



City Hall, First Floor Conference Room
401 S. Johnstone Avenue
Bartlesville, OK 74003

**MINUTES OF THE
SPECIAL "WORKSHOP" MEETING
OF THE BARTLESVILLE CITY COUNCIL**

**Monday, September 20, 2021
7:00 p.m.**

**Mayor Dale Copeland
918-338-4282**

MINUTES

(The Notice of Meeting and the Agenda was posted September 10, 2021 at 5:00 p.m.)

Present were Mayor Dale Copeland, Vice Mayor Jim Curd, Jr., Councilmembers Trevor Dorsey, Paul Stuart and Billie Roane.

City staff present were Mike Bailey, City Manager; Jess Kane, City Attorney; Jason Muninger, City Clerk/CFO; Kelli Williams, Chief Communications Officer; Lisa Beeman, Director of Community Development; Police Captain Jay Hastings, Security; and Elaine Banes, Executive Assistant.

- 1. The business meeting of the Bartlesville City Council was called to order at 7:00 p.m. by Mayor Copeland.**
- 2. Roll call was held and a quorum established.**
- 3. Citizens to be heard.**

There were no citizens to be heard.

- 4. Discuss use tax law, sources of use tax, purposes of use tax, and other information related to municipal use taxes. Presented by Mike Bailey, City Manager and Jason Muninger, CFO/City Clerk.**

Mr. Bailey opened the discussion stating Use Tax has been a topic of discussion for several years but was not previously adopted in order to foster a business-friendly tax policy in the interest of economic development since Use Tax was considered a business type tax. Mr. Muninger added that traditional sales tax is still the largest source of revenue for Bartlesville, but much of the growth in retail sales is shifting to online sales. Without a Use Tax, continual increases in sales tax to cover the lack of growth would be necessary. This is an unsustainable model that requires diversification to avoid long-term disruption to essential services.

Mr. Muninger presented a PowerPoint beginning with definitions. The definition of Use tax is tax levied on tangible personal property purchased and brought in this state for storage, use, or consumption. Very similar to sales tax. Tangible Personal Property is defined as personal property that can be seen, weighed, measured, felt, or touched, or that is any other manner perceptible to the senses. For the purposes of the Oklahoma Sales tax Code, tangible personal property includes: electricity, water, gas, steam, and prewritten computer

software. It does not include rights of actions having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, or CDs. A brief discussion was held as to software and how it would fall under these definitions.

Mr. Muninger continued reporting that prior to the law change, Use Tax was very similar to Sales Tax, except that sellers with no presence in the State had no obligation to collect the tax. This placed the responsibility for payment of the tax due on the consumer. Whereas, sales tax is collected by the seller; who is acting as an agent of the State. With the challenge of the Quill decision being put to the test in the South Dakota v. Wayfair case, the U.S. Supreme Court overturned the prior Supreme Court precedent. The Court noted that the Quill ruling discouraged interstate commerce by creating incentive to avoid economic activities in many states. Beginning July 1, 2018, Oklahoma's Market Place Facilitator Law went into effect. Marketplace facilitators, remote sellers, and referrers with at least \$10,000 in sales in the State must collect and remit Use Tax. This was the end of traditional Use Tax, and now a majority of Use Tax growth is related to sales traditionally considered Sales Tax.

Mr. Bailey reported on Sales vs. Use Tax Growth Comparison. Use Tax growth is outpacing Sales Tax growth by a large margin showing a 12% growth across the state in the last 24 months, while sales tax has only grown by 2% during the same period. It is believed that the pandemic accelerated the growth in online shopping which harms the traditional Sales Tax, and it is expected that online shopping will likely be a permanent habit for some. Using a graph showing Sales vs. Use Tax Trends, Mr. Bailey reported that growth in online sales has eroded traditional Sales Tax type transactions.

Continuing, Mr. Bailey reported that Use Tax performance in peer cities of Owasso, Ponca City, Muskogee and Enid shows a growth on average of 22% per month. Based on this, Use Tax estimates for Bartlesville would generate a low estimate of \$2,000,000 a year and a high estimate of \$3,700,000 per year. Based on the 219 estimated census, Bartlesville is the 12th largest city in the State; Bartlesville is the only city in the top 100 by population without a Use Tax; the next largest city with a Use Tax is Bethel Acres with 3,147 in population; only two cities (including Bartlesville) over 1,500 population without a Use Tax; 98.5% of the cities in the top 200 by population have a Use Tax, and 97% of the cities in the top 300 by population have a Use Tax.

Mr. Bailey, in considering whether Bartlesville should adopt a Use Tax, stated that Sales Tax growth is now being eroded by the transition to online sales. This growth can only be captured via a Use Tax, and due in part to Use Tax substitution, Sales Tax growth has not been keeping pace with inflation. City staff has held conversations with several local employers who have indicated that they do not oppose the creation of a Use Tax - with a delayed implementation date. Additionally, Use Tax closes the loop and requires all parties to pay the same taxes regardless of locations. It is about fairness.

In conclusion, Mr. Bailey set out the steps required to adopt a Use Tax should the City Council chose to do so. The City Council would need to adopt a Use Tax Ordinance with a recommended effective date of January 1, 2023 to allow for adequate planning by local businesses and citizens. Staff is also recommending a mid-fiscal year start date so the amount of Use Tax can be determined before it is budgeted. A new Use Tax can only start on the first day of a quarter. Additionally, Staff is recommendation adopting before the expiration of the ARPA funds which is December 31, 2024.

Discussion ensued covering how Use Tax is already being paid on a State level; how it levels the field for all businesses; appreciation to the larger businesses for agreeing to the importance of adopting a Use Tax; how after many discussions with local business leaders, there were no adverse reactions; timing of the adoption of the ordinance, later rather than sooner; items that may or may not be exempt from use tax; how the adoption of a Use Tax can be seen as a re-balance of sorts; how beneficial Use Tax has been to other communities, and that Staff provided a good presentation. Mr. Bailey stated that the information provided can be found on the City's website for citizens who are interested. He concluded that based on the discussion at this meeting, he will move forward with the City Attorney to prepare an ordinance for consideration and possible adoption at the October 4, 2021 City Council meeting.

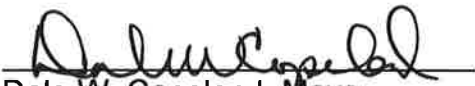
5. City Manager and Staff Reports.

Mr. Bailey announced that Hillcrest Drive is now open. There is additional work to be completed that will not affect traffic flow. He added that the contractor has done a great job and will complete the project ahead of schedule. PSO is working with the City to install lighting on this corridor as soon as electrical drops can be designed and installed. Vice Mayor Curd stated that would like to see the new section of Pathfinder Parkway along there also be lighted.

6. City Council Comments and Inquiries.

Discussion covered an update on the seating renovations at the Community Center; how the grass at Price Field and Tower Center at Unity Square was improving; an update on the recycling company, Replenish; the new businesses that will soon be opening; and additional housing being developed.

7. There being no further business to address, Mayor Copeland adjourned the meeting at 8:05 p.m.


Dale W. Copeland, Mayor


Jason Muninger, CFO/City Clerk

Kay Spivey, Deputy

