) located on the premises and in an area for the transporter to pump-out; and
    - (5) Detailed records on these activities are maintained.
  - b. Grease trap self-cleaning operators must submit a completed self-cleaning request to the Director for approval. The written request shall include the

following information:

- (1) Business name and street address;
  - (2) Grease trap/interceptor operator name, title, and phone number;
  - (3) Description of maintenance frequency, method of disposal, method of cleaning and size (in gallons) of the grease trap/interceptor; and
  - (4) Signed statement that the operator will maintain records of waste disposal and produce them for compliance inspections.
- c. Self-cleaners must adhere to all the requirements, procedures, and detailed record keeping outlined in their approved application to ensure compliance with this ordinance. A maintenance log shall be kept by self-cleaning operators that indicates, at a minimum, the following information:
- (1) date the grease trap/interceptor was serviced;
  - (2) name of the person or company servicing the grease trap/interceptor;
  - (3) waste disposal method used;
  - (4) gallons of grease removed and disposed of;
  - (5) waste oil added to grease trap/interceptor waste; and
  - (6) signature of the operator after each cleaning that certifies that all grease was removed, disposed of properly, grease trap/interceptor was thoroughly cleaned, and that all parts were replaced and in operable condition.
4. Violations incurred by grease trap self-cleaners will be subject to enforcement action including fines and/or removal from the self-cleaner program.

#### 6.0604 Cleaning Schedules

1. Grease traps and grease interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease trap/interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.
2. Grease traps and grease interceptors subject to these standards shall be completely evacuated a minimum of every ninety (90) days, or more frequently when:
  - a. Twenty-five (25) percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases; or

- b. The discharge of free or emulsified fats, oils or grease deposits into the sanitary sewer lines obstruct flow; or
  - c. There is a history of non-compliance.
3. Any person who owns or operates a grease trap/interceptor may submit to the Director a request in writing for an exception to the ninety (90) days pumping frequency of their grease trap/interceptor. The Director may grant an extension for required cleaning frequency on a case-by-case basis when:
- a. The grease trap/interceptor owner/operator has demonstrated the specific trap/interceptor will produce an effluent, based on defensible analytical results, in consistent compliance with established FOG parameters as determined by the Director; or
  - b. Less than twenty-five (25) percent of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, fats, oils, or greases.
4. In any event, a grease trap and grease interceptor shall be fully evacuated, cleaned, and inspected at least once every 180 days.

#### 6.0605 Manifest Requirements

- 1. Each pump-out of a grease trap or interceptor must be accompanied by a manifest to be used for record keeping purposes.
- 2. Persons who generate, collect and transport grease trap waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest. The manifest shall include:
  - a. The name, address, telephone, and Health Department registration number of transporter;
  - b. The name, signature, address, and phone number of the person who generated the waste and the date collected;
  - c. The type and amount(s) of waste collected or transported;
  - d. The name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;
  - e. The date and place where the waste was deposited;
  - f. The identification (permit or site registration number, location and operator) of the facility where the waste was deposited;

- g. The name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received;
  - h. The volume of the waste received; and
  - i. A consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking the volume of waste transported.
3. Manifests shall be divided into five (5) parts and records shall be maintained as follows:
- a. One (1) part of the manifest shall have the generator and transporter information completed and be given to the generator at the time of waste pickup.
  - b. The remaining four parts of the manifest shall have all required information completely filled out and signed by the appropriate party before distribution of the manifest.
  - c. One (1) part of the manifest shall go to the receiving facility
  - d. One (1) part shall go to the transporter, who shall retain a copy of all manifests showing the collection and disposition of waste.
  - e. One (1) copy of the manifest shall be returned by the transporter to the person who generated the wastes within fifteen (15) days after the waste is received at the disposal or processing facility.
  - f. One (1) part of the manifest shall go to the Health Department.
4. Copies of manifests returned to the waste generator shall be retained for five (5) years and be readily available for review by the Director.

#### 6.0606 Alternative Treatment

- 1. A person commits an offense if the person introduces, or causes, permits, or suffers the introduction of any surfactant, solvent or emulsifier into a grease trap. Surfactants, solvents, and emulsifiers are materials which allow the grease to pass from the trap into the POTW collection system, and include but are not limited to enzymes, soap, diesel, kerosene, terpene, and other solvents.
- 2. It is an affirmative defense to an enforcement of subsection (f) (1) that the use of surfactants or soaps is incidental to normal kitchen hygiene operations.
- 3. Bioremediation media may be used with the Director's approval if the person has proved to the satisfaction of the Director that laboratory testing which is appropriate

for the type of grease trap to be used has verified that:

1. The media is a pure live bacterial product which is not inactivated by the use of domestic or commercial disinfectants and detergents, strong alkalis, acids, and/or water temperatures of one-hundred-sixty (160°F) degrees Fahrenheit (71°C);
2. The use of the media does not reduce the buoyancy of the grease layer in the grease trap and does not increase the potential for oil and grease to be discharged to the sanitary sewer or POTW system;
3. The use of the bioremediation media does not cause foaming in the sanitary sewer or POTW system; and
4. The BOD, COD, and TSS discharged to the sanitary sewer or POTW system after use of the media does not exceed the BOD, COD, and TSS which would be discharged if the product were not being used and the grease trap was being properly maintained. pH levels must be between 6 and 11.
4. All testing designed to satisfy the criteria set forth in subsection (f) (3) shall be scientifically sound and statistically valid. All tests to determine fat, oil and grease, TSS, BOD, COD, pH, and other pollutant levels shall use appropriate tests which approved by the EPA and the Health Department as defined in 40 CFR, Part 136. Testing shall be open to inspection by the Director, and shall meet the Director's approval.

#### 6.0607 Schedule of Penalties

1. Except as provided in provision, any person violating any of the provisions of this ordinance shall be subject to a written warning for the first violation, a one thousand dollars (\$1,000.00) civil penalty for the second violation, a one thousand five hundred dollar (\$1,500.00) civil penalty for the third violation, and a two thousand dollar (\$2,000.00) civil penalty for the fourth violation within a two- year period. Consistent violations may result in a five hundred dollar (\$500.00) increase in civil penalty and may result in termination of services.
2. If the Director determines that a generator is responsible for a blockage of a POTW collection system line the generator shall owe a civil penalty of a one thousand dollar (\$1,000.00) for the first violation, a one thousand five hundred dollar (\$1,500.00) for a second violation, and two thousand (\$2,000) for the third violation within a two-year period. Consistent violations may result in an increase in penalty by five-hundred (\$500.00) and may also result in termination of services. The city will enforce these rules as provided by city ordinance, and by any other remedies provided by state law.

#### 6.0608 Saving Clause

If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of the ordinance will continue in force if they can be given effect without the invalid portion.

#### 6.0609 Conflicts

All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

### **ARTICLE 7 - General Penalty Provision**

#### 6.0701 Rates and Changes - Liability For

The record owner of any premises where water or sewer service or garbage/rubbish service is supplied shall be deemed to be responsible for any delinquency or bills attributable to or given in favor of such premises, irrespective of whether said record owner shall occupy or inhabit the said premises.

Owners of premises where water or sewer service or garbage/rubbish service is supplied shall notify the City Auditor's office in case any tenant moves from said premises, prior to such moving. In case said tenant moves from said premises to other premises in the city, and is therefore eligible to be supplied with water or sewer service or garbage/rubbish service, he shall be liable for the water or sewer service or garbage/rubbish service used at his former residence up to the time of moving, and the City in conjunction with the water department or other applicable department with the City shall take such measures to enforce the collection of such bills, as are provided for in the case of non-payment of other bills. In case said tenant moves away from said city or moves to some place within said city where he is not directly supplied by said such services through the City and refuses or neglects to pay said bills within fifteen (15) days after notice thereof, then and in that event the owner of the property for which said bill was rendered shall be liable for said bill, and the City shall take such measures to enforce connection of such bill, as are provided for in the case of non-payment of other bills, as described herein.

The owner or owners of all real property in the city furnished water or sewer service or garbage/rubbish service or service line repairs shall be responsible for the payment of any and all such charges, regardless of who the occupant or tenant may be. On request of the owner or owners the Water Superintendent or City Auditor will bill the occupant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner or owners shall be responsible for such charges and they shall be assessed to the property served. It shall be the duty of the city auditor to certify to the county auditor such unpaid water or sewer service or garbage/rubbish service bills or service charges that are unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collected in the same manner.

## **Policies for the Payment of Delinquent Utility Bills and for the Establishment of Delinquency Penalties, Disconnection and Reconnection Fees**

The City Commission of the City of Tioga, North Dakota, declares it to be in the public interest to establish a policy regarding the payment of delinquent utility bills and for the establishment of delinquency penalties, disconnection and reconnection fees.

1. Any consumer of municipal utilities whose bill(s) shall remain unpaid after the 30<sup>th</sup> day of each month, shall then have a penalty added to said bill (an amount equal to 1.75 percent of the total utility bill).
2. The City of Tioga shall send notice on the 1<sup>st</sup> day of the following month to the consumer of said utilities and to the owner/landlord, where applicable, of the property to which utility services are provided, that a delinquency has occurred.
3. Any consumer of municipal utilities whose bill(s) remains unpaid at 10:00 a.m. on the 10<sup>th</sup> day of the 2<sup>nd</sup> month of unpaid services shall have all municipal services provided under said billing(s) discontinued or disconnected.
4. Any consumer of municipal utilities whose service has been disconnected or discontinued under the provisions of the preceding paragraph, shall not have the service reconnected or recommenced until all amounts due, for services rendered prior to and including the date of disconnect, plus applicable penalties, and the reconnection charge of \$80 have been paid in full.
5. If the utility consumer is a tenant, the property owner/landlord will be sent a copy of the tenant's notice of Delinquency, at the time said Notice is sent to the consumer, with notification of the date services will be disconnected. If the tenant fails to make the specified payment as of the disconnect date, said owner/landlord will be responsible for payment of the utilities by that date.

### 6.0702 Penalty for Violation

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of an infraction.

## CHAPTER SEVEN

### BUSINESS REGULATIONS AND LICENSES

#### ARTICLE 1 - General Provisions

##### 7.0101 Licenses

Unless otherwise specifically provided licenses and permits required for the carrying on of a business or trade within the City shall be applied for, issued, terminated and revoked according to the provisions of this article.

##### 7.0102 Licenses - Application

Any person desiring a license or permit under any ordinance of the City shall make a written application to the City upon application furnished by the City Auditor and file the same with the City Auditor, stating the purpose for which the same is desired, for what length of time, and specifying the place where his business is to be carried on; if required to file a bond before being licensed he shall also name his proposed sureties on his bond in his application.

##### 7.0103 Licenses - Granting

The City Auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If he shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, he shall report such application to the next meeting of the City Commission for their action thereon.

##### 7.0104 Licenses - Term

1. No license or permit shall be granted for a longer period than one (1) year.
2. No license or permit shall be valid until signed and sealed nor shall any persons be deemed licensed until a license shall be duly issued to him.
3. Each license shall be dated the day of issuance thereof; but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced.
4. The date of issuance of the license, together with the time of commencing and expiration shall be given in the license and the license record.



#### 7.0105 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the governing board. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The City may grant the continuance of the business license to any other portion of the City, such permission to be certified or the license by the City Auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

#### 7.0106 Licenses - Revocation

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the City Commission. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the governing body or the court before which any action may be brought for the recovery of any fine or penalty.

Where not otherwise provided any license may be revoked by the governing board at any time for cause. "Cause" shall include, but not be limited to, the following:

1. Violation of the laws of the State of North Dakota, or any of the ordinances of the City dealing with or pertaining to the business or trade licensed.
2. The willful making of any false statement as to a material fact in the application for license.
3. Permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.
4. The death of a licensee.
5. When the licensee ceases business at the location licensed.
6. When the licensee ceases to be a legal and bona fide citizen of the State of North Dakota.

When the license is terminated or revoked for cause, the licensee or those claiming under him, shall not be entitled to any return of any portion of the license fee previously paid to the City.

### 7.0107 Licenses - Posting Of

All licenses and permits issued by the City for the operation of any business establishment, trade or any part of the operation thereof, shall be posted in a conspicuous place in the main business establishment. Where badges representing permits or licenses are issued to be worn by an individual such licensee shall wear such badge during the normal course of employment for which said badge was issued.

## **ARTICLE 2 - Peddlers, Hawkers, Itinerant Merchants**

### 7.0201 Definitions

1. “Person” as used herein shall include the singular and the plural and shall also mean and include any person, firm or corporation, association, club, co-partnership or society, or any other organization.
2. “Hawker” and “Peddler” as used herein shall include any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, or merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who without traveling from place to place, shall sell or offer the same for sale from an automotive vehicle, railroad car, or other vehicle or conveyance, and further provided that one who solicits as a part of a scheme or design to evade the provisions of this article shall be deemed a hawker or peddler subject to the provision of this article.

### 7.0202 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article, or thing without having first secured a license therefore.

### 7.0203 Fees

The license fee to be required of all hawkers and peddlers for the transaction of business within the City shall be a sum, which from time to time shall be set by resolution of the City Commission, per day or portion of the day which any such hawker or peddler shall transact business in the City.

## **ARTICLE 3 - Alcoholic Beverages**

### 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 (1/2 of 1%) 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 (1/2 of 1%) of alcohol by volume.
4. “Business Complex” shall mean any shopping center, shopping mall or similar physical facility where two (2) 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 two-hundred (200) members at the time a license is applied for and shall have been in existence for at least twenty (20) years prior to the time of application for the license; provided, that a local veteran’s organization which has not existed for twenty (20) years but is a subsidiary of and chartered by a national organization which

has had a bona fide existence for more than twenty (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 fifty percent (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 twenty-one (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 resident 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 five (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 license is as follows:

- |    |            |           |
|----|------------|-----------|
| a. | Class AB - | \$1000.00 |
| b. | Class A -  | \$750.00  |
| c. | Class B -  | \$750.00  |
| d. | Class E -  | \$500.00  |

#### 7.0306 Application - Investigation Of

An employee or agent of the City, as appointed by the City Commission, shall investigate the facts stated in the application filed with the Commission pursuant to the provisions of Section 7.0303 of this Article, and shall report the results of this investigation to the Commission prior to hearing on said application. Said investigation and report shall include the character, reputation, and fitness of the applicant to hold the license, together with any other pertinent information regarding the applicant in connection with the license sought. Such employee or agent of the City may secure, utilize, and rely upon the services of a third-party vendor or entity to conduct such character and fitness investigation, together with other publicly available databases and information to prepare and compile its report. The investigation and report shall further set forth a recommendation as to whether or not such license should be granted. In addition, the Commission may request and consider such other recommendations and reports of other City officials in connection with the applicant. Unless specifically requested by the City Auditor's Office, a member of the City Commission, or the City 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 licensee or a transfer of license wherein the existing license is to be exchanged for a license of a lower category.

#### 7.0307 Other Provisions of Chapter Seven Unaffected

Except as expressly provided in this amended ordinance, all other provisions of Chapter Seven remain unmodified and in full force and effect.

#### 7.0308 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" license shall authorize the licensee to sell "on-sale" and "off-sale."
2. "Class A" license shall authorize the licensee to sell "on-sale" only.
3. "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 E" license shall authorize the licensee to sell beer and/or wine "on- sale, subject to the following conditions:
  - a. The "Class E" license is restricted to a licensee who operates a business which fifty (50%) or more of its gross receipts are from the preparation and service of food.
5. "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:

- a. That any holder of a city license, except “Class E” may apply for a “Class F” license.
- b. 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.
- c. A Class “F” license may be issued for a period of time not to exceed 14 days, and may include Sundays.
- d. 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.
- e. 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, North Dakota Century Code, 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.

7.0309 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:
  - a. Class AB - \$5000.00
  - b. Class A - \$2000.00



- c. Class B - \$2000.00
  - d. Class E - \$1000.00
  - e. 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 ten percent (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:
- a. 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.
  - b. 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.
  - c. 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.
  - d. 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.

- e. 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.
- f. 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 five-hundred (\$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.

#### 7.0310 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:
  - a. The convenience of police regulation.
  - b. Public health and sanitation.
  - c. The proximity of other businesses licensed to sell alcoholic beverages.
  - d. The proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
  - e. Protests of neighboring property owners or occupants.
  - f. Zoning regulations.

- g. Interference with neighboring properties.
- h. Suitability of premises for sale of alcoholic beverages.
- i. Public convenience and necessity.
- j. Number of such licenses already in existence.
- k. Economic impact upon other such licensed premises.
- l. Sufficiency of the application required by this article.
- m. 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.
- n. 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.
- o. 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 one hundred (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.

7.0311 Restrictions on Sale, Service, or Dispensing of Alcoholic Beverages

1. No licensee, his agent, or employe, shall sell, serve, or dispense any alcoholic beverage to a person less than twenty-one (21) years of age; and no licensee, his agent, or employee shall permit any person less than twenty-one (21) years of age to be furnished with any alcoholic beverage upon the licensed premises.
2. No person less than twenty-one (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 twenty-one (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 twenty-one (21) years of age until 8 a.m. on the person's twenty-first (21<sup>st</sup>) birthday.
3. Any person less than twenty-one (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 nineteen (19) and twenty-one (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 twenty-one (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 twenty-one (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 eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one (21) years of age. Any person under twenty-one (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 twenty-one (21) years of age may remain in the area of an 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, North Dakota Century Code, and the city comparable ordinance.

4. Any person under twenty-one (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 1:00 a.m. on Sundays, before 12:00 noon on Sundays, or between the hours of 1:00 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 1:00 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 twenty-one (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 seventy-two (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 twenty-one (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.
  - a. 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.

- b. 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 twenty-one (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 twenty-one (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.
- a. The licensee maintains the responsibility to comply with city ordinance prohibiting selling, serving or dispensing any alcoholic beverage to a person less than twenty-one (21) years of age; or permitting any person less than twenty-one (21) years of age to be furnished with any alcoholic beverage upon the licensed premises.
  - b. The room must have a point of entry and exit which does not permit those less than the age of twenty-one (21) to enter any portion of the licensed premises, not designated as the private event, where alcoholic beverages are being sold, mixed or consumed.
  - c. 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 twenty-one (21) will not be permitted and that no participant less than the age of twenty-one (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.
  - d. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order.
  - e. 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.

#### 7.0312 Restrictions on Sale or Consumption in a Public Place

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. 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.

#### 7.0313 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 7.0314. 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.

#### 7.0314 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:
  - a. 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 thirty (30) days of the licensee's death.
  - b. 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 thirty (30) consecutive business days; or
    - (2) When alcoholic beverages are not sold on the licensed premises on at least fifteen (15) of any sixty (60) consecutive business days; or
    - (3) When the licensed premises are not open for normal business for at least one hundred eighty (180) hours in any sixty (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.

c. 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.

d. 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 them.

e. 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 fifty (50) 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.

- f. Penalties for failing compliance checks are as follows:
- (1) First offense - five-hundred-dollar (\$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 - seven-hundred-fifty-dollars (\$750) penalty. No license sanction penalty.
  - (3) Third offense - one-thousand-dollars (\$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.
- g. The foregoing penalties for failing compliance checks will be those offenses occurring within a one (1) year period. Said one (1) 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.
- h. 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 (15) 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 exist 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 license. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

- i. Administrative penalties for violation of section 7.0313 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: One-thousand-dollars (\$1,000) penalty, plus one (1) day suspension of alcoholic beverage license to be determined by the city commission.
  - (3) Third offense: Two-thousand-dollars (\$2,000) monetary penalty, plus a three (3) day suspension of alcoholic beverage license to be determined by the city commission.
  - (4) Fourth offense: Two-thousand-dollars (\$2,000) monetary penalty, plus a four (4) day suspension of alcoholic beverage license.
  - (5) Fifth offense: Two-thousand-dollars (\$2,000) monetary penalty, plus a ten (10) day suspension, and a possible revocation of alcoholic beverage license
  - (6) The level of offenses shall be determined by reference to an eighteen (18) month period from the first offense by licensee. By way of illustration, a second offense occurring more than eighteen (18) months after a first offense would then be deemed a first offense.
- j. 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.
- k. 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.

1. 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 exist 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.

#### 7.0315 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 twenty-one (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 twenty-one (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.

#### 7.0316 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.

#### 7.0317 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 thirty (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 five hundred dollars (\$500); the court to have power to suspend said sentence and to revoke the suspension thereof.

#### 7.0318 Hours and Times of Sale

No licensee shall sell, serve, or permit any alcoholic beverage to be sold, served or consumed on the premises named in the license (any alcoholic beverages) after 1:00 a.m. on Sundays, before 8:00 a.m. on Mondays, or between the hours of 1:00 a.m. and 8:00 a.m. on all other days of the week, Christmas Day, or Thanksgiving Day, after 6:00 p.m. on Christmas Eve.

#### 7.0319 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain upon the premises.

#### 7.0320 Gambling Prohibited - Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board, or any other machine or device of similar nature, nor shall gambling, whether by card, dice or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting license issued by the State of North Dakota.

#### 7.0321 Sale Prohibited - Items

No licensee shall sell on the licensed premises any item other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips and related sundries, except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

#### 7.0322 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises, a licensee, his agent, or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his age, or signs a name other than his own or her own, to any such statement shall be guilty of a violation of this section.

#### 7.0323 Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any, street, alley or public way is prohibited.

#### 7.0324 Premises - Equipment

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths, and stools in sufficient number to reasonably accommodate the patrons.

#### 7.0325 Closed or Screened Areas

No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths, or other screened enclosures, nor shall any screen, partition, curtain, blind, or obstruction of any kind prevent a clear view at all time of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

#### 7.0326 Purchases from Licensed Wholesaler

No licensee hereunder shall purchase, have, or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title V of the North Dakota Century Code; and each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler, and such records shall be retained in the possession of the

licensee and shall be at all times open to inspection by any police officer or peace officer in the State of North Dakota.

#### 7.0327 Toilets Required

That the premises where on-sale is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The on-sale license may be revoked when the foregoing requirements, or any other health ordinance or regulation, is not at all times strictly observed.

#### 7.0328 Bottle Clubs

No person shall operate an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix ice or charges for bringing such beverages on the premises.

### **ARTICLE 4 - Shows, Carnivals and Circuses**

#### 7.0401 License Required

No person, firm, association or corporation shall exhibit or cause to be exhibited, or assist in exhibiting any natural or artificial curiosity or conduct a circus, menagerie, tent show, carnival or carnival show, continuous theatrical performance, shooting gallery, or other like exhibition without first obtaining a license from the City.

#### 7.0402 Fees

Fees prescribed to secure licenses to conduct a show performing in any theater or hall, or a traveling theatrical company performing in a tent or each circus, menagerie, and sideshow combined, or a merry-go-round, or a street carnival charging admission, or a shooting gallery shall be set from time to time by resolution of the Tioga City Commission.

## **ARTICLE 5 - Penalty**

### 7.0501 Penalty

Any person, firm, corporation, or association violating any of the terms, article, or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be guilty of an infraction. The court shall have such power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit of such violator, or terminate or revoke all power, rights, and privileges given by a license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation thereof.



## CHAPTER EIGHT

### TRAFFIC

#### **ARTICLE 1 - Adoption of Traffic Code**

##### 8.0101 Adoption of Code

The provisions of the North Dakota Century Code Title 39 as amended are adopted in whole by the City of Tioga.

#### **ARTICLE 2 - Parking Ordinance**

##### 8.0201 Left Hand Turn Prohibited

1. It shall be unlawful for any person operating a motor vehicle to make a left hand turn into a parked position on a public street within the City of Tioga. It shall not make any difference if the parking is done in a parallel manner or a diagonal manner.
2. Except when backing out from a driveway, it shall be unlawful for any person operating a motor vehicle to back onto a public street in a left-hand maneuver, crossing one lane of traffic into another in reverse.

##### 8.0202 Time Limit for Parking on City Streets and Alleys

1. Shall be unlawful for any person, firm or corporation to leave standing, either attended or unattended, any motor vehicle or motorized vehicle for more seventy-two (72) consecutive hours on any Public Street or alley.
2. Shall be unlawful for any person, firm or corporation to leave standing, either attended or unattended, any trailer for more seventy-two (72) consecutive hours on any Public Street or alley.
3. Trailers parked on a public roadway in accordance to this section may have slide outs extended to the curb side of the street for the purposes of loading and un-loading the trailer.
4. For a violation of section 2, the fine shall be in the amount of \$50.00.
5. The Chief of Police shall also be authorized to remove such vehicle from a public street or alley and impound the same in a designated City impound lot. The owner of any such vehicle impounded must pay to the City the cost of towing, an impoundment fee of tow

be set from time to time by resolution of the City Commissions, and the parking ticket before the vehicle is released from the City impound area.

### **ARTICLE 3 - Truck Route**

#### 8.0301 Definitions

For the purposes of this article the following terms, phrases, words and their derivations shall have the following meaning given herein:

1. “Destination Point” shall be a point of stoppage to load or unload property being transported and to be delivered or picked up at the point.
2. “Deviating Truck” is a truck which leaves and departs from a truck route while traveling inside the City.
3. “Farm Truck” is any truck which is used for the transportation of agricultural products from the farm to a point of destination within the City, or the transportation of any commodity from the City to the farm.
4. “Truck” is any vehicle designed or operated for the transportation of property, and whose body weight or whose combined body and load weight exceeds twenty-five thousand (25,000) pounds registered gross weight.
5. “Truck Route” is a way over certain streets, as designated in this article over and along which trucks coming into and going out of the City must operate.

#### 8.0302 Application Generally

All Trucks within the City shall be operated only over and along the truck routes established in this article and on the other designated streets over which truck travel is permitted.

#### 8.0303 Parking of Trucks Prohibited on Truck Route

The parking of trucks within the City right of way on any streets designated as part of the City Truck Route is prohibited. Exceptions: North East Elm Street, North of 2<sup>nd</sup> Street North East to 4<sup>th</sup> Street North East or as posted.

#### 8.0304 Truck Route Map

The City Auditor shall keep and maintain any truck maps setting out truck routes and streets upon which truck traffic is permitted; the map shall be kept in the office of the City Auditor and shall be available to the public.

#### 8.0305 Street Superintendent Maintains Signs

Street Superintendent shall cause truck routes and those streets upon which truck traffic is prohibited to be clearly posted to give notice that this article is in effect.

#### 8.0306 Chief of Police - Authority to Weigh Trucks

The Chief of Police shall have the authority to require any persons driving or in control of a commercial vehicle not proceeding over a truck route or street over which the truck traffic is permitted to proceed to any public or private scale for the purpose of weighing and determining whether this article has been complied with.

#### 8.0307 Penalty

Violations - traffic/parking - citation complaint. Whenever any motor vehicle is found stopped or parked contrary to the provisions of this section, the owner of such vehicle may be issued a traffic summons or a parking citation charging them with a violation of this section. Any person violating this section is subject to a fine of \$150 per violation.

#### 8.0308 Exceptions

This article shall not prohibit:

1. Operation on street of destination. Operation of trucks on any street or alley that is necessary to conduct a business at a destination point, provided streets upon which said traffic is permitted are used until reaching the intersection nearest the destination point.
2. Emergency vehicles. The operation of emergency vehicles upon any street in the city.
3. Public utilities, etc. The operation of trucks owned or operated by the City, public utilities, any contractor or material man engaged in repair maintenance or construction of the streets, street improvements or street utilities within the city.
4. Detoured trucks. The operation of trucks upon an officially established detour in any case where such truck can lawfully be operated upon the street which such detour is established.
5. Loading or unloading. The operation of trucks in the City for the purpose of loading or unloading any cargo or part of cargo.
6. Service or repair. The operation of a truck for the purpose of having such truck serviced or repaired.
7. Farm Trucks. The operation of farm trucks within the City.

#### 8.0308 Designated Routes

1. There is hereby established within the City the following truck route for those trucks having a destination within the City, with two separate routes being divided by the Burlington Northern Santa Fe railroad right of way, with those routes being designated as the Northern Truck Route and the Southern Truck Route:
  - a. NORTHERN TRUCK ROUTE: Beginning at a point that 2<sup>nd</sup> St. NE intersects with Oil Capital Way (aka North Dakota Highway No. 40), West to Main Street North, thence either to the North to Signal Road (aka 68<sup>th</sup> St. NW) and beginning at 2<sup>nd</sup> Street NE and Elm Street North to 6<sup>th</sup> Street NE. All trucks having business in this area are to use the alleyways behind said businesses as access points.
  - b. SOUTHERN TRUCK ROUTE: Beginning at a point at which 2<sup>nd</sup> St. SE intersects with North Dakota Highway No. 40, West along 2<sup>nd</sup> St. SE to a point at which it intersects with Main Street South, thence either to the North on Main Street South to 1<sup>st</sup> St. SE, West along 1<sup>st</sup> St. SE to a point where 1<sup>st</sup> St. SE merges with Front St. SE, West along Front St. SE to Iverson Ave. South. (aka 105<sup>th</sup> Ave.)
2. There is hereby established the following truck route for all trucks not having a destination within the City:
  - a. Beginning at a point on the northeasterly edge of the City limits on Oil Capital Way (aka North Dakota Highway No. 40), proceeding West on Signal Rd. for a distance of approximately one (1) mile, proceeding South on Iverson Avenue a distance of approximately one (1) mile, East a distance of one (1) mile to 8<sup>th</sup> Street (aka 67<sup>th</sup> Street), a point intersecting with Oil Capital Way (aka North Dakota Highway No. 40) within the Southeastern section of the City.

### **ARTICLE 4 - Snow Emergency Routes**

#### 8.0401 Snow Emergency Routes

The following streets in the City of Tioga are declared snow emergency routes as follows:

Snow emergency routes are those streets normally traversing the entire City or a major part of the City and are essential to the rapid movement of emergency vehicles and normally carry the heaviest traffic volumes. The following streets or portions of streets in the City are hereby designated as snow emergency routes: Please see Exhibit Map found as an attachment to this chapter.

The Board of City Commissioners by resolution may designate and amend streets or portions of streets which shall constitute snow emergency routes within the City.

1. "Snow Emergency" Snow Emergency defined: When winter weather conditions exist that make it necessary for motorized vehicle travel to be expedited such that parking on snow emergency routes be prohibited for snow plowing and/or hauling, an emergency condition exists. Whenever the Tioga Chief of Police, Superintendent of Public Works or the City Street Commissioner determines that three inches or more of snow, sleet, or freezing rain has accumulated on the designated snow emergency routes, a snow emergency may be declared. Notification of the snow emergency shall be made through public service announcement (either local media, Facebook or other means) will be issued stating that snow route plowing will begin, a parking prohibition on said routes shall become necessary.
2. A parking prohibition under this section shall remain in effect until such time as the City plows have completed plowing on a particular street designated as a snow emergency route. It is City policy to start plowing snow emergency routes within 8 hours of a snow event ending that creates the emergency situation. While the parking prohibition is in effect, no person shall park, or allow to remain parked, any vehicle or trailer on any portion of the designated snow emergency route.
3. Nothing herein contained will be construed to permit parking at any time or place where it is forbidden by any other ordinance provision.
4. Signs to mark route. Snow emergency routes shall be posted with special signs with wording "EMERGENCY SNOW ROUTE - NO PARKING IF OVER THREE INCHES."
5. Stalled/stuck vehicles. Whenever a vehicle becomes stalled for any reason on a snow emergency route on which there is a parking prohibition in effect, the person operating the vehicle shall take immediate action to have the vehicle towed or pushed off the snow emergency route. No person shall abandon or leave his vehicle on a snow emergency route except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone, nearby garage or gasoline station, or other place of assistance, and return without delay, (one-half (1/2) hour maximum allowed).
6. Impounding vehicles. Any vehicle stopped on any snow emergency route in violation of the provisions of this section or on any other street of the City in violation of this section providing for the completion of plowing of snow or ice may be impounded by members of the Tioga Police Department and held in accordance with City ordinance or state law.
7. Evidence with respect to vehicles parked or left in violation of section. In any prosecution with regard to a vehicle parked or left in place in violation of any provision of this section, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this section, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the

vehicle in violation of this section.

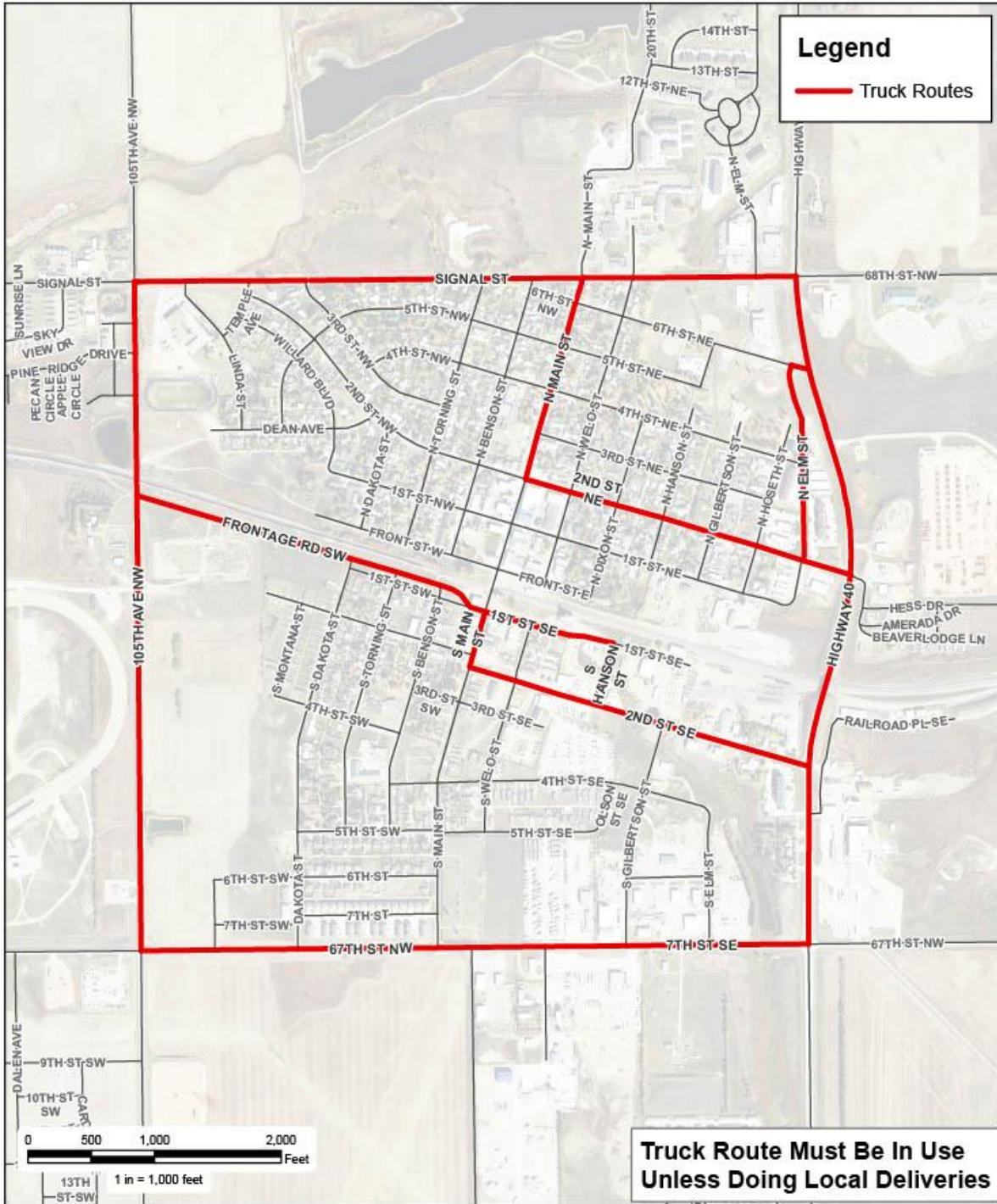
8. Effective date. This section shall be in full force and effect from and after the passage, approval, and publication of the listed streets when signed as snow emergency routes in accordance with this section.
9. Violations - traffic citation - complaint. Whenever any motor vehicle is found stopped or parked contrary to the provisions of this section, after eight hours (8) of the declaration of a snow emergency, the owner of such vehicle may be charged with a violation of this section. Any person violating this section is subject to a fine of \$50 per each day of violation and the vehicle may be subject to impound, administrative, and other incurred fees.

#### 8.0402 Snow Route Map

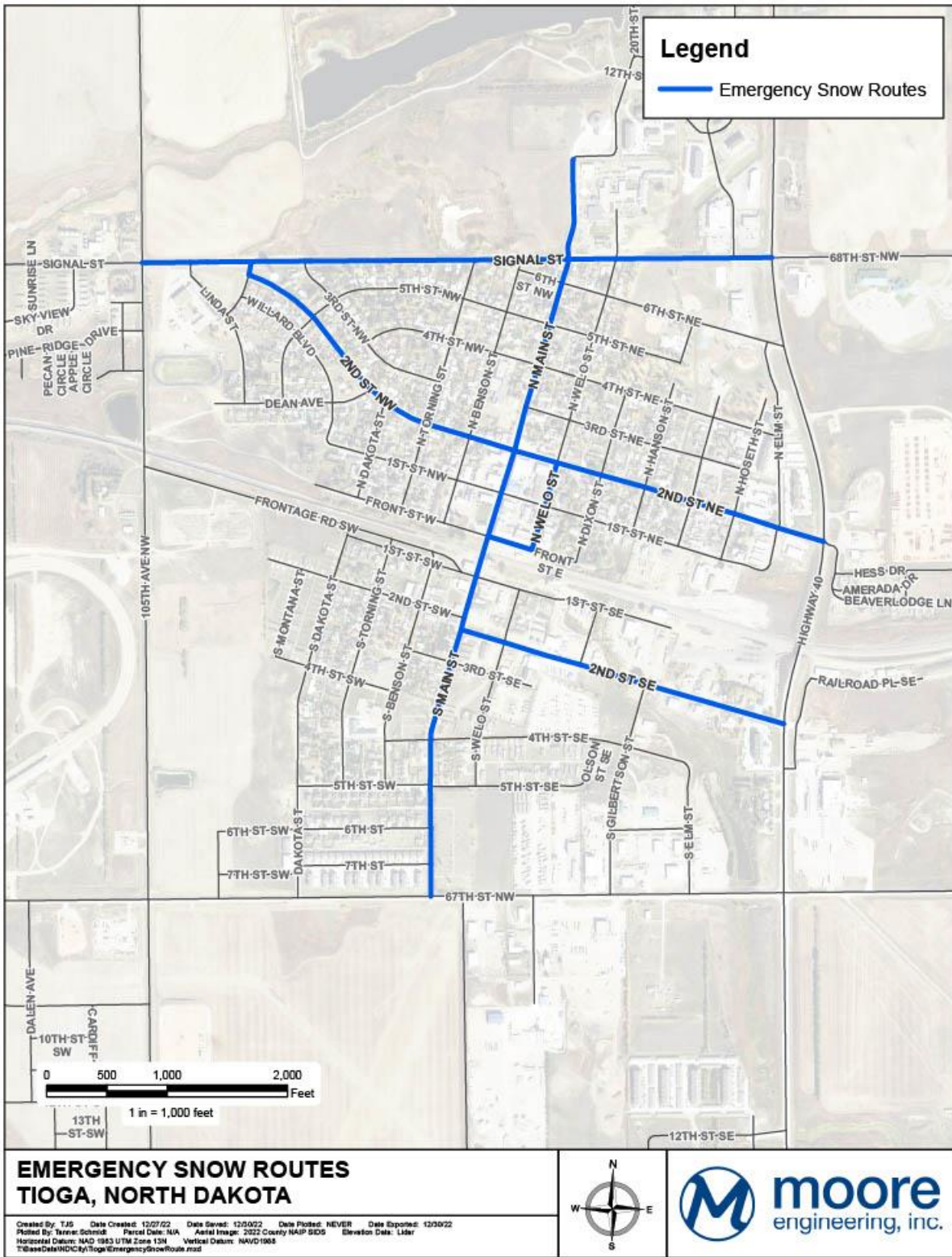
The City Auditor shall keep and maintain any Snow Emergency maps setting out emergency routes and streets upon which maintained; the map shall be kept in the office of the City Auditor and shall be available to the public.

#### 8.0403 Street Superintendent Maintains Signs

Street Superintendent shall cause snow emergency routes and those streets upon which vehicle parking is prohibited to be clearly posted to give notice that this article is in effect.



<p><b>TRUCK ROUTES          TIOGA, NORTH DAKOTA</b></p> <p><small>Created By: TJD Date Created: 12/07/22 Date Saved: 12/07/22 Date Plotted: NEVER Date Reported: 12/07/22          Plotted By: Marco Schmidt Parcel Date: N/A Aerial Image: 2022 County NAIP 5005 Elevation Data: LIDAR          Horizontal Datum: NAD 1983 UTM Zone 13N Vertical Datum: NAVD1988          T:\BaseData\INDC\Tioga\TruckRoute.mxd</small></p>		
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## CHAPTER NINE

### HEALTH

#### **ARTICLE 1 - Board of Health**

##### 9.0101 Members

The Board of Health shall be the Board of City Commissioners and the City Health Officer or City Physician.

##### 9.0102 Regulations, Notice of

Notice shall be given by the Board of Health, pursuant to the laws of the State of North Dakota, of all general orders and regulations made by such board, by publishing the same in the official newspaper within the jurisdiction of the board, which publication shall be deemed a legal notice to all persons.

#### **ARTICLE 2 - Contagious Diseases**

##### 9.0201 Duty of Health Officer

He shall properly instruct the physicians within his jurisdiction in the proper methods to employ in reporting contagious and other diseases, and shall furnish each physician with the necessary blanks for that purpose, said blanks to be of the form prescribed by the State Board of Health. He shall keep a record of all dangerous, contagious and infectious diseases occurring within his jurisdiction, which record shall show the name and address of the party affected, the name of the disease, by whom reported, and such other statistical data as may be required by the State Board of Health, and shall perform such other duties as may be prescribed by the laws of the State and the ordinance of the City.

##### 9.0202 Report Required of Disease

Every physician called in to care for or treat a person afflicted with a contagious disease or any epidemic disease shall make a report of the same within twenty-four (24) hours after being called in to the Health Officer. In case no physician is in attendance it shall be the duty of the person in charge or having the care of such person to make a report within twenty-four (24) hours from the time the disease is recognized.

#### 9.0203 Quarantine

The Health Officer shall have charge of the enforcement of the quarantine rules. He shall have the power and the authority to place any premises within which a contagious or epidemic disease occurs under quarantine, and the Health Officer shall determine the time when the quarantine ends.

#### 9.0204 Fumigation

Premises which have been quarantined in accordance with the terms of the preceding section shall be thoroughly fumigated or otherwise freed from all risk of contagious disease, under the supervision of the Health Officer before the quarantine shall end.

#### 9.0205 Spreading Contagion

It shall be unlawful for any person to spread, willfully or carelessly, any contagious disease or to so cause the spread of the same.

#### 9.0206 Deliveries to Quarantined Premises

No person engaged in the delivery of food or drink intended for human consumption shall enter any premises which are quarantined because of the existence of a contagious or epidemic disease. No containers or bottles shall be removed from any such premises until the termination of the quarantine - and no such container which has been left at such premises during the quarantine shall be placed in use for carrying food or drink until it has been thoroughly sterilized.

#### 9.0207 Penalty

The violation of any of the provisions of this article shall be a class B misdemeanor.

### **ARTICLE 3 - Garbage, Refuse, Rubbish**

#### 9.0301 Definitions

For the purpose of this article the following words shall have the meanings given herein:

1. "Ashes" is the residue from burning wood, coal, coke or other combustible materials.
2. "Garbage" is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

3. "Refuse is all putrescible and non-putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
4. "Rubbish" is non-putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

#### 9.0302 Accumulation of Refuse Prohibited

No person shall permit or suffer to accumulate in or about any yard, lot, place, or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block, or place or premises owned and occupied by him or for which he may be agent, within the City limits, any and all refuse, nor suffer such yard, lot, place, or premises to be or remain in such condition.

#### 9.0303 Containers

All garbage and rubbish shall, by the person upon whose premises the same shall have been produced or accumulated, be placed in watertight, galvanized metal containers of not less than ten (10) nor more than thirty-one (31) gallons net capacity, which container shall be kept clean and continuously closed by a tight-fitting cover and shall be protected against the access of flies and rodents. Containers shall be stored in racks or sufficient size to hold three containers at least eighteen (18) inches above the ground.

Containers for wet garbage shall have plastic disposable liners.

Containers shall be placed in the alley of those lots having access to any alley and along the curb if no alley is accessible. The City may specify where containers shall be placed along the alley or street for convenience of collection.

#### 9.0304 Burning

No garbage, refuse or rubbish shall be burned within the City or in disposal grounds maintained by the City.

#### 9.0305 Nuisance

Failure to comply with the provisions of sections 9.0302, 9.0303, and 9.0304, herein contained shall constitute a public nuisance and be punishable as such under the terms of Chapter Two of these ordinances.

#### 9.0306 City Collection

All garbage and rubbish as defined herein shall be collected by the City or franchised

contractor as frequently as is necessary to maintain and preserve community cleanliness and sanitation, except that this section shall not require the collection of garbage and rubbish where streets and alleys are in a temporary condition which makes it impossible to do so in case of the failure to collect such garbage and rubbish, such failure shall not relieve the occupant of the premises from the payment of the garbage and rubbish collection fees hereinafter provided for.

#### 9.0307 Fees

For the collection of garbage and rubbish by the City or franchised contractor and the disposal thereof, the City Commission shall from time to time set such rates by resolution.

#### 9.0308 Fees - Payment - Collection

In all places where water service is provided, the monthly charge set forth shall be added to and collected as part of the water bill and collected by the water department, but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill, either monthly or quarterly as the case may be. If such charge is not paid when due, the water service to such premises shall be shut off by the water department in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

In all places where water service is not provided, the charges above set forth shall be paid to the Water Department of the City upon quarterly bills from the Water Department.

If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the City, in an action at law against the owner or occupant, or both, of the property so served.

The proceeds from the collection of the fees and charges shall be placed in the general fund, and all of the expense of the City, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the general fund.

#### 9.0309 Fees - Payment - Collection by Franchised Contractor

In the event the City elects to franchise a contractor to perform the collection services contemplated in this section, collection of fees, limited as set out in this section, are to be made by the contractor. Failure to pay fees billed by the contractor within fifteen (15) days of billing and reporting of the failure to pay to the City shall release the contractor from collection responsibility regarding the delinquent premises. On being notified of delinquencies the City may avail itself of any or all of the collection provision of section 9.0308.

#### 9.0310 Disposal of Refuse not Collected by the City

All other wastes as defined and not included under garbage, rubbish, and ashes may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the City Health Office; or, such person may arrange with some person not in their employ to collect or haul such wastes to such points as are designated by the City Health Officer. Hauling done by or for an individual may only be done in a covered container or covered truck box.

#### 9.0311 Supervision

The collection, removal, and disposal of garbage and rubbish under the provisions of this article, shall be under the supervision, direction, and control of the City Commission with the assistance of the City Health Officer. The City Commission shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the governing body.

#### 9.0312 Rules and Regulations

The Health Officer of the City shall prescribe such reasonable rules and regulation in connection with the preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce, and carry out the provisions of this chapter. He may direct that the City garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this code. In the absence of City collection crews, the Health Officer may give instructions to a franchised contractor.

### **ARTICLE 4 - Dangerous Buildings**

#### 9.0401 Dangerous Buildings Defined

All buildings or structures which have any or all of the following defects shall be deemed “dangerous buildings”:

1. Those whose interior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
2. Those which, exclusive of the foundation, show thirty-three percent (33%) or more or damage or deterioration of the supporting member or members, or fifty per cent (50%) of damage or deterioration of the non-supporting enclosing or outside walls or covering.

3. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
4. Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants of the people of the City of Tioga.
5. Those which have become or are so dilapidated, decayed, unsafe, unsanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.
6. Those having inadequate facilities for egress in case of fire or panic, or those having insufficient stairways, elevators, fire escapes, or other means of communication.
7. Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
8. Those which because of their condition are unsafe, unsanitary, or dangerous to the health, morals, safety, or general welfare of the people of this City.
9. Those buildings existing in violation of any provision of the building code of the City, or any provision of the fire prevention code, or other ordinances of this City.

#### 9.0402 Standards for Repair, Vacation, or Demolition

The following standards shall be followed in substance by the Building Inspector and the City Commission in ordering repair, vacation, or demolition:

1. If the “dangerous building” can reasonably be repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.
2. If the “dangerous building” is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
3. In any case where a “dangerous building” is fifty percent (50%) damaged or decayed or deteriorated from its original value or structure, it shall be demolished. In all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this ordinance, it shall be demolished. In all cases where a “dangerous building” is a fire hazard existing or erected in violation of the terms of this ordinance or any ordinance of the City or statute of the State of North Dakota, it shall be demolished.

#### 9.0403 Dangerous Buildings - Nuisances

All “dangerous buildings” within the terms of section 9.0401 of this ordinance are hereby declared to be public nuisances, and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

#### 9.0404 Duties of Building Inspector

The Building Inspector shall:

1. Inspect or cause to be inspected semi-annually, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a “dangerous building” within the terms of section 9.0401 of this chapter.
2. Inspect any building, wall, or structure about which complaints are filed by any person to the effect that a building, wall, or structure is or may be existing in violation of this chapter.
3. Inspect any building, wall or structure reported by the Fire or Police Departments of this City as probably existing in violation of the terms of this ordinance.
4. Notify in writing the owners, occupant, lessee, mortgagee, agent, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of Williams, of any building found by him to be a “dangerous building” within the standards set forth in section 9.0401 of this chapter, that:
  - a. The owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this ordinance.
  - b. The owner, occupant, or lessee must vacate said building or may have it repaired in accordance with the notice and remain in possession.
  - c. Any person notified under this sub-section to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty (30) days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.
5. Set forth in the notice provided in sub-section 9.0404.4 hereof a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a “dangerous building” and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty (30) days, as is reasonable.
6. Report to the City Commission any non-compliance with the “notice” provided for in sub-sections 9.0404.4 and 9.0404.5 hereof.

7. Appear at all hearings conducted by the City Commission and testify as to the condition of the “dangerous building.”
8. Place a notice on all “dangerous buildings” reading as follows:

“This building has been found to be a dangerous building by the Building Inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, mortgagee, or agent of the building, and all other persons having an interest in said building, as shown by the land records of the Register of Deeds of the County of Williams. It is unlawful to remove this notice until such notice is complied with.”

#### 9.0405 Duties of City Commission

The Tioga City Commission shall:

1. Upon receipt of a report of the Building Inspector as provided for in section 9.0404.6, give written notice to the owner, occupant, mortgagee, lessee, agent, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the Country of Williams, to appear before such Commission on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building” should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the Building Inspector’s notice provided for herein in section 9.0404.8.
2. Hold a hearing and hear such testimony as the Building Inspector or the owner, occupant, mortgagee, lessee, or any other person having an interest in said building as shown by the land records of the Register of Deeds of the County of Williams, shall offer relative to the “dangerous building.”
3. Make written findings of fact from the testimony offered pursuant to section 9.0406.2 as to whether or not the building in question is a “dangerous building” within the terms of section 9.0401 hereof.
4. Make written findings of fact from the testimony offered pursuant to sub-section 9.0406.3 commanding the owner, occupant, mortgagee, lessee, agent, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of Williams, to repair, vacate, or demolish any building found to be a “dangerous building” within the terms of this chapter.

#### 9.0406 Failure to Comply with Decision of the City Commission

If the owner, occupant, mortgagee, or lessee fails to comply with the decision of the City Commission, or in the alternative fails to appeal to the District Court within the thirty (30) days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated, or demolished as ordered by the Commission and shall



cause the costs of such repair, vacation, or demolition to be charged against the land on which the building existed by special assessment, or as a municipal lien, or shall cause said cost of removal to be levied as a special tax against the land upon which the building stands, or did stand, or to be recovered in a suit at law against the owner.

#### 9.0407 Violations - Penalty for Disregarding Notices or Orders

The owner of any “dangerous building” who shall fail to comply with any notice or order to repair, vacate, or demolish said building given by any person authorized by this ordinance to give such notice shall be guilty of an infraction for each offense.

The occupant or lessee in possession who fails to comply with any notice to vacate and who fails to repair said building in accordance with any notice given as provided for in this ordinance shall be guilty of an infraction. Everyday subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in section 9.0404.8 hereof shall be guilty of an infraction for each offense.

#### 9.0408 Duties of the City Attorney

The City Attorney shall:

1. Prosecute all person failing to comply with the terms of the notices provided for herein in sections 9.0404.4 and 9.0404.5 and the order provided for in section 9.0405.4.
2. Appear at all hearings before the Tioga City Commission in regard to “dangerous buildings.”
3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

#### 9.0409 Where Owner Absent from the City

In such case, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the City all notices or orders provided for herein shall be sent by registered mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of Williams to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the “dangerous building” to which it relates. Such mailing and posting shall be deemed adequate service.

#### 9.0410 Duties of Fire, Police and Health Departments

All employees of the Fire, Police and Health Departments shall make written reports to the Building Inspector of all buildings or structures which are, may be, or are suspected to be “dangerous buildings” as herein defined.

#### 9.0411 Appeal

The governing body shall serve a copy of its order, upon the owner, occupant, mortgagee, lessee, and all other persons having an interest in any such building so ordered repaired, vacated, or demolished, a copy of its order, such notice to be served upon such owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such order upon him in which to appeal from such order to the District Court of Williams County, North Dakota, or to take such other legal steps to enjoin the enforcement of such order as he may deem proper.

Any person desiring to appeal from any order issued by the City Commission under and by virtue of this article shall file an undertaking in the sum of at least five hundred dollars (\$500.00) to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in the District Court. Such undertakings shall be payable to the City.

## CHAPTER TEN

### ANIMALS AND FOWL

#### ARTICLE 1 - Dogs and Cats

##### 10.0101 Definitions

1. The word "animal" or "animals," when used in this chapter, means any animal, domesticated or wild.
2. An "animal unit" is one mature animal and its offspring until such offspring is no longer dependent upon the mature animal for survival.
3. "At large" means not under the immediate control of the owner by leash, fence or other physical restraint.
4. "Dog" means male and female canines, whether neutered or spayed or not.
5. "Leash" means a cord, chain or physical restraint apparatus which holds the dog a distance of not more than 6 feet from the owner.
6. "Owner" means any person owning or having custody or responsibility of the care of a dog or a member of his immediate family or household.
7. "Cat" means male and female felines, whether neutered or spayed or not.
8. "Domestic" means any animal which usually lives in or about the habitation of humans as a pet or animal companion. The term does not include a dangerous animal or a feral cat.

##### 10.0102 Raising and Keeping of Animals Generally

It shall be unlawful to keep any live animal within the city limits except as described in this article.

1. The following animals may be kept within the city limits of Tioga.
  - a. Domestic dogs and cats, pursuant to the provisions of this chapter.
  - b. Common indoor pets, such as aquarium fish, nonpoisonous reptiles and amphibians, and other common indoor pets and animals such as hamsters, mice, birds, which animals shall remain indoors at the owner's residence or

business, and up to two (2) pet rabbits and their offspring until the offspring are not dependent upon the mature animal for survival, which rabbits may be kept in an outdoor hutch and pen which is sanitary and kept odor free.

- c. A horse, mule, jackass, goat, or other animal kept as a family pet may be kept within the following zoning districts: Agricultural, provided there is a minimum of one (1) acre available for the first four (4) animal units, and no more than one (1) additional animal unit per acre of land over five (1) acres.
- d. The City Commission, by resolution, may allow temporary or seasonal keeping of animals or livestock when the city commission determines that it is in the best interests of the City to allow such keeping of animals within the City limits for a seasonal or temporary duration not to exceed six (6) months.
- e. The City Commission may, by resolution, after notice to property owners within one hundred fifty (150) feet of the applicant's property and after public hearing, allow the use of Agricultural (A) property for livestock purposes on such conditions as the commission deems appropriate. It must be stated in the resolution that such use is of lower priority and may be terminated by the commission at any time, and the commission shall terminate such use if any problem with health, safety, odor, or noise develops regardless of the fact that adjacent or surrounding development moves to an area where such use is being allowed.
- f. Any animal for exhibition or display purposes such as fairs, circuses, animal displays, or special exhibitions, which displays or exhibitions do not exceed seven (7) days annually, including the use of horses or other trained animals in parades.
- g. Permitted fowl shall mean chickens, (roosters shall not be allowed) ducks, doves, pigeons or quails are permitted pursuant to this section. An individual may maintain, keep or house permitted fowl for nonindustrial, non-commercial purposes within the City limits in Residential Zones r-1, R-2a, MHD and R-2M only, subject to the following limitations and conditions:

The individual has obtained letters and provided the City from all owners of real property located within fifty (50) feet of the exterior real property boundary line of the property where such permitted fowl will be maintained, kept or housed. The individual has applied for and obtained a permit from the Community Service Director, or the Director's designee for the permitted fowl. In his/her determination of whether to issue a permit, the Director or designee shall consider the impact of noise, odor, sanitation and the public health, safety and welfare upon neighboring properties, the neighborhood and the City.

The total number permitted fowl that may be maintained, kept, or housed at any one location shall not exceed eight (8).

A permit issued in accordance with this section shall expire on December 31 of the year in which such permit is issued and may be bi-annually (every other year) renewed provided the requirements of limitations and conditions set forth in this section are satisfied,

The Director or designee may revoke or suspend any permit issued under this article when it is determined that any of the requirements, limitations or conditions for issuance of a permit are no longer complied with or it is determined the maintain of permitted fowl has become a public nuisance as described in section 10.0205.

Except otherwise provided in this article, any person who owns or keeps at any time within the limits of the City any unauthorized fowl of any kind shall be deemed guilty of maintaining a public nuisance of such fowl is not removed from the City limits within ten (ten) days after notice. Each day's continuance of such nuisance shall be a separate offense.

#### 10.0103 Cruelty to Animals

Every person who shall willfully (1) torture, torment, deprive of necessary food or water or cruelly beat any animal or (2) harmfully and knowingly expose any animal to heat or cold shall be guilty of a misdemeanor and subject to the penalties.

**State law references** - Power of city to prohibit and punish cruelty to animals, North Dakota Century Code § 40-05-01(42); damage for injury to animals, North Dakota Century Code § 36-21-13; humane treatment of animals, § 36-21.1-01 et seq

#### 10.0104 Disposition of Dead Animals

No owner or person having custody or responsibility for the care of any animal which shall have died shall abandon or allow the same to lie on any public ground, street, lane, alley or any private lot or place within the city limits, nor shall any person throw or discard any dead animal or decayed animal matter into any pool of water or city trash bins in the city. No owner or possessor of any dead animal shall bury it either within the city limits or in grounds designated for such purposes by the board of city commissioners without first obtaining a written permit therefor from the chief of police. The expense of burying or removing any dead animal or animal droppings shall be a charge against the owner or person having custody or responsibility for the care of the same.

**State law reference** - Disposition of carcasses of animals dying from contagious or infectious disease, North Dakota Century Code § 36-14-19.

**ARTICLE 2 - Licensing**

10.0201 License Required

No dog or cat shall be permitted to be or remain in the City without being licensed as hereinafter provided if over one (1) month of age. No license or renewal license shall be issued for a dog or cat over six (6) months of age unless it has been inoculated against rabies. No more than five

(5) licenses will be issues to one individual or address.

10.0202 License Fee

All dogs and cats kept in the City shall be registered as to sex, breed, name, and address of the owner of the dog or cat, and the name that dog or cat. At the time of such registration such owner shall obtain a license for such dog or cat and shall pay the following fees:

1. Male - Five Dollars (\$5.00)
2. Female - Ten Dollars (\$10.00)
3. Spayed Female - Five Dollars (\$5.00)

It shall be the duty of said owner to cause such license tag to be securely attached around the dog or cat's neck and kept there at all times during the license period. The license shall be for a period of one year.

10.0203 Dangerous Dogs and Cats

No vicious, dangerous, ferocious dog or cat or dog sick or cat sick with or liable to communicate hydrophobia or other contagious or infectious disease shall be permitted to run at large in the City. Such animal will be immediately impounded.

1. The Judge may order that the animal be confined within a building or secure enclosure, said animal not be removed from such building or enclosure without being effectively restrained by chain or leash not exceeding six (6) feet in length and/or properly muzzled.
2. Judge may order the seizure and surrender of such animal, and may also order that the animal be disposed of in a humane manner.

10.0204 Rabies Inoculation and Rabid dogs

1. It shall be the duty of the owner or person in custody of any dog or cat kept in the City to have the dog or cat inoculated against rabies at least once a year if the vaccine used was Penalized vaccine and within three years if the vaccine used was Avianized vaccine, and no license shall be issued for nay dog or cat unless the applicant exhibits a

certificate of veterinarian showing compliance with this section.

2. The owner of any dog which has contracted rabies, been subjected to the same, suspected of having rabies, or bitten any person shall, upon demand of the police department or the health officer, surrender the dog to the police department to be held in quarantine for observation for a period determined by the health officer. If, upon examination, any dog is found to be infected with rabies, the dog shall be disposed of as directed by the health officer.
3. Any person who knowingly keeps or harbors any dog infected with rabies or any dog known to have been bitten by a rabid dog or other animal, or fail to report to the police or to the health officer the existence of a dog or cat which he knows to be so infected or exposed to infection, shall be guilty of a class B misdemeanor.

#### 10.0205 Nuisance - When and Penalties

1. The animals exhibiting the following behavior shall be considered a nuisance:
  - a. Excessive, continuous, or untimely barking, howling, braying, crowing or other sounds common to its species; or by reason of failure of the owner to maintain all structures, pens, coops, or yards wherein any animal or fowl is kept, in a clean and sanitary condition devoid of rodents and vermin, and free from all objectionable odors
  - b. Molesting passersby
  - c. Chasing vehicles
  - d. Habitually attacking other domestic animals
  - e. Trespassing upon school grounds or trespassing upon private property
  - f. Damaging property by a dog or cat is hereby declared to be a nuisance
  - g. Not having a valid license and collar
  - h. Dog or Cat Droppings in private or public places
2. The owner of a dog, cat, fowl, or any other pet mentioned in this chapter that is in violation of this section may be cited for an infraction, upon receipt of a signed complaint or if the violation was on view of an animal warden and/or police officer. The penalties for such violation are as follows:
  - a. First Offense: a fifty dollar (\$50.00) fine;
  - b. Second Offense: a one hundred dollars (\$100.00) fine;

- c. Third Offense: one hundred fifty dollars (\$150.00) fine;
- d. Fourth Offense: Said animal shall be forfeited to the City and shall be entered in an adoption program (if applicable) or humanely destroyed.

10.0206 Animals at Large; Impounding & Return to Owner if Known

1. Unrestrained and animals at large shall be considered a public nuisance.
2. Unrestrained animals may be taken by the police and impounded in an animal shelter, and there confined in a humane manner. Impounded animals shall be kept for a maximum of five(5) days. If by a permit tag or other means the owner can be identified, the officer shall immediately upon impoundment attempted to notify the owner by telephone or mail of the impoundment of the animal. Animals not claimed by their owners within five (5) days shall entered in an adoption program (if applicable) or humanely destroyed. Any owner whose animal has been impounded is in violation of this ordinance and shall be assessed the fees as set forth in 10.0206.4. In addition to the fees set forth in 10.0206.4, for each day a dog or cat is kept in the City pound, the owner of such dog or cat will be assessed fifteen dollars (\$15.00) per day impoundment fee.
3. Notwithstanding the provisions of section 10.0206.1, if an animal is found at large and its owner can be identified and located, such animal need not be impounded but may instead be taken to the owner. In such case, the policeman may proceed against the owner for violation of this ordinance.
4. The owner of any dog or cat picked up and returned to the owner or impounded by the dog/cat warden or police shall be assessed the following fees:
  - a. First Offense: a fifty dollar (\$50.00) fine.
  - b. Second Offense: a one hundred dollars (\$100.00) fine.
  - c. Third Offense: one hundred fifty dollars (\$150.00) fine.
5. No animal will be released to its owner until said owner provides the following:
  - a. Proof of a dog license for the City;
  - b. Proof of current inoculations, if not on file with the City;
  - c. Pay all impoundment fees.



## **ARTICLE 3 - Pit Bull Dogs**

### **10.0301 Pit Bull Dogs: Keeping Prohibited**

It shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the City of Tioga, North Dakota, any pit bull dog; provided, that pit bull dogs registered with the City on or before the first day of November, 1987, may be kept within the City subject to the standards and requirements set forth in section 10.0202 of this article. "Pit bull dog" is defined to mean:

1. The bull terrier breed of dog;
2. Staffordshire bull terrier breed of dog;
3. The American pit bull terrier breed of dog;
4. The American Staffordshire terrier breed of dog;
5. Dogs of mixed breed or of other breeds than above listed which breed or mixed breed is known as pit bulls, pit bull dogs or pit bull terriers.
6. Any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, any other breed commonly known as pit bulls, pit bull dogs, or pit bull terriers, or a combination of any of these breeds.

### **10.0302 Keeping of Registered Pit Bulls**

1. The provisions of 10.0301 of this article are not applicable owners, keepers, or harbors' of pit bull dogs registered with the City of Tioga on or before the 1st day of November, 1987. The keeping of such dogs, however, shall be subject to the following standards:
  - a. Leash and Muzzle. No person shall permit a registered pit bull dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length. No person shall permit a pit bull dog to be kept on a chain, rope or any other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, building, etc. In addition, all pit bull dogs on a leash outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
  - b. Confinement. All registered pit bull dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel, or structure must have secure sides and a secure top attached to the sides. All structures used to confine registered pit bull dogs must be locked with a key or combination lock when such animals are within the

structure. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All structures erected to house pit bull dogs must comply with all zoning and building regulations of the City. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

- c. Confinement Indoors. No pit bull dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.
  - d. Signs. All owners, keepers or harbors of registered pit bull dogs within the City shall within ten (10) days of the effective date of this ordinance display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal.
  - e. Insurance. All owners, keepers, or harbors of registered pit bull dogs must within ten (10) days of the effective date of this ordinance provide proof to the City Auditor of public liability insurance in a single incident amount of fifty thousand dollars (\$50,000.00) for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless ten (10) days written notice is first given to the Tioga City Auditor.
  - f. Identification Photographs. All owners, keepers, or harbors of registered pit bull dogs must within ten (10) days of the effective date of this ordinance provide to the City Auditor two color photographs of the registered animal clearly showing the color and approximate size of the animal.
  - g. Reporting Requirements. All owners, keepers, or harbors of registered pit bull dogs must within ten (10) days of the incident, report the following information in writing to the City Auditor as required hereinafter:
    - (1) The removal from the City or death of a registered pit bull dog;
    - (2) The birth of offspring of a registered pit bull dog;
    - (3) The new address of a registered pit bull dog owner should the owner move within the corporate city limits.
2. Sale or Transfer of Ownership Prohibited. No person shall sell, barter, or in any other way dispose of a pit bull registered with the City to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such dog; provided that the registered owner of a pit bull dog may sell or otherwise dispose of a registered dog or the offspring of such dog to persons who

do not reside within the City.

3. All offspring born of pit bull dogs registered with the City must be removed from the City within six (6) weeks of the birth of such animal.
4. Irrebuttable Presumptions. There shall be an irrebuttable presumption that any dog registered with the City as a pit bull dog or any of those breeds prohibited by section 10.0201 of this article is in fact a dog subject to the requirements of this section.
5. Failure to Comply. It shall be unlawful for the owner, keeper, or harbored of a pit bull dog registered with the City of Tioga to fail to comply with the requirements and conditions set forth in this ordinance. Any dog found to be subject of a violation of this ordinance shall be subject to immediate seizure and impoundment. In addition, failure to comply will result in the revocation of the license of such animal resulting in the immediate removal of the animal from the City.
6. Violations and Penalties. Any person violating or permitting the violation of any provision of this ordinance shall upon conviction in Municipal Court be guilty of a class B misdemeanor.

In addition, the court shall order the registration of the subject pit bull revoked and the dog removed from the City. Should the convicted refuse to remove the dog from the City, the Municipal Court Judge shall find the owner in contempt and order the immediate confiscation and impoundment of the animal. Each day that a violation of this ordinance continues shall be deemed a separate offense. In addition to foregoing penalties, any person who violates this ordinance shall pay all expenses, including shelter, food, handling, veterinary care, and testimony necessitated by the enforcement of this ordinance.

#### **ARTICLE 4 - Exception to Pit Bull Dog Breed Restrictive Ordinance for ADA, FHA and other State and Federal Civil and Statutory Rights Compliance**

##### 10.0401 Purpose

Notwithstanding any provisions of Chapter Ten, Article 3 to the contrary, this Article 4 of Chapter Ten is enacted to assist and serve community members with disabilities (as defined by the ADA and other applicable federal and state laws and regulations) by acknowledging the importance of such individuals' rights to service animals within the City of Tioga, irrespective of the animal's breed type and generalized reputation. The City of Tioga endeavors to improve the quality of life of all of its citizens, to include, without limitation, those community members with disabilities; the City recognizes that service animals perform desirable and important, if not necessary, tasks and work on behalf of community members with disabilities. Further, the City of Tioga endeavors to be mindful and respectful to all walks of life within the community, and endeavors to remain compliant with all federal and state civil rights bestowed upon its population. It is for these reasons that the City finds it desirable, necessary and appropriate to ensure that service animals (as defined in the ADA), and, when applicable, assistance or support animals

(under the FHA) and other service/assistance/support animals as may be recognized under other applicable federal and state law now existing and future laws that may become controlling with respect to such animals and their owners.

10.0402 Exception for Otherwise Restricted Ownership of Pit Bull Dogs within the City of Tioga

Notwithstanding any provisions of Chapter Ten, Article 3 to the contrary, individuals with a qualifying disability under the ADA or those individuals who are entitled to the keeping of an assistance or support animal under the applicable provisions of the FHA shall not be deemed to have violated the provisions of Article 3, Chapter Ten, and shall not suffer a prosecution under the same, when such dog is a Pit Bull Dog, as defined in this Ordinance, but the animal is currently acting as a service animal or assistance/support animal as defined under the ADA or FHA.

10.0403 Procedure for Accommodation of Service and/or Assistance/Support Animals within the City of Tioga

A disabled individual who keeps a pit bull dog within the City of Tioga as a “service animal”, as defined under the ADA, or a qualified individual who wishes to keep a pit bull dog within the City of Tioga as an “assistance animal” or “support animal” must make application for accommodation to Article 3 of Chapter Ten by submitting to the City Auditor, in writing, all of the following information:

1. The name of the owner of the animal (if the disabled or requesting person is a minor or legal ward of another person, the minor or ward may be identified by use of that individual’s initials alone, with the parent or legal guardian of such person identifying himself or herself in full);
2. The physical and mailing address(es) where the individual (and his/her parent or legal guardian’s physical and mailing address, if different from the individual seeking the accommodation) and the address at which the animal reside and primarily be kept;
3. The breed of the animal;
4. The nature or type of the disability at issue or the basis on which the request is made if brought under the FHA;
5. A statement that the animal has training as a service animal (or assistance/support animal when applicable);
6. A general statement(s) of what work or tasks the animal is trained to perform on behalf of the individual or what assistance/function the animal performs if accommodation is sought under the FHA; and
7. A copy of the animal’s vaccination records, showing that the animal for whom exception

is sought has a current rabies vaccination and is current on any other vaccinations required under City ordinance.

On receipt of the written request, the City may, as permitted by controlling law, make further inquiry as to the application or its contents or request additional documentation prior to approving or denying the request, if such further inquiry is necessary or appropriate. The City shall not, however, ask the owner of the animal to present the animal to perform or demonstrate any of the work or tasks articulated in the request. Further, the City shall not make further inquiry into the disability unless the disability is not obvious by presentation of the application or the applicant himself or herself.

The City, after review of the application/written request and any other supplemental information produced thereafter, shall maintain a copy of the request within of the Office of the City Auditor and shall present to the owner or owner's representative, a written statement denying or accepting the request, which shall also be maintained in the records of the City. If the request is denied, temporarily or permanently, the City shall state the basis on which the same is denied.

#### 10.0403 Other Provisions of Chapter Ten Unaffected

Except as expressly provided in this supplemental and amended ordinance, all other provision of Chapter Ten remains in full force and effect (e.g., animal licensing procedure and fees, provisions against dangerous animals, nuisance provisions, etc.).

## CHAPTER ELEVEN

### OFFENSES

#### **ARTICLE 1 - In General**

##### 11.101 Criminal Contempt

1. The Municipal Court has power to punish for contempt of its authority only for the following offenses:
  - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
  - b. Misbehavior of any of its officers in their official transactions; or
  - c. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of North Dakota Century Code Chapters 12.1-01 through 12.1-05, North Dakota Century Code Chapter 12.1-32.
3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.
4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

##### 11.0102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if he recklessly hinders an official City proceeding by noise or violent or tumultuous behavior or disturbance.

#### 11.0103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a Class B misdemeanor. The signal given by the police officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

Any person who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop is guilty of a class B misdemeanor. A signal to stop complies with this section if the signal is perceptible to the person and: 1) if given from a vehicle, the signal is given by hand, voice, emergency light, or siren and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or 2) if not given from a vehicle, the signal is given by hand, voice, emergency light, or siren and the officer is in uniform and prominently displays the officer's badge of office.

#### 11.0104 Interfering with Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of his duty, or in any way interfere with or hinder in the discharge of his duty.

#### 11.0105 False Alarms or False Reports

No person in the City shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the City shall make to, or file with, the police department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the City.

### **ARTICLE 2 - Offenses Against Public Order, Health, Safety, and Sensibilities**

#### **Division 1. Riot**

##### 11.0201 Engaging in a Riot

1. A person is guilty of an offense if he engages in a riot.
2. "Riot" means a public disturbance involving an assemblage of five (5) or more persons

which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

#### 11.0202 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in section 11.0201(2), or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

### **Division 2. Disorderly Conduct**

#### 11.0203 Disorderly Conduct

1. A person is guilty of violating the ordinances of this City, if with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed, or alarmed by his behavior, he:
  - a. Engages in fighting or in violent, tumultuous, or threatening behavior;
  - b. In a public place, uses abusive, insulting, or offensive language or an abusive, insulting, or offensive gesture, under circumstances in which such language by its very utterance or gesture, is likely to cause or provoke a disturbance or breach of the peace;
  - c. Makes unreasonable noise;
  - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
  - e. Persistently follows a person in or about a public place or places;
  - f. While loitering in a public place for the purpose of soliciting sexual contact, they solicit such contact;
  - g. Creates a hazardous or seriously alarming condition by any act which he is not licensed or privileged to do;
  - h. Enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;



- i. Not being a police officer, discharges a firearm or displays a deadly weapon in a public place;
- j. Exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed, and with intent to arouse or gratify the sexual desire of any person, including the actor;
- k. Urinate or defecate on public or private property other than a public or private toilet;
- l. Throws any missile in a public or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or
- m. Creates, by chemical means, a noxious and unreasonable odor in a public place.

(1) It shall be unlawful for any person to knowingly expose one's penis, vulva or anus in a public place within the City of Tioga.

(2) It shall be unlawful for any person to urinate or defecate on public or private property other than in a public or private toilet.

(3) Any person found guilty of a committing offense under this section shall be subject to a fine not to exceed \$1,000.00.

### **Division 3. Gambling**

#### 11.0204 Gambling

- 1. It shall be an infraction to engage in gambling.
- 2. "Gambling" means risking any money, credit, deposit or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
  - a. Lawful contest of skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or
  - b. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.
- 3. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists

of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in the North Dakota Century Code, or an antique “slot” machine twenty-five (25) years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

4. This ordinance shall not apply to gambling or games or chance conducted by a licensee under the authority of a valid license issued by the State of North Dakota.

#### **Division 4. Sexual Offenses**

##### 11.0205 Prostitution

1. A person is guilty of the offense of prostitution if he:
  - a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
  - b. Solicits another person with the intention of being hired to engage in sexual activity.
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse’s prostitution.
3. In this section:
  - a. “Sexual activity” means sexual act or sexual contact as those terms are defined in the North Dakota Century Code
  - b. A “house of prostitution” is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.
  - c. An “inmate” is a prostitute who acts as such in or through the agency of a house of prostitution.

#### **Division 5. Alcohol Related Offenses**

##### 11.0206 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises, a licensee, his agent, or employee may require a statement in writing and signed by said person of such person’s age. Any person who makes a false statement as to his age, or signs a name other than his own or her own, to any such statement shall be guilty of a violation of this section.

### 11.0207 Bottle Clubs

No person shall operate an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix ice or charges for bringing such beverages on the premises.

### 11.0208 Persons Less than Twenty-One Years Prohibited - Exceptions

It shall be unlawful for any person under twenty-one (21) years of age to purchase, attempt to purchase, be in possession of, or consumption of alcoholic beverages or furnish money to any person for such purchase or enter any licensed premises where such beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian.

## **Division 6. Regulation of Minors**

### 11.0209 Curfew, General Regulations - Penalty

1. It shall be unlawful for any minor under the age of fourteen (14) to loiter, idle, wander, stroll, play, or remain in or on the public streets, highways, lots, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places or amusement, places or entertainment, vacant lots, or other unsupervised places between the hours of 10:00 p.m. and 6:00 a.m. of the following day, official City time, from September 1st through May 31st, or between the hours of 11:00 p.m. and 5:00 a.m. of the following day, official City time, from June 1st through August 31st; unless accompanied by his or her parent, guardian, or other adult person having his or her care, custody, and control, or unless the minor is on an emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having his or her care, custody, and control.
2. It shall be unlawful for any minor between the ages of fourteen (14) through seventeen (17) to loiter, idle, wander, stroll, play or remain in or on the public streets, highways, lots, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places of amusement, places of entertainment, vacant lots, or other unsupervised places between the hours of 12:00 midnight and 6:00 a.m. of the following day, official City time, from September 1st through May 31st, or between the hours of 1:00 a.m. and 5:00 a.m., official City time, from June 1st through August 31st; unless accompanied by his or her parents, guardian, or other adult person having his or her care, custody, and control or unless the minor is on an emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having his or her care, custody, and control.
3. It shall be unlawful for the parent, guardian or other adult person having the care, custody, and control of a person under the age of fourteen (14) years to suffer or permit or by inefficient control, to allow such person to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public

buildings, places of amusement and entertainment, vacant lots, or any public places in the City of Tioga between the hours of 10:00 p.m. and 6:00 a.m. of the following day, official City time, from September 1 through May 31, or between the hours of 11:00 p.m. and 5:00 a.m. of the following day, official City time, from June 1 through August 31, unless said person is accompanied by his or her parent, guardian, or other adult person having his or her care, custody, or control; provided that any parent, guardian, or other adult person herein who shall have made a missing person notification to the police department shall not be considered to have suffered or permitted any person to be in violation of this section.

4. It shall be unlawful for the parent, guardian or other adult person having the care, custody and control of a person between the ages of fourteen (14) and seventeen (17) years to suffer or permit or, by inefficient control, to allow such person to congregate, loiter, wander, stroll, stand, or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots, or any public places in the City of Tioga between the hours of 12:00 midnight and 6:00 a.m. of the following day, official City time, from September 1 through May 31, or between the hours of 1:00 a.m. and 5:00 a.m., official City time, from June 1 through August 31, unless said person is accompanied by his or her parent, guardian, or other adult person having his or her care, custody, or control; provided that any parent, guardian or other adult person herein who shall have made a missing person notification to the police department shall not be considered to have suffered or permitted any person to be in violation of this section.

Any person seventeen (17) years of age and under violating the provisions of this section shall be referred to the proper authorities as provided by Chapter 27-20 of the North Dakota Century Code.

Any person, firm, or corporation violating any of the provisions of section 11.0209, upon conviction thereof, shall be fined according to the following schedule:

- First offense within one (1) year - no fine
- Second offense within one (1) year - \$25 fine
- Third offense within one (1) year - \$50 fine
- Fourth offense within one (1) year - \$75 fine

### **ARTICLE 3 Penalties and Violations**

#### 11.0301 Penalties and Violations

Unless otherwise indicated a violation of this chapter shall be considered a class B misdemeanor.

## **ARTICLE 4 - Offenses against a Person**

### 11.401 Simple Assault

1. A person is guilty of an offense, a Class B misdemeanor, if that person willfully causes bodily injury to another human being.
2. As used in this section, bodily injury means any impairment of physical condition, including physical pain.
3. As used in this section, a person engages in conduct “willfully” if he or she engages in the conduct intentionally, knowingly, or recklessly.

## **ARTICLE 5 - Victim Witness Fee Ordinance**

### 11.0501 Victim Witness Fee

### 11.0502 Fee

A municipal judge for the City of Tioga shall assess a fee of not more than twenty-five (25) dollars as part of any sentence imposed on a defendant who pleads guilty to or is convicted of violating any municipal ordinance for the City of Tioga for which the maximum penalty which may be imposed, under such municipal ordinance, for the violation includes imprisonment. This victim witness fee shall further extend any sentence imposed under which such sentence is suspended or the imposition of such sentence is deferred, unless the Court makes a specific finding that the defendant is indigent and unable to pay the fee. The victim witness fee, however, shall not be deemed a mandatory imposition for criminal proceedings disposed of by pretrial diversion agreements, which are more particularly described in Rule 32.2 of the North Dakota Rules of Criminal Procedure. The victim witness fee assessed under this ordinance is to be assessed in addition to any fine, penalty, cost, restitution, or other administrative fee presently prescribed by any law or ordinance.

### 11.0503 Use of Funds

All fees paid to the municipal court for the City of Tioga under this ordinance must be deposited monthly in the city treasury for allocation by the City Commission of the City of Tioga to one or more of the following programs as determined by the City Commission:

1. A private, nonprofit domestic violence or sexual assault program.
2. A victim and witness advocacy program of which the primary function is to provide direct services to victims and or witnesses to crime.

3. Any other program, service, or agency which may subsequently become authorized under law in accordance with North Dakota Century Code Section 27-01-10.

Except as expressly stated herein, no other Ordinance(s) of the City of Tioga shall be deemed to have been amended, modified, or rendered invalid by this Ordinance.

## CHAPTER TWELVE

### FRANCHISE

#### **ARTICLE 1 - Grant of Franchises**

##### 12.0101 Power to Grant

The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or to do business in the City, but such franchise shall be subject to the provisions of this article.

##### 12.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulations as the City shall by resolution or ordinance provide.

##### 12.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

## CHAPTER THIRTEEN

### BUILDING CODE

#### **ARTICLE 1 - General Building Code**

##### 13.0101 Adoption of Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City of Tioga shall meet with the provisions of the rules and regulations of the North Dakota State Building Code, copies of which code are on file with the City Auditor and are hereby made a part of this chapter by reference with the exception of the sections hereinafter set forth affecting local conditions in the City, which are amended, deleted, or added to, for use and application in the City, and the City hereby adopts said code as so modified.

##### 13.0102 Penalty

The violation of any of the provisions of this chapter shall be punishable as provided in chapter two (2) of these revised ordinances.



## CHAPTER FOURTEEN

### ELECTRICAL CODE

#### **ARTICLE 1 - Adoption of Electrical Code**

##### 14.0101 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota adopted by the State Electrical Board, and the whole thereof not less than one (1) copies are on file in the office of the City Auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

#### **ARTICLE 2 - Licenses**

##### 14.0201 License Required

No person, firm or corporation shall be permitted to conduct the business of a Master Electrician without a Master Electrician's license or by virtue of a license issued to any other person.

##### 14.0202 Application for License

A person, firm, or corporation applying for an electrician's license in the City of Tioga must be the holder of either a Master, Journeyman's Electrician's License, or Class "B" Electrician's License from the State of North Dakota. Application in either case shall be made to the Board of City Commissioners of the City of Tioga, and shall state the full name of the applicant, his place of residence, previous experience, and trade reference. The application for a Master Electrician's License shall further state applicant's mailing address.

##### 14.0203 License Fee

Before any person may be issued an Electrical Contractors License, from the City of Tioga, he must first show that he is properly bonded by the State of North Dakota; and he shall pay to the City of Tioga a fee of one hundred dollars (\$100.00); provided, however, that all Master Electrician's once licensed, and all Journeyman Electricians, and Class "B" Electricians once licensed shall be require to pay a license fee of twenty-five dollars (\$25.00) per year for the renewal of any such license. Said renewal fee must be paid within fifteen (15) days of expiration of license or license hereto for issued shall be revoked. All electrical licenses shall expire on the 30th day of June, after the issuance of said license.

#### 14.0204 License Required for any Electrical Work - Exception

No person shall extend, construct, or alter any electrical installation in the City of Tioga until such person shall have received either an electrical contractor's license of the City of Tioga, or be the holder of a Journeyman Electrician's license of the City of Tioga and be under the employ of a regularly licensed Master Electrician or Class "B" Electrician, or be an Apprentice or helper working under the direct supervision of a licensed Journeyman Electrician or a licensed Master Electrician or Class "B" Electrician on the job, except the following person shall not be required to hold an Electrician's License:

1. Employees of public utilities engaged in the manufacture and distribution of electrical energy when engaged in work directly pertaining to the manufacture and distribution of electrical energy. This exemption shall terminate at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service.
2. Employees of telephone, telegraph, and radio communication service when engaged in work pertaining directly to such service.

## CHAPTER FIFTEEN

### TELEVISION MASTS, TOWERS AND ANTENNAS

#### **ARTICLE 1 - Installation of Television Masts, Towers and Antennas**

##### 15.0101 Installation

No person, firm, company or corporation shall erect or install an outside television mast, tower or antenna in the City of Tioga unless said television mast, tower or antenna shall be installed to conform to the following technical requirements:

1. An Underwriters Laboratories approved lightning arrestor or its equivalent is required on all antenna lead-ins unless the lead-in is of the metal shielded type, with the metal shield properly grounded.
2. Lead-in conductors attached to buildings shall be so installed that they cannot swing within two (2) feet of conductors carrying two hundred fifty (250) volts or less, or within ten (10) feet of conductors carrying more than two hundred fifty (250) volts. The clearance between lead-in conductors and any conductor forming part of a lightning rod system shall be not less than six (6) feet. That part of the lead-in that comes in contact with the building shall be supported at intervals of not more than fifteen (15) feet apart.
3. Conductive supporting poles, masts or other structures supporting antennas shall be permanently and effectively grounded with a minimum of #10 copper or #8 aluminum wire. Poles or masts which are themselves the sole antenna are exempt from this rule.
4. No television mast, pole, tower, or antenna shall be mounted or attached to a chimney.
5. Poles or masts over twelve (12) feet in height must be guying with three (3) or more wires to one position. Masts or poles twenty (20) feet to thirty (30) feet must be guyed to a minimum of two (2) positions with the uppermost guy wires to be within two (2) feet of the top of the pole or tower. The angle of the guys must not be less than thirty (30) degrees from the vertical mast; wire used shall be of the stranded rust-proofed type. Anchors shall be of equal strength or stronger than the combined wire connected to them. All guys fastened to the ground shall be protected by a sufficient safety guard to a minimum of eight (8) feet vertically from the ground.
6. All self-supporting towers, poles or masts over ten (10) feet in height shall be designed and installed to withstand an actual wind velocity of ninety (90) miles per hour.
7. Metal supporting poles, masts, towers or other structures located on buildings provided with lightning protection must have an interconnection between the ground conductors

and the lightning surge conductors.

8. Plumbing vent stacks or natural gas piping shall not be used to ground antenna masts, poles, or towers, instead, all grounding conductors shall be attached, preferably to a cold-water pipe supplied by an underground water distribution system, with the water meter properly jumpered. Where not available, grounding conductors shall be attached to a standard driven ground rod six (6) feet or longer. No pole, mast, tower, or structure used to support antenna shall be so located that in falling it might fall across a utility distribution line over two hundred fifty (250) volts unless that mast, pole, tower, or structure has a double strength guy in such a position so as to keep that pole, mast, tower, or structure from falling across such utility line.
9. All towers, mast, poles, or antenna attached to a building shall be noncombustible and corrosive resistant.

#### 15.0102 Penalty

Every person, firm, company or corporation convicted of a violation of any of the provisions of this chapter, shall upon conviction be guilty of an infraction.

## CHAPTER SIXTEEN

### OIL AND GAS PERMITS

#### **ARTICLE 1 - Drilling Permit and Regulation of Oil and Gas Production**

##### 16.0101 Purpose

For the purpose of the protection of the lives of the citizens of the City of Tioga, and of the public generally, and for the protection of property from the dangers of fire, explosion, gas and other hazards to the public peace, health and safety which can result from the drilling for and production of oil and natural gas, such drilling and production within the corporate limits of the City of Tioga is declared unlawful unless conducted in accordance with the following regulations limiting the drilling of oil and gas wells within the City limits and providing safety measures to govern the oil and gas activity permitted.

##### 16.0102 Districts

The following oil and gas production districts are established within the limits of the City of Tioga:

1. All of Section 27, Township 157, North, Range 95 West, Williams County, North Dakota, which constitutes the City limits of Tioga, is divided into sixteen (16) square forty (40) acre tracts which shall be numbered consecutively, commencing with district one (1) at the northeast corner, and proceeding west to district four (4); thence in the next tier numbering east from district five (5) to district eight (8); and so back and forth until district sixteen (16) is reached in the southeast corner.

##### 16.0103 Number of Permits

Within the boundaries of each of the districts set forth in section 16.0102, there shall be only one (1) permit issued for one well in each district, except where more than one producing oil or gas horizon shall be found in such district, a permit may be granted for one well to each of such horizons within the district.

##### 16.0104 Application for Permit

Applications for drilling permits shall be filed in writing by the applicant with the City Auditor. The application shall state the exact location within a product district where the proposed well will be drilled and there shall be attached thereto either certified or photostatic copies of all oil and gas leases or drilling contracts with the owners of the property in the production district which are owned or controlled by the applicant. There shall also be attached

to said application a certificate showing the exact correct acreage within said production district on which any proposed well is to be drilled and the total acreage owned or controlled by the applicant in said production district, which shall be duly certified by a competent engineer. There shall also accompany said application a statement showing the names and last known addresses of all persons, firms or corporations having any interest in any property within such production district, together with a statement of the interest owned or shown of record. The proposed location of the well shall be as near the center of the production district as practicable.

A filing fee for the application of twenty-five dollars (\$25.00) shall be paid at the time said application is made.

After receiving an application for a drilling permit, the City Auditor shall proceed in the following manner. He shall cause notice by registered mail to be given to all owners of whom the applicant has actual or constructive knowledge within the production district not less than fifteen (15) days prior to the date and place of hearing on the drilling permit, which date and place shall be set out in the notices. If the address of any owners be unknown, upon affidavit duly filed by the applicant setting out the inability of the applicant to obtain the addresses of such unknown owners, the City Auditor shall cause a notice to be given by publication in not less two issues of the official City newspaper, proof of which must be filed before the hearing on said application. The hearing shall be held less than fifteen (15) days after the date of the last publication.

#### 16.0105 Hearing

The hearing shall be held at the time designated before the Board of Commissioners of the City of Tioga.

If more than one application for the same oil and gas production district is before the City Commission for consideration at the time of the hearing, they shall grant the application which, if otherwise sufficient, shall be made by the applicant controlling, for purposes of oil and gas development, the greater area in the production district concerned. Provided, that the City Commission shall have the authority to refuse any application for a permit where the character and value of the permanent improvements already erected in the immediate area of the proposed well sites are such that the drilling of an oil or gas well will be a serious disadvantage to the City and its inhabitants as a whole.

Where an application is denied for this reason, the applicant shall have fifteen (15) days in which to submit a new application from the time of the decision. Fifteen (15) days' notice of the time and place of the hearing on such second application shall be published as in section 16.0104 in the official newspaper of the City. If no such application be submitted, or it be denied, the well permit shall be granted to the qualified applicant controlling the next greatest acreage in the district.

In the conduct of the hearing provided for by this ordinance, the Board of Trustees shall examine all witnesses under oath and shall keep a record of proceedings and shall have

power to make any requirements, regulations or orders which may be necessary, proper or equitable for all persons interested in the subject matter of the hearing. Any person affected by an order of the City Commission to permit to drill under this ordinance may appeal to the courts as provided by law.

#### 16.0106 Bond Required

No drilling shall be commenced under a permit granted under this article until there shall be filed with the City Treasurer a good and sufficient bond covering each well for which an application is made, executed by a bonding or indemnity company authorized to do business in the State of North Dakota, running in the name of the City of Tioga for the benefit of the City and all persons, firms, and corporations concerned, and conditioned that the applicant will pay and discharge any liability imposed by law for damages on account of injury to property, either private or public, or bodily injury, including death, received or suffered by any person or persons, firm or corporation, and resulting from the drilling, operation, or maintenance of any well or structure, equipment, machinery, tanks, pipe lines, or appurtenances thereto.

The monetary amount of said bond shall be determined from time to time by resolution of the City Commission.

#### 16.0107 Landowners

In case a drilling permit be issued under this ordinance to an applicant who does not hold leases or other valid drilling contracts in writing from the owners of all of the land within the production district, any owner of unleased land in the district, and any person or corporation holding oil and gas leases on land in the district, shall have the right to share in the ownership and benefits of any production of oil and gas or either of them that may result from drilling by the successful applicant in the proportion that the area of his land or lease bears to the area of land in the district. Provided that each tract of land in the district shall be charged with a like proportion of the expense of production. The owner of the right to develop the oil and gas in each tract shall, within fifteen (15) days of the granting of the permit to drill under this ordinance, file with the City Auditor a bond with an authorized surety company in the amount representing that portion of the estimated maximum cost of the well that the area of ground owned or held under lease by him or it bears to the whole area of the district, such bond to be approved as to form and condition by the City Attorney and accepted by the Board of City Commissioners and to run in favor of the City of Tioga for the benefit of all person interested. In case of the failure of any owner of a right to develop minerals in a part of the district to file such bond within the required time, that tract of land shall not be considered a part of the district for the purposes of sharing in the production, if any, from the well to be drilled; provided that the production against drilling more than one well per horizon in the district shall continue in full effect. The obligation of non-developing owners of the mineral rights for the payment of their share of district production expenses shall at all-time be several and not joint or collective. If production is obtained, each owner of the oil and gas rights in a separately owned tract shall continue to pay his share of the operation of the district well.

The owner of the surface rights in the land on which the well is actually drilled shall be entitled to a payment to compensate him for the injury to his surface interests beyond that suffered by other surface owners in the district. The amount of this payment shall be determined upon hearing, after fifteen (15) days published notice as in section 16.0104 before the Board of City Commissioners, and the amount shall be charged to the operating expenses of the district. A quarterly statement of other expenses incident to oil and gas development shall be filed by the successful applicant with the City Auditor and shall be subject to approval by the City Commission upon published fifteen (15) day notice and hearing.

#### 16.0108 Royalties

Neither this article, nor any permit issued thereunder shall be interpreted to grant any right or license to the successful applicant to enter upon or occupy in any respect in the drilling, production, or operations, any land except by the written consent of the owner, nor shall it limit or prevent the free right of any landowner to contract for the amount of the royalty to be paid with respect to his land; provided that the amount of district production allocated to each separately owned tract within the district, regardless of the land upon which the producing well is finally located, shall for all purposes be regarded as production from such separately owned tract, and the production allocated shall be distributed among the several persons entitled to share in the production for such separately owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production had such production been from a well actually drilled upon such tract.

#### 16.0109 Existing Law

In exercising the permit to drill under the terms of this chapter, the laws and regulations of the State of North Dakota shall be at all times observed. For the further protection of the safety and general welfare of the City of Tioga, additional safety rules for drilling within the City limits will be promulgated by the City Commission.

#### 16.0110 Penalty

Every person, firm, company or corporation convicted of a violation of any of the provisions of this chapter, shall upon conviction be guilty of an infraction.



## CHAPTER SEVENTEEN

### CITY LODGING TAX

#### **ARTICLE 1 - Imposition, Payment and Use of a City Lodging Tax**

##### 17.0101 Purpose

The purpose of this ordinance shall be to generate revenue to promote, encourage, and attract visitors to come to the City and use travel and tourism facilities within the City.

##### 17.0102 Imposition of Tax

A tax of two percent (2%) shall be imposed upon the gross receipts of retailers, on the leasing or renting of hotel, motel, or tourist court accommodations within the City of Tioga, for periods of less than thirty (30) calendar days or one month. The tax imposed by this ordinance shall be in addition to the state sales tax on rental accommodations provided in Chapter 57-39.2 North Dakota Century Code.

##### 17.0103 Use of Revenue

All proceeds from the above tax shall be deposited in the City Visitors' Promotion Fund. A Visitors' Committee shall be appointed to serve as an advisory committee to the City Commission in administering the proceeds deposited in the Fund. The proceeds must be used for the purposes described in section 17.0101.

##### 17.0104 Visitors' Committee

The Visitors' Committee shall consist of five members appointed by the City Commission. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for a term of four (4) years, except that two (2) of those initially appointed must be appointed for an initial term of two (2) years. Vacancies must be filled in the same manner as the initial appointment. The Committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two (2) years.

##### 17.0105 Budget and Contracts

The City Commission shall annually set the budget under which the Committee shall operate. The City Commission may contract with any person, firm, association, or corporation to carry out the purposes of the City Visitors' Promotion Fund.

#### 17.0106 Payment of Tax

The City lodging tax imposed by this article are due and payable at the same time the taxpayer is required to file a return under North Dakota Century Code Chapter 57-39.2. The tax must be collected and administered by the State Tax Commissioner in accordance with the relevant provisions of said Chapter. The tax, minus a three percent (3%) administration fee, will be remitted to the City on a quarterly basis.

#### 17.0107 Penalty

Any person, including corporate officers who shall be personally liable, who fails to file a return or corrected return or pay any tax within the required time shall be guilty of a Class A Misdemeanor. That person shall also pay penalties and interest pursuant to North Dakota Century Code 57-39.2- 18.

## CHAPTER EIGHTEEN

### HOME RULE CHARTER

#### ARTICLE 1 - Home Rule Charter

##### 18.0101 Incorporation

The inhabitants of the City of Tioga, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of “City of Tioga.”

##### 18.0102 Governing Body to Exercise Powers

Subject to the limitations imposed by the state constitution, state law, and this charter, all powers of the City shall be vested in the elected governing body. The elected governing body shall enact local legislation, adopt budgets, determine policies, and prescribe the function of government to be performed under this charter by the City. All powers of the City shall be exercised in the manner prescribed in this chapter, or if the manner not prescribed, then in such manner as may be prescribed by ordinance.

##### 18.0103 Powers of City

The City shall have all powers granted to municipal corporations by the constitution and laws of this state and by this charter, together with all implied powers necessary to carry into execution all powers granted.

Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in the charter, shall be the following:

1. To acquire, hold, operate and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs, to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants and other evidence of indebtedness; to establish charges for any City or other services and to establish debt mill levy limitations, provided that the mill levies ordered and imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classifications to that of the City of Tioga. The governing body shall be permitted to promulgate the City

budget without regard to the specific dedications of mill levies to specific purposes as long as the total of the budget is not more than the total amount of mills authorized to be levied by a city.

3. Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in this charter, shall be the authority to impose a retail sales tax and use tax of no more than two percent (2%) of those gross receipts taxed pursuant to Chapters 57-39.2 and 57-40.2, North Dakota Century Code, subject to the following:
  - a. The revenue collected from such a tax shall be used for projects developing, promoting and enhancing the general welfare of the community including but not limited to such projects for health, recreation, business, and commerce retention, expansion, and recruitment.
  - b. The following shall be specifically exempted from any tax imposed pursuant to this article:
4. Those sales exempted from the imposition and computation of the state sales tax and use tax pursuant to Section 57-39.2-04, 57-39.2-04.1, 57-40.2-04, and 57-40.2-04.1, North Dakota Century Code Sales to contractors that are exempt pursuant to subsection 15 of Section 57-39.2-04, North Dakota Century Code, shall be exempt from any City sales tax, but contractors shall be subject to the City use tax on those items used within the City that would be taxed pursuant to Section 57-40.2-03.3, North Dakota Century Code, on which the City sales tax has not been previously paid.
5. Gross receipts from the sale of sporting event tickets.
6. Any sales tax imposed shall not exceed two percent (2%) of the gross retail sales and use purchases in the City of Tioga.
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.

b. The proceeds of one percent (1%) sales tax shall be dedicated to:

Business retention, expansion, or recruitment	50%
Property tax relief	25%
Recreation infrastructure improvements	5%
Park infrastructure improvements	5%
Community Improvements	15%

By using the above-stated formula, if the amount dedicated to business retention, expansion, or recruitment exceeds one hundred fifty thousand dollars (\$150,000.00), the excess monies shall first be transferred from the business retention, expansion, or recruitment fund to the property tax relief fund, with any excess monies then transferred to any other area of need, as determined by the Tioga City Commission.

c. The proceeds of one percent (1%) shall be dedicated to: repair and replacement of the City infrastructure, including streets, water distribution and sewer collection and disposal.

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.

8. To fix fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
9. To provide for City officers, agencies, and employees, their selection, terms, powers, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
10. To provide for City courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers. Provided, however, that the municipal judge shall be elected in the manner as may from time to time be provided by state law.
11. To provide for all matters pertaining to City elections, except as to qualifications of electors.
12. To provide for adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

13. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
14. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
15. To engage in any utility or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchise therefore to a private person, firm, or corporation.
16. To provide for zoning, planning, and subdivision of public or private property within the City limits; to provide for such zoning, planning and subdivision of public or private property outside the City limits as may be permitted by state law.
17. To levy, collect franchise and license taxes for revenue purposes.
18. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
19. To fix boundary limits of said City and the annexation and de-annexation of territory adjacent to said City except that such power shall be subject to, and shall conform with, the state law made and provided.
20. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

The enumeration of particular powers by this chapter shall be deemed to be exclusive, and in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers which under this constitution and laws of this state, it would be competent for this charter specifically to mandate.

#### 18.0104 Additional Sales Tax Dedicated for the Tioga Medical Center

1. An Additional 0.50% retail sales tax, use tax and gross receipts tax shall be imposed on the gross receipts taxed pursuant to Chapters 57-39.2 and 57-40 of the North Dakota Century Code on all retail sales within the corporate boundaries of the City of Tioga.
2. All monies created under Subsection 1 shall be dedicated to Tioga Medical Center for the purpose of capital improvements.

#### 18.0105 Referendum and Initiative

1. The voters of the City of Tioga shall have the power to refer an initiate ordinances and resolutions, except that the power of initiative and referendum shall not extend to the

annual appropriations ordinance, nor to those ordinances or resolutions implementing public projects upon which an election has previously been held, nor shall the power of initiative and referendum extend to special improvement projects under which the law provided for protest procedures or to special assessment projects carried out under the provisions of the North Dakota Century Code. Furthermore and notwithstanding anything to the contrary herein, the power of referendum and initiative shall not extend to executed irrespective of whether entry into such contractual obligation or relationship shall occur through ordinance, resolution or other means, nor shall the power of initiative and referendum extend to any ordinance or resolution which arises out of or in conjunction with funding sources or revenues which are derived of monies and/or funds which do not originate and/or are not derived of the City of Tioga's own taxation through real property tax and sales tax.

2. Initiative petitions must be signed by qualified votes of the City equal to at least twenty- five (25%) of the total votes cast in the City at the most recent gubernatorial election.
3. Referendum petitions must be signed by qualified voters of the City equal to at least twenty-five percent (25%) of the total votes cast in the City in the most recent gubernatorial election.
4. Each petition, whether for initiating or referring an ordinance or resolution, shall contain or have attached thereto throughout their circulation the full text of the ordinance or resolution proposed or referred. In addition, each petition shall list the names of the three electors who shall constitute the "Committee for the Petitioners" who shall represent and act for the petitioners. Each petition shall also contain an affidavit signed by the circulator of the petition affirming that the signers thereto are believed by him to be qualified electors of the City of Tioga.
5. Referendum petitions for ordinances must be filed with the City Auditor within thirty (30) days after the second reading of the ordinance referred. Referendum petitions for resolutions must be filed with the City Auditor within thirty (30) days after the passage of the resolution referred.
6. The City Auditor shall pass upon the sufficiency of each petition and shall have twenty days after the petition is filed to certify as to its sufficiency. A petition shall be deemed sufficient if City Auditor has not certified to the contrary in said twenty (20) day period. If the City Auditor finds the petition insufficient, he shall notify the "Committee of the Petitioners" specifying the insufficiencies, and allow seven (7) days for correction or amendment, and, in the case of a petition for initiating an ordinance only, for additional signatures within said seven (7) day period.
7. Upon the filing of a referendum petition, the ordinance or resolution referred, except emergency ordinances or resolutions, as hereafter defined, shall be suspended. Such suspension shall terminate:

- a. If the petitions are deemed to be insufficient and not corrected or amended as above provided; or
- b. The petitions are withdrawn by the “Committee of Petitioners” as provided in section 18.0105(10) of this article; or
- c. The governing body of the City repeals the ordinance or resolution; or
- d. After thirty (30) days have elapsed after the City election on the referral.

An emergency ordinance or resolution is an ordinance or resolution thus designated by the full governing body and passed by a 4/5ths vote of such body.

- 8. Upon the final determination of the sufficiency of the petitions for initiating an ordinance or resolution the governing body shall have sixty (60) days in which to adopt the proposed ordinance or resolution. If the City Commission fails to adopt the proposed ordinance or resolution, without any change in substance from the proposed, within the said sixty (60) day period, the governing body shall submit the same to the votes of the City at an election within one hundred eighty (180) days after the final determination of the sufficiency of the petition. If no regular City election is held within said time period, the governing body shall provide for a special election, otherwise the vote shall be taken at such regular election.

Copies of the proposed ordinance or resolution shall be available at the office of the City Auditor at least ten (10) days prior to the election. The ballot shall fairly state a summary of the proposed ordinances or resolution’s provisions and copies of the ordinance or resolution shall be made available at the polling places.

- 9. Upon the final determination of the sufficiency of the petition of referendum, the City governing body shall cause an election on the referral to be held within ninety (90) days thereafter. The election shall be held at a regular City election if one is scheduled within said time period; in none, than at a special election called by the governing body. The ballot shall fairly state a summary of the ordinance or resolution referred. Copies of the ordinance or resolution shall be available at the polls as well as from the City Auditor for at least ten (10) days prior to the election.
- 10. An initiative or referred referendum petition may be withdrawn at any time prior to the scheduling of the election by the governing body upon the filing of a request for withdrawal signed by all members of the “Committee for the Petitioners.”
- 11. If a majority of electors voting on an initiated ordinance or resolution vote in its favor, it shall be considered adopted upon certification of election results and shall thenceforth stand the same as if adopted by the City’s governing body. If a majority of electors voting on a referred ordinance or resolution vote against it, such ordinance or resolution shall be considered repealed upon certification of the election results.



12. Any ordinance or resolution pursuant to initiative as by this article provided may not be referred except at a regular City election taking place at least two (2) years after the election at which such initiative ordinance or resolution was adopted. The governing body may not repeal or make any material amendment to the initiated ordinance or resolution or to an ordinance or resolution referred and upheld by a vote of the people except by a vote of 4/5ths of the members thereof for ten (10) years after the date of the election adopting such ordinance or resolution; thereafter such an ordinance or resolution may be repealed or amended the same as any other ordinance or resolution.
13. This article shall be self-executing and all of its provisions treated as mandatory. Ordinances or resolutions may be enacted to facilitate its operation but no ordinance or resolution shall be enacted to hamper, or impair the exercise of the right herein reserved to the people.

#### 18.0106 Plenary and Implied Powers of the Governing Body

The governing body shall have plenary power to enact and make all proper and necessary ordinances, resolutions, and orders to carry out and give effect to the express and implied powers granted in this charter to the end that a complete, harmonious, and effective municipal government may be initiated, installed, operated, and maintained in the City, and thereby protect and safeguard the rights, interests, safety, morality, health, and welfare of the City and its inhabitants.

### **ARTICLE 2 - Succession in Governments**

#### 18.0201 Rights of Officers and Employees Preserved

Nothing in this charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the City or of any office, department, or agency existing at the time when this charter shall take effect and not inconsistent with the provisions of this charter, in relation to the personnel, appointment, removal, pension, and retirement rights, civil rights or any other rights or privileges of officers or employees of the City or any office, department, or agency.

#### 18.0202 Continuance of Present Officers

All persons holding executive and administrative office at the time this charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the governing board for their performance of such duties in some other manner or discontinuance of such office.

#### 18.0203 Continuance of Present Offices, Departments, or Agencies

Any office, department, agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other matters within the scope of its regular powers and duties until such office, department, or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department, or agency of the City by the laws or this state shall, if such office, department, or agency be abolished by this charter or under its authority, be hereafter exercised and discharged by this office, department or agency designated by the governing body.

#### 18.0204 Continuance of Appointive Boards, Authorities, and Commissions

All appointive boards, authorities, and commissions heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities, and commissions shall be changed or abolished by the governing body.

#### 18.0205 Continuance of Contracts

All contracts entered into by the City, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect.

#### 18.0206 Pending Actions and Proceedings

The adoption of this charter shall not abate or otherwise affect any action or proceedings civil or criminal pending when it takes full effect, brought by or against the City or any office, department, agency, or officer thereof.

#### 18.0207 Ordinances to Remain in Force

All ordinances, resolutions, and regulations of the City in force at the time this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until the same shall be duly amended or repealed.

#### 18.0208 Inauguration of Government Under this Charter

If a majority of the qualified electors of the City voting on the question, vote to ratify this charter, the provisions of this charter shall go into effect upon the filing of the charter by the governing body with the Secretary of State, the Clerk of the District Court for Williams County, and the office of the City Auditor.

18.0209 Changing the Form of Government

Changes in the form of government may be proposed and effected in the manner provided by the North Dakota Century Code and acts mandatory thereto.

18.0210 Construction

The powers of the City under this charter shall be constructed liberally in favor of the City, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this charter.

## CHAPTER NINETEEN

### SALES AND USE TAX

#### ARTICLE 1 - Sales and Use Tax Pursuant to Home Rule Charter

##### 19.0101 Definitions

All terms as defined in Chapters 57-39.2 and 57-40.2 North Dakota Century Code, including any future amendments, are adopted by reference. All references to the North Dakota Century Code include amendments adopted by the Legislature of the State of North Dakota.

##### 19.0102 Sales Tax Imposed

Except as otherwise provided in this chapter, a tax of two and half percent (2.5%) is imposed upon the gross receipts of retailers from all retail sales within the corporate limits of the City of Tioga, North Dakota. Such sales tax shall parallel the State of North Dakota sales and use tax law. All of the exemptions applicable for state sales and use tax apply to the Tioga sales and use tax including exemptions for tax exempt entities (schools, counties, state agencies, etc.). Such sales tax shall be applied to the following:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. Communications services.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement, or entertainment in response to the use of a coin.
4. Gross receipts from the sale of tangible personal property costing sixteen cents (\$0.16) or more sold through a coin-operated vending machine.
5. Magazines and other periodicals.
6. The leasing or renting of a hotel or motel room or tourist court of accommodations.
7. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales tax under this chapter.
8. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 North Dakota Century Code.

9. Furnishing and installation of, or attachment to real property in this state by a contractor or a subcontractor who is a retailer of drapes, hardware or hanging drapes, or carpet for floor covering.

#### 19.0103 Use Tax Imposed

Except otherwise provided in this chapter, a use tax of two and a half percent (2.5%) is imposed on the storage, use, or consumption in the City of Tioga on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the City.
2. The fair market value of tangible personal property which was not originally purchased for storage, use, or consumption in the City, at the time which it is brought into this City.
3. Alcoholic beverages and tobacco products which are stored, used or consumed in this City, as provided in Section 57-39.2-03.2 North Dakota Century Code.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-03.3 North Dakota Century Code. This tax applies only to bids awarded on or after January 1, 1995.

#### 19.0104 Exemptions

All sales, storage, use or consumption of tangible personal property which are exempt from imposition and consumption of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this article. In addition to the exemptions provided by state law, the Tioga tax ordinance provides exemptions for sales of sporting event tickets, and other school functions.

#### 19.0105 Contract with State Tax Commissioner

The City Auditor for the City of Tioga is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this chapter. The City Auditor has all powers granted the Commissioner and in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, shall perform these duties in place of the Commissioner.

#### 19.0106 Collection and Administration

The Tax Commissioner and City Auditor for the City of Tioga shall have the powers enumerated in the provisions of Chapter 57-39.2 North Dakota Century Code and Chapter 57-40.2 North Dakota Century Code relating to the collection and administration of the state sales and use tax, including all administrative rules of the state sales and use tax, including all

administrative rules adopted by the Tax Commissioner. The Tax Commissioner is authorized to establish rates tables integrating the tax imposed by this chapter with other state, county, and city taxes.

19.0107 Corporate Officer Liability

Officers of any corporation required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this ordinance.

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 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.

19.0110 Option for Continuation

Ninety (90) days prior to the termination of the sales and use tax, the City Commission will assess the need for continuation. If determined that continuation would be beneficial to the City, the appropriate legal steps will be followed to extend sales and use tax collections.

## CHAPTER TWENTY

### TREE ORDINANCE

#### ARTICLE 1 - Tree Ordinance

##### 20.0101 Trees

For the purposes of this ordinance, the following terms, phrases, words and their deviations shall have the meaning given herein:

1. "City" is the City of Tioga, State of North Dakota and shall mean all parks, airport, landfill, and lagoon.
2. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
3. "Streets" means the entire width of every public way or right of way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.
4. "Boulevard" means the space between the sidewalk, or the normal location of the sidewalk or the property lines and the curb line or curb.
5. "Width of Boulevard" means the distance between the sidewalk, or the normal location of the sidewalk or the property lines and the curb line or curb.
6. "Property Lines" means the outer boundaries of any lot or parcel of land.
7. "Property Owner" means the person owning such property as is shown by the Williams County, North Dakota, Register of Deeds.
8. "Public Tree" are all shade and ornamental trees now or hereafter growing on any public right of way or in any public place or park.

##### 20.0102 Administration

1. A Tree Committee is hereby created and shall be composed of one (1) member of the Tioga City Commission appointed by the President of the Board, one (1) member of the Tioga City Park Board to be appointed by that body, and three (3) other members at large to be appointed by the Tioga City Commission.
  - a. For a term of one (1) year: the three (3) at large members.

- b. For a term of two (2) years: the City Commission and Park Board members. Annually thereafter, Group A and Group B shall be reappointed alternately. The duties of the Tree Committee shall be to advise and to aid in the coordination of the tree care programs in the City of Tioga on properties controlled by the City of Tioga. City Forester, county extension agent, district conservationist for SCS, shall all be ex-officio members of the Tree Committee. The members of the Tree Committee shall serve without compensation.
2. City Forester position is hereby created to be filled by appointment by the City Commission, in consultation with Tree Committee.

20.0103 Authority and Jurisdiction of the City Forester

The authority and jurisdiction of the City Forester shall be as follows:

1. The City Forester shall have the authority and jurisdiction, through the Board, to regulate the planting, maintenance, protection, and removal of all trees on streets and other public places to ensure safety or preserve the esthetics of such streets and public places.
2. The City Forester shall have the authority to make known, with the approval of the Tree Committee, the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, protection, and removal of trees as specified on the streets and public areas of the City of Tioga.
3. The City Forester shall have the authority to supervise all work done under any permit, issued in accord with the terms of this ordinance.

20.0104 Nuisance Declared

The following conditions are public nuisances whenever they may be found within the City of Tioga:

1. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus, *Ceratocystis ulmi*, and which harbors any of the elm bark beetle, *Scolytus multistriatus* or *Hylurgopinus rufipes*, or other tree species infected by a disease determined a nuisance by the City Tree Committee.
2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed or chipped or buried in the City landfill during that part of the year, April 1st to October 15th, each year.
3. Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property but overhanging or interfering with the use of any public walk, street or highway, park, or public place within the City of Tioga, which in the opinion of the majority of the Tree Committee, endangers the life, health, safety, or property of the



public, shall be declared a public nuisance.

4. Before any person may plant a tree in any boulevard, public way, he shall obtain prior authorization or permit from the City of Tioga Community Service Director. The Types of trees that can be planted and the location for the trees shall be determined by the City of Tioga in accordance with the standards established by the City Commission following the guidelines of the NDSU, North Dakota State Forest Service recommended trees for North Dakota Communities.
5. Trees shall be planted on the center line between the curb line at the front edge of the sidewalk. Where the sidewalk does not exist, a five (5) foot allowance will be made along the property line to accommodate future sidewalk construction. In no case shall a tree be planted within three (3) feet of the curb line. All trees planted hereafter on the boulevard of the City shall be planted by and at the expense of the owner abutting lands thereon. Such trees not planted or provided for under 20.0103.4 will be removed at owners expense.

#### 20.0105 Abatement

It is unlawful for any person to willfully permit any public nuisance as defined in section 20.0104 to remain on any premises owned or controlled by him within the City. Such nuisance may be abated in the manner prescribed by this ordinance.

#### 20.0106 Inspection and Investigation

The City Forester, under the direction of the Tree Committee, shall inspect all premises and places within the City annually, and at other necessary times, to determine whether any condition described in section 20.0104 exists therein.

The inspection shall determine all hazards as specified in section 20.0104. The owner shall be notified in writing of the existence of the nuisance and give a reasonable time for its removal.

The Tree Committee or City Forester may enter upon private premises at any reasonable time of the purpose of carrying out any of the duties assigned to it under this ordinance.

It shall be in the discretion of the Tree Committee or City Forester to determine if a laboratory diagnosis of a suspect Dutch Elm tree or other diseased tree is necessary. A field evaluation will usually be adequate unless there is some question about the tree being diseased or if the landowner requests that a sample be sent into the lab. If the landowner requests a laboratory diagnosis, the landowner shall pay all costs incurred therein.

If the Tree Committee or City Forester, upon finding a suspect Dutch Elm disease tree, decided to send appropriate specimens of samples to a qualified plant disease diagnostician, no

action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

Within five (5) days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the City Forester of the result by mail.

#### 20.0107 Abatement of Nuisance in the City of Tioga

In abating the nuisance on the public streets, alleys, boulevards, public ways, and private property as defined in sections 20.0104.1 and 20.0104.2, the City of Tioga shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch Elm disease fungus and elm bark beetles. Such abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The Tree Committee shall establish specification for tree removal and disposal methods consistent therewith.

In abating tree hazards on public property as defined in section 20.0104(3), the City Forester shall cause such hazards to be removed and disposed in accordance with tree care specifications which the Tree Committee shall accept, the cost to be assessed as defined in section 20.0113.

#### 20.0108 Abatement of Nuisance on Private Property

Whenever the Tree Committee or City Forester finds with reasonable certainty that Dutch Elm or other disease defined in section 20.0104.1 exists in any tree or wood located on private property outside of any public way in the City, he shall notify the owner or person in control of such property of which the nuisance is found by mail within ten (10) days of receipt of the diagnosis. The Tree Committee shall direct that the diseased tree be removed and effectively treated in any manner approved by the Committee within ten (10) days after receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree is not so removed and/or treated as specified within ten (10) days after actual receipt of posting of the notice, the City of Tioga shall remove and/or treat said tree. The owner or person in charge may be charged with a violation of this ordinance for maintaining a nuisance and that the City may abate the nuisance, the cost to be assessed as defined in section 20.0113.

The nuisance as defined in section 20.0104.3 shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the Tree Committee shall authorize the removal or correction to be done in accordance with recommended procedures, with the property owner to bear the cost.

#### 20.0109 Certification as Special Assessment

The City Auditor shall keep in the City office, a book called "Nuisance Abatement, Special Assessment Book" and shall enter the cost of the abatement of a nuisance as declared

by the City Commission therein as a special assessment against the lot or parcel of land from which the nuisance was abated, with the name of the owner.

At the regular meeting of the City Commission in October of each year, the City Commission shall review all such assessments and hear all complaints against the same and approve the same finally adjusted, and the City Auditor shall certify to the County Auditor a list of the lots and parcels of land specially assessed for such purpose, and the sum shall be collected as other City taxes are collected.

#### 20.0110 Spraying

Whenever the Tree Committee or the City Forester determines that any elm tree or part thereof is infected with Dutch Elm disease fungus and is in a weakened condition, he may cause all elm trees within a one thousand (1,000) foot radius thereof to be treated with an effective elm bark beetle destroying concentrate as recommended by the State entomologist.

Whenever the Tree Committee or City Forester determines that other diseases or insects pose a problem, it may cause all trees to be treated with control materials as recommended by the State entomologist.

In order to facilitate the work and minimize the inconvenience to the public of any treating operation conducted under this ordinance, the Tree Committee or City Forester shall have cause to be given advance public notice of such operations by newspaper, radio, public service announcements, or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be treated at least twenty- four (24) hours in advance.

When appropriate warning notices have been given and posted, the City shall not allow any claim for damages to any vehicle damaged by such treating operations.

When trees on private property are to be treated, the City Forester shall notify the owner of such property and proceed in accordance with the requirements of this ordinance.

#### 20.0111 Transporting Elm Wood Prohibited

It shall be unlawful for any person to transport within the City any elm wood bearing bark between April 1st and October 15th, without having obtained a permit from the City Forester. The Forester shall grant such permits only when the purpose of this ordinance shall be served thereby.

#### 20.0112 Interference Prohibited

It shall be unlawful for any person to prevent, delay or interfere with the Tree Committee or City Forester while it is engaged in the performance of duties imposed by this ordinance.

### 20.0113 Costs

The costs for abating of the public nuisances as defined in section 20.0104 shall be borne as follows:

1. For abatement of the nuisance as defined in section 20.0104.1, and with the nuisance occurring on public trees, the cost will be borne by the City of Tioga, and the cost for Park District land shall be borne by the City of Tioga Park Board. For abatement of the nuisance as defined in section 20.0104.1, and with the nuisance occurring on private land or on any street, alley, boulevard or other public way adjoining the private property, the cost shall be borne by the private owner.
2. For abatement of the nuisance defined in section 20.0104.2, the costs shall be borne as defined in section 20.0113.1.
3. For abatement of the nuisance as defined in section 20.0104.3, and the nuisance occurring on public trees, the cost will be borne by the City of Tioga, and the cost for Park District land shall be borne by the City of Tioga Park Board. When the nuisance occurs on any street, alley, boulevard, or any other public way, the cost shall be borne by the property owner adjoining the street, alley, boulevard, or public way.
4. The cost of spraying for abatement of the nuisance as defined in sections 20.0104.1 and 20.0104.2 shall be borne by the City of Tioga when the nuisance is on public trees and the Park Board shall pay the cost of Park District Land. The cost of spraying on private property shall be borne by the property owner.
5. The cost of tree planting for replacement of diseased trees on public property will be borne by the City of Tioga.
6. All permits relating to this ordinance will be issued at no cost fee.
7. The cost of the diagnostic test stated in section 20.0106 shall be borne by the property owner unless tests are deemed necessary by the City Forester.

### 20.0114 Tree Planting

The Office of the City Forester shall issue permits to plant trees on public parkways, boulevards, berms and alleys in accordance with section 20.0103.2.

### 20.0115 Tree Topping

It shall be unlawful as a normal practice for any person, firm, or City department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

#### 20.0116 Pruning, Corner Clearance

Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the sidewalk and twelve (12) feet above the street.

#### 20.0117 Penalty

In the event any person, firm, or corporation violates any provision of the above article sections they will be guilty upon conviction of an infraction.

Any violation of any provisions of the above article section shall result in the revocation of the violator's license.

## CHAPTER TWENTY-ONE

### COMMUNITY PRESERVATION AND IMPROVEMENT ORDINANCE

#### **ARTICLE 1 - Nuisances**

##### 21.0101 Findings

The City Commission finds and declares that the regulations set forth in this article are necessary in order to eliminate conditions on properties in the City which are detrimental to the health, safety, and welfare of residents thereof, to neighboring occupants or properties and the municipal welfare.

##### 21.0102 Definitions

For the purpose of this article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning that they have in common usage and to give this article its most reasonable application.

1. “Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy.
2. “City Auditor” shall mean the City Auditor or his or her designees.
3. “Owner” shall mean any person owning property, as shown on the last equalized assessment roll for City taxes and also includes the lessee, tenant, or other person having control or possession of the property unless otherwise specified.
4. “Property” shall mean all real property including, but not limited to, front yards, side yards, backyards, driveways, walkways, and sidewalks and shall include any building located on such property.
5. “Junked Vehicles” shall mean any motor vehicle which:
  - a. Is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and which is wrecked, dismantled, partially dismantled, or discarded; or
  - b. Remains inoperative or unlicensed for a continuous period of more than 60 days.

### 21.0103 Unlawful Property Nuisance

It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon, except as may be allowed by this code or by other City regulations:

1. The exterior accumulation of dirt, litter, or debris on the property;
2. Trash, garbage, or refuse cans, bins, boxes, or other such containers stored in yards for an unreasonable period;
3. Packing boxes, lumber, junk, trash, salvage materials, or other debris kept on the property for an unreasonable period;
4. Attractive nuisances dangerous to children including abandoned, broken, or neglected equipment, machinery, refrigerators and freezers, hazardous pools, ponds, and excavations;
5. Broken or discarded furniture, household equipment, and furnishings or shopping carts stored outside of buildings on the property for an unreasonable period;
6. Overgrown vegetation likely to harbor rats, vermin and other nuisances causing detriment to neighboring properties or property values or obstructing necessary view of drivers on public streets or private driveways;
7. Dead, decayed, diseased, or hazardous trees, weeds, or other vegetation, constituting unsightly appearance; dangerous to public safety and welfare, or detrimental to neighboring properties or property values;
8. Graffiti or other words, letters, or drawings which remain on the exterior of any building or fence for an unreasonable period and are visible from a public street;
9. Boats, trailers, vehicles or vehicle parts, or other articles of personal property which are located on the property in violation of this ordinance or are abandoned or left in a state of partial construction or repair for an unreasonable period of time in the designated paved parking area of the front yard, the back yard, side yard, driveway, or sidewalk;
10. Camper shells which are left for an unreasonable period of time in the front yard, the back yard, driveway, side yard, sidewalk, or walkway and are visible from a public street; and
11. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time and such buildings which are unpainted or where the paint on the building exterior is mostly worn off.

12. Garbage, as defined in section 9.0301.2 of the Code of Ordinances;
13. Refuse, as defined in section 9.0301.3 of the Code of Ordinances;
14. Rubbish, as defined in section 9.0301.4 of the Code of Ordinances;
15. Dangerous building as defined in section 9.0401 of the code of Ordinances;
16. Noxious weeds; grass or weeds in excess of eight (8) inches high
17. Open pits or excavations not barricaded or fenced in a manner sufficient to protect persons, particularly small children, whether or not such persons are trespassers (but excluding those persons working about the premises who assume the risk), from falling therein and injuring themselves, or which pits or excavations present a significant danger or collapse or cave-in with a reasonable likelihood of damage to property, whether public or private, or injury persons, resulting therefrom;
18. Barbed wire or electric fences within City limits, except this clause shall not apply to strands of barbed wire if the lowest strand is located more than six and one-half (6½) feet above the adjoining ground level;
19. Mining, manufacturing, food processing or other industrial procedures which (a.) violate applicable state or federal pollution regulations, or (b.) which are generally offensive (under a reasonable man standard) to three (3) or more people working or living within close proximity to source:
20. All species and varieties of elm trees (trees of genus *Ulmus*) infected with the fungus known as Dutch Elm Disease (*certostomella*) as determined by a laboratory analysis by the section of applied botany and plant pathology, North Dakota State University, or by laboratories approved by said agency;
21. All species and varieties of elm trees that are dead or substantially dead and all dead elm wood to which the bark is still attached, which, because of their condition, serve as a breeding place for the European Elm Bark Beetle (*Scolytus multistriatus*), and the native Elm Bark Beetle (*hylurgopinus rufipes*), or any other carrier of said disease, as defined in section 20.0101
22. Privies or septic systems not constructed or operating in accordance with the Code or Ordinances; or
23. Nuisance as defined by regulation promulgated by the District Health Unit pursuant to North Dakota Century Code 23-05-01 and North Dakota Century Code 23-14-06 or other equivalent statutes.
24. Prohibited disposition of dead animals, as more particularly set forth in section 10.0104 of Article 1 of Chapter 10 of the City of Tioga Ordinances;



25. An unreasonable accumulation of dog, cat, or other animal droppings in private or public places;
26. The keeping of an animal(s) which constitutes a nuisance as defined in section 10.0205 of Article 1 of Chapter 10 of the City of Tioga Ordinances;
  - a. Discarded building materials;
    - (1) The keeping or storage of building materials shall not be deemed a nuisance as long as there is ongoing, active construction taking place upon such property in accordance with a City Building Permit and when such building materials will be used in such construction.
    - (2) Likewise, this provision shall not apply to a building supply business which operates entirely on a premises that is zoned or otherwise legally permitted or licensed to engage in such business.

21.0104 Located or Presence of Junked Vehicles Within City Deemed Public Nuisance; Exceptions

The location or presence of any junked vehicle or junked vehicles on any lot, tract, parcel of land, or portion thereof, occupied or unoccupied, improved or unimproved, within the City of Tioga shall be deemed a public nuisance and it shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning, or discarding his or their vehicle or vehicles on the property of another or to suffer, permit, or allow the same to be placed, located, maintained, or exist upon his or their own real property; provided that this section shall not apply to 1. a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; 2. a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer, machine dealer, or vehicle and machine repair garage; or 3. a junkyard, auto wreckers, scrap processor, dealer in used auto parts, and auto and machinery repair businesses, all operations including storage of material to be processed, in process, and already processed in connection with the forgoing when such business activities are conducted within a reasonably opaque fence at least eight (8) feet high which is kept in good repair and condition and which completely surrounds the area or areas in which such processing operations takes place provided, however, that such business activities are conducted in an area zoned or otherwise legally permitted or licensed to engage in such business operations.

21.0105 Declaration of Public Nuisance

Any property found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other

City ordinances and regulations or abating public nuisances in any other manner provided by law or contained within these ordinances.

#### 21.0106 Abatement Procedure; Notification of Nuisance

Whenever the City Auditor determines that any property with the City is being maintained contrary to one or more of the provisions of Section 21.0103 of this article, the City Auditor shall give written notice (Notice to Abate) to the owner of said property stating the section(s) being violated. The notice to abate shall set forth a reasonable time limit, in no event less than seven calendar days, for correcting the violation(s) and may also set forth suggested methods of correcting the same and shall be served upon the owner in accordance with the provisions of subsection b covering service in person or by mail. This subsection shall not apply, however, to a claimed nuisance under 21.0103 p. (relating to weeds or grass in excess of eight (8) inches high).

1. Administrative Hearing to Abate Nuisance. In the event the owner shall fail, neglect, or refuse to comply with the Notice to Abate, the City Commission shall conduct an administrative hearing to ascertain whether the condition complained of in the notice violates this article and therefore constitutes a public nuisance. This subsection shall no apply, however, to a claimed nuisance under 21.0103 p. (relating to weeds or grass in excess of eight (8) inches high).
2. Notice of Hearing. Notice of hearing shall be served upon the owner not less than seven calendar days before the time fixed for hearing. Notice of hearing shall be served in person or by certified mail to the owner's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

#### **NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE**

This is a notice of hearing before the City Commission to ascertain whether certain property situated in the City of Tioga, State of North Dakota, known and designated as (street address), and more particularly described as (assessor's parcel number), constitutes a public nuisance subject to abatement by the methods suggested in this notice. If the condition(s) described in this notice, in whole or in part, is (are) found to constitute a public nuisance as defined in Chapter 21, Article 1 and is (are) not promptly abated by the owner, such nuisance may be abated by municipal authorities, in which case the cost of abatement will be assessed upon such property and such costs, together with interest thereon, will constitute a lien upon such property until paid. In addition, you may be cited for violation for the provisions of the Tioga Municipal Code and subject to a fine or imprisonment.

The nuisance conditions consist of the following:

The method(s) of abatement are:

All persons having an interest in the matters covered by this notice may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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City Auditor

Time and Date of Hearing:

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Location of Hearing:

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3. Administrative Hearing by City Commission. At the time stated in the notice, the City Commission shall hear and consider all relevant evidence, objections, or protests relative to such alleged public nuisance and to the proposed method(s) of abatement which may include cleanup, rehabilitation, repair, removal, demolition of such property of such other method(s) which the City Auditor may deem appropriate. The hearing may be continued from time to time.

If the City Commission finds that such public nuisance does exist and that there is sufficient cause to abate the nuisance, the City Commission shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. The order shall include reference to the right to appeal set forth in Section 21.0107 of this article. A copy of the findings and order shall be served on all owners of the subject property in accordance with the provisions of subsection b. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property.

4. Procedure; No Appeal. In the absence of any appeal, the owner shall abate the nuisance on the property in the manner and means specifically set forth in the findings and order. In the event the owner fails to abate the nuisance as ordered, the City Commission shall cause the nuisance to be abated by City employees or private contract. The costs shall be billed to the owner, as specified in Section 21.0108 of this article. The City Commission may authorize City employees or the City's contractors to enter upon the property for such purposes.

### 21.0107 Appeal Procedure

The owner may appeal the City Commission's findings and order to the District Court of Williams County, North Dakota within ten days of the date of service, in accordance with the provisions of 21.0106, of City Commission's decision. If the tenth day falls on a weekend or legal holiday observed by the City, then the appeal may be filed on the next workday. The appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;
3. A statement of appellant's legal interest in the subject property;
4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
5. The date and signatures of all appellants; and
6. The verification of at least one appellant as to the truth of the matters stated in the appeal.

### 21.0108 Abatement by City

If the nuisance is not abated as ordered within the abatement period, the City Auditor shall cause the same to be abated by such City employee or private contractors the City Auditor may authorize to enter upon the property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable thirty days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation of notices, specifications, and contracts and in inspecting the work; and the costs of printing and mailing the notices required hereunder. This subsection shall not apply, however, to a claimed nuisance under 21.0103 p. (relating to weeds or grass in excess of eight (8) inches high).

In the event of a claimed nuisance under section 21.0103 p. (relating to weeds or grass in excess of eight (8) inches high), the city is authorized with the proper notice to enter upon the premises and to take whatever steps as might reasonably be required to abate the nuisance. Actions taken by the City, of reasonable by nature and undertaken in good faith, shall not constitute a trespass or conversion.

21.0109 Lien Procedure

1. Record of Cost of Abatement. The City Auditor shall keep an account of the cost of abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Commission showing the cost of abatement, including any salvage value. Before the abatement cost report is submitted to the City Commission, a copy of the same shall be posted for at least five days upon the subject property, together with a notice of the date when said report shall be heard by the City Commission for confirmation. A copy of said report and notice shall be served upon the owners of said property in accordance with the provisions of Section 21.0106.2 of this article at least five calendar days prior to submitting the same to the City Commission. Proof of said posting and service shall be made by affidavit filed with the City Auditor.
  
2. Assessment Lien. If unpaid by the owner within thirty (30) days after service as set forth in 21.0109.1, the total cost for abating such nuisance, as so confirmed by the City Commission, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the County Register of Deeds of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the City Commission's decision shall be filed with the Williams County Auditor on or before October 1<sup>st</sup> of each year, whereupon it shall be the duty of said Auditor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to such special assessment.

3. Foreclosure. In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.
  
4. Notice of Lien. The Notice of Lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN  
(Claim of City of Tioga)

Pursuant to the authority vested by the provisions of Chapter \_\_\_\_\_, Article \_\_\_\_\_ of the Tioga Municipal Code, the City Auditor of the City of Tioga did on or about

the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, cause the property or condition hereinafter described to be rehabilitated or the building or structure on the property or condition hereinafter described to be removed in order to abate a public nuisance on said real property; and the City Commission of the City of Tioga did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, assess the cost of such abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Tioga does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of said assessment, to-wit: The sum of \$\_\_\_\_\_ shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinafter mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Tioga, County of Williams, State of North Dakota, and particularly described as follows:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Auditor, City of Tioga

5. Remedies. The City may use any other remedies permitted by law in recovery of its costs of abating such nuisance including small claims court, and district court actions.

21.0110 Removal with Permission of Owner or Occupant

If within ten days after receipt of notice from the City Auditor, or his duly authorized agent, to abate the nuisance, as herein provided, the owner or occupant of the premises shall give his written permission to the City Auditor, or his duly authorized agent for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of Section 21.0106.

21.0111 Disposal of Junked Vehicles

If such public nuisance is not abated by said owner or occupant after notice is given in accordance with this ordinance, official action shall be taken by the City of Tioga to abate such nuisance. Junked vehicles or parts thereof may be disposed of by removal to a scrap yard, demolishers, or any suitable site for processing as scrap or salvage.

21.0112 Application

Nothing in this article shall affect ordinances that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

21.0113 Alternative Actions Available; Violation an Infraction; Continuing Violations a Misdemeanor

Nothing in this article shall be deemed to prevent the City Commission from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this article constitutes an infraction, for which a fee of up to Five Hundred Dollars may be assessed per each day violation continues. Violations which constitute infractions which occur for more than three days, shall constitute an offense with a penalty or fine of up to One Thousand Dollars and/or jail sentence of up to thirty days for each violation exceeding the three infractions.

The provision of this article shall not constitute the exclusive remedy of the City to abate nuisances, nor shall this Chapter be deemed to exclude, restate, rescind, or amend other nuisances as may be defined in other Chapters herein, nor to exclude, restate, rescind, or amend other procedures or penalties that arise under other Chapters of this municipal code. The City reserves the right to proceed in any court or competent jurisdiction to obtain an injunction requiring abatement of the nuisance and such remedy may be asserted without regard to the notice requirements of this article and the provision for administrative relief set forth herein. Moreover, the harboring or maintenance of a nuisance shall constitute an offense punishable as a B misdemeanor for each day that such nuisance is harbored or maintained shall constitute a separate offense.

It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City. Any private sewer system emitting such odor is hereby declared to be a nuisance and a menace to the public health of the City.

## CHAPTER 22

### INTERNATIONAL PROPERTY MAINTENANCE CODE ORDINANCE

#### ARTICLE 1

##### 22.0101 Adoption of International Property Maintenance Code (“IPMC”)

The construction, enlargement, alteration, repair, relocation, removal, demolition, conversion, occupancy, uses, equipment, area, and maintenance of buildings or structures in the City of Tioga shall meet with the provisions of the rules and regulations of the International Property Maintenance Code, copies of which code are on file with the City Auditor and are hereby made a part of this Chapter by reference with the exception of the sections hereinafter set forth affecting local conditions in the City, which are amended, deleted, or added to, for use and application within the City, and the hereby adopts said code as so modified.

##### 22.0102 Penalty

The violation of any of the provisions of this chapter shall be punishable as provided in Chapter Two (2) of these revised ordinances.



## CHAPTER 23

### INTERNATIONAL FIRE CODE ORDINANCE

#### **ARTICLE 1**

##### 23.0101 Adoption of International Fire Code (“IFC”)

The construction, enlargement, alteration, repair, relocation, removal, demolition, conversion, occupancy, uses, equipment, area and maintenance of buildings or structures in the City of Tioga shall meet with the provisions of the rules and regulations of the International Fire Code, copies of which code are on file with the City Auditor and are hereby made a part of this Chapter by reference with the exception of the sections here and after set forth affecting local conditions in the City, which are amended, deleted or added to, for use and application within the City, and the hereby adopts said code as so modified.

##### 23.0102 Penalty

The violation of any of the provisions of this chapter shall be punishable as provided in Chapter Two (2) of these revised ordinances.

## CHAPTER 24

### RECREATIONAL FIRE ORDINANCE

#### ARTICLE 1

##### 24.0101 Short Title

This Ordinance shall be known as the “Recreational Fire Ordinance”.

##### 24.0102 Prohibition Against Outdoor Fires and Burning Within the City of Tioga

No person(s) shall ignite, keep, maintain, feed/fuel or enjoy any fire(s) within the City of Tioga, except a recreational fire(s), as defined and in compliance with the provisions set forth in this Ordinance.

##### 24.0103 Definitions of Recreational Fire.

A “Recreational fire”, as the term is used in this Ordinance, is defined as an outdoor fire, where the fuel or material being burned is not in a contained incinerator, outdoor fireplace, barbeque grill, or pit and is used for pleasure, religious, ceremonial, cooking, warmth, or similar recreational purposes.

##### 24.0104 Authorization for and Maximum Dimensions of Permissible Recreational Fires

Recreational fires are permissible within the City of Tioga, provided, however, that such fires may not exceed a maximum fuel area of three (3) feet in diameter and may not exceed two (2) feet in height. A fire that exceeds these dimensions, and/or fails to meet the requirements set forth under the “Additional Limitations, Requirements and Restrictions” set forth below, does not qualify as a permissible recreational fire under this Ordinance and any person(s) who ignites, keeps, maintains, feeds/fuels or enjoys fire exceeding the limitations and dimensions set forth in this Ordinance may be cited for the same and assessed the penalty described herein.

##### 24.0105 Additional Limitations, Requirements and Restrictions for Permissible Recreational Fires

In addition to the definition and maximum dimensions set forth above, recreational fires must meet the following requirements:

1. A recreational fire shall not be located within twenty-five (25) feet of structures or conditions such as dry grass, leaves or combustible materials that will cause a fire to spread within twenty-five (25) feet of any structure.

2. Recreational fires are not allowed during a declared fire ban, whether such ban has issued by a state, county or municipal government or governmental agency, or when the rangeland fire danger index is in the extreme category.
3. Only untreated wood with a recommended diameter of at least one (1) inch may be burned. No brush, yard waste, or rubbish is to be burned in a recreational fire.
4. Recreational fires must be located on private property and have approval from all involved parties. Recreational fires are not allowed in easements or right-of-ways.
5. A functioning cellular or portable phone or other means of reporting an emergency must be available for use during all times at which a recreational fire is ignited, maintained, smoldering, or otherwise active.
6. Recreational fires must be attended and supervised until fully extinguished, and a garden hose, dirt, water barrel, fire extinguisher, or other means of controlling and extinguishing the fire shall be available for immediate utilization.
7. Recommended hours for conducting recreational fires are between 7:00 a.m. to 12:00 a.m. (midnight). The ignition and keeping of recreational fires outside of these recommended hours may result in a violation of this Ordinance.
8. Any fire or police officer or other representative so authorized by the City of Tioga or other state or county government entity or agency may withdraw permission to conduct a recreational fire due to climatic conditions such as extreme dryness, actual or prospective nuisance related issues that arise directly or indirectly as a result of such fire, or violations of these provisions.
9. Fire in approved and UL listed containers equipped with screens and spark arrestors, must be located a minimum of fifteen (15) feet from structures and combustible materials with all other requirements provided herein still applying to these types of fires.
10. Cooking devices utilizing charcoal or LP (propane/liquid propane) must be located a minimum of ten (10) feet from combustible construction with the exception of 1 and 2 family dwellings and this use may be restricted.

24.0106 Advance Permitting Required for Fires Not Compliant with Requirements, Restrictions, Limitations, and/or Maximum Dimensions Specified for Recreational Fires

Any person(s) wishing to ignite or maintain any fire(s) that fails to comply with all or part of the requirements, restrictions, limitations, and/or maximum dimensions specified for recreational fires as set forth in this Ordinance, shall request a permit for such fire, which may, at the sole discretion and judgment of the Tioga Fire Department, be granted or denied, for fires of larger size, other uses, or which otherwise fail to meet the requirements of this section. No appeal process is available for a denial of such a permit request. Any person(s) who fails to obtain such a permit in advance of igniting or maintaining a noncompliant fire as described

and/or defined in this Ordinance be cited and penalized as provided in this Ordinance.

24.0107 Effect of Ordinance

Except as expressly stated herein, no other Ordinance(s) of the City of Tioga shall be deemed to have been amended, modified, or rendered invalid by this Ordinance.

24 .0108 Penalty

The violation of any of the provisions of this chapter shall be punishable as provided in Chapter Two (2) of the Revised Ordinances of the City of Tioga.

24.0901 Effective Date

This Ordinance shall be in full force and effect from and after its final passage and approval and publication of its heading and penalty in the official City newspaper.

## CHAPTER 25

### GROSS PRODUCTION TAX REVENUE BONDS

#### ARTICLE 1

##### 25.0101 Gross Production Tax Revenue Bonds

The City of Tioga is hereby authorized, by resolution or resolutions of its Board of City Commissioners, to issue revenue bonds of the City in an amount not exceeding \$10,000,000.00 (Ten Million and no/100<sup>th</sup> Dollars) for the purpose of financing an expansion of the Tioga Community Center, a recreational and wellness facility within the City. The resolution authorizing the issuance of the bonds may provide that the principal and interest on the bonds shall be payable from the Gross Production Tax allocated to the City pursuant to Section 57-51-15 of the North Dakota Century Code.

**CERTIFICATE**

STATE OF NORTH DAKOTA     )  
   )  
COUNTY OF WILLIAMS         )     ss.

The undersigned City Auditor of the City of Tioga, hereby certifies that he or she is the City Auditor of the City of Tioga, and as such is the custodian of the Ordinance Book of the City;

He or she further certifies that the foregoing is a true and accurate copy of the revised ordinances of 2024, duly enacted by the governing body of the City of Tioga, the first reading which was had on \_\_\_\_\_ and the second reading and final passage had at the regular meeting held on \_\_\_\_\_ and passed on a roll call vote as shown in the records kept of said meeting.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Auditor  
City of Tioga, North Dakota