

CHAPTER 8

FINANCE AND BUSINESS

Article 1. Sales Tax

Sec. 8-1 Citation and Codification. *[Ord. No. 305-A; Amended 5/2001, Ord. No. 01-1015; Amended 11/2006, Ord. No. 06-1041]*

This article shall be known and may be cited as the Wilburton Sales Tax Ordinance.

Sec. 8-2. Definitions.

The definition of words, terms and phrases contained in the Oklahoma Sales Tax Code, Section 1302, Title 68 O.S. are hereby adopted by reference and made a part of this article.

Sec. 8-3. "Tax Collector" Defined.

The term "tax collector" as used herein means the department of the city government or the official agency of the state duly designated according to law or contract authorized by law to administer the collection of the tax herein levied.

Sec. 8-4. Classification of taxpayers.

For the purpose of this article, the classification of taxpayers hereunder shall be as prescribed by state law for purposes of the Oklahoma State Tax Code.

Sec. 8-5. Subsisting State Permits.

All valid and subsisting permits to do business issued by the Oklahoma Tax Commission pursuant to the Oklahoma Sales Tax Code are, for the purposes of this article, hereby ratified, confirmed and adopted in lieu of any requirements for an additional city permit for the same purpose.

Sec. 8-6. Effective Date.

This article became effective on 7-20-1967 and 10-1-1972, as prescribed by Title 11 O.S. Section 16-101., as amended. This sales tax was approved by a vote of the registered voters of the city.

Sec. 8-7. Purpose of Revenues.

It is hereby declared to be the purpose of this article to provide revenues for general government, expense of collection of tax, airport, Library, Civil Defense, Cemetery, Sanitation, Fire Department, Police Department, Streets, Water & Sewer Improvements .

SALES TAX AGREEMENT

THIS SALES TAX AGREEMENT, dated as of the 21st day of October, 1994, by and between The Wilburton Public Works Authority (the "Authority") and the City of Wilburton, Oklahoma (the "City").

WHEREAS, the Authority has been created by a Declaration of Trust dated as of August 3, 1961, designating the members of the governing body of the City as trustees of the Authority for the use and benefit of 180.4, inclusive, as amended and supplemented, the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City has adopted Ordinances levying and assessing a two cent sales tax which Ordinances were approved by a majority of the qualified voters of the City voting at election held for such purpose; and

WHEREAS, such ordinances together shall be referred to herein as the "Sales Tax Ordinance"; and

WHEREAS, the revenues derived by the City from the two cents of sales tax levied pursuant to the Sales Tax Ordinance shall be referred to herein as the "Sales Tax Revenues";

WHEREAS, the Authority has determined to issue its Series 1995 Promissory Note to the Oklahoma Water Resources Board in the aggregate principal amount of \$600,000.00 (the "Note") for the purpose of renovating and expanding the water system certain water improvements for the City of Wilburton; and

WHEREAS, The Authority has issued its Promissory Note, dated November 28, 1995, to Oklahoma Water Resources Board to be secured by a Mortgage with Power of Sale and Security Agreement (the "Mortgage and Security Agreement"), dated

November 28, 1995, which pledges and assigns the revenues and receipts of the operation of the water, sewer and garbage systems of the City of Wilburton for the repayment of the Note; and WHEREAS, the City Council of the City of Wilburton has earmarked, on a year to year basis, the Sales Tax Revenue for use in paying operation and maintenance expenses of the Sanitation Sewer System and debt service on the Note, which portion representing debt service on the note shall be limited to one cent (\$.01) of such Sales Tax Revenues; and

WHEREAS, in order to secure the payment of the Note, and define how the Sales Tax Revenue levied and collected pursuant to the Sales Tax Ordinance is to be received by the city and paid over to the Authority, it is necessary that this Sales Tax Agreement be entered into; and

WHEREAS, all things to be done to make this Sales Tax Agreement a valid and binding agreement by and between the Authority and the City have been done, happened and performed.

NOW, THEREFORE, IN CONSIDERATION of the mutual Covenants expressed herein and the issuance of the Note by the Authority by and on behalf of the City and other good and valuable consideration, receipt of which is hereby acknowledged by and between the parties hereto, the Authority and the City agree as follows:

Section 1. The Authority shall issue its \$600,000.00 Series 1995 Promissory Note to the Oklahoma Water Resources Board and use the net proceeds thereof for the purposes set out above and as more fully set out in the Note.

Section 2. The monies received from the State Sales Tax Commission by the City each month by virtue of the Sales Tax Ordinance shall be segregated from all other receipts and shall be deposited in a special account established in the General Fund of the City. The City agrees to appropriate each year the Sales Tax Revenue, all as levied by the Sales Tax Ordinance, to be paid over as received for immediate deposit in the Latimer State Bank as designated by the Authority, in an account to be established entitled "The Wilburton Public Works Authority Series 1995 Promissory Note to the Oklahoma Water Resources Board - Sales Tax Revenue Fund" (the "Sales Tax Revenue Fund"). The parties to this Sales Tax Agreement hereby acknowledge, and the Authority does hereby pledge the proceeds of a one cent (\$.01) portion of the Sales Tax Revenue, for the purpose of paying debt service on the Note which purposes it is hereby acknowledged are consistent with the authorized uses of said Sales Tax Revenue as authorized by the City Council..

On or before the 10th day of the Month and in the event that no default exists under the Mortgage and Security Agreement, the balance in the Sales Tax Revenue Fund shall be transferred back to the General Fund of the City and shall be available for any lawful purpose.

Section 3. In consideration of the issuance of the Note by the Authority on behalf of the City, and in consideration of the purchase of said Note by the Oklahoma Water Resources Board, the Authority has pledged the above referenced Sales Tax Revenue to the repayment of the Note and does hereby create a security interest in said revenues in favor of the Trustee for the benefit of the holder of the Note.

Section 4. Monies contained in the Sales Tax Revenue Fund shall be continuously invested and reinvested, as directed by the Authority.

Section 5. The Authority and the City agree to continually ensure that the Sales Tax Revenue is utilized for purposes as authorized by the City Council of City and in the manner set out in Section 2 hereof.

Section 6. It is hereby acknowledged that under Oklahoma law the City may not become obligated beyond its fiscal year (July 1 through June 30) and therefore, the covenants made here by the City shall be on a year-to-year basis and renewed for additional one-year periods on July 1 of each year until such time as the principal of and interest on the Note has been paid; provided that the payment of the sales tax monies as set out herein is subject to annual appropriation by the City, and provided further that since the levy, collection and use of the Sales Tax Revenue as approved by a majority of the voters voting at an election held for such purpose, the voters may have the power to revoke the same. The Note issued by the Authority shall in no way be or become an obligation of the City.

IN WITNESS WHEREOF, The Wilburton Public Works Authority has caused this Sales Tax Agreement to be signed by its Chairman, attested by its Secretary, and has caused the seal of the Authority to be impressed hereon and the City of Wilburton, Oklahoma acting by and through its City Council have caused this Sales Tax Agreement to be signed by its Mayor, attested by its City Clerk, and has caused the seal of the City to be impressed hereon, all as of the date above set out.

Section 8-7.a. Capital Improvement Funds

One fourth (25%) of one cent (\$.01) of the City Sales Tax shall be transferred from the General Fund each month and deposited into the Capital Improvement Fund for the purposes of Capital Improvements for the City of Wilburton and the Wilburton Public Works Authority, and/or any other matter the City Council and Mayor deems necessary.

Section 8-7.b. Water and Sanitary Sewer System *[Adopted 5/2001, Ord. No. 01-1015; Amended 11/2006, Ord. No. 06-1041]*

The purpose of the revenues provided by the one-half (½%) excise tax levied by this Ordinance is to provide revenues for the purpose of financing the extension, enlargement and improvement of the water and sanitary sewer systems of the City of Wilburton, Oklahoma, and by paying the principal of and interest on indebtedness incurred on behalf of said City for said purpose.

Sec. 8-8. Tax Rate; Sales Subject to Tax. *[Amended 5/2001; Ord. No. 01-1015; 11/2006, Ord. No. 06-1041]*

There is hereby levied an excise tax of two and one-half percent (2-1/2%) upon the gross proceeds or gross receipts received from all sales taxable under the Sales Tax Law of Oklahoma, including but not exclusive of the following:

1. Tangible personal property.
2. Natural or artificial gas, electricity, ice, steam or any other utility or public service except water.
3. Transportation for hire or person by common carriers, including railroads, both steam and electric, motor transportation companies, taxicab companies, Pullman car companies, airlines and all other means of transportation for hire.
4. Service by telephone and telegraph companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with transmission of any message.
5. Printing or printed matter of all types, kinds, and characters and the service of printing or overprinting.
6. Service of furnishing rooms by hotels, apartment hotels, public rooming houses and public lodging houses and tourist camps.
7. Service of furnishing storage or parking privileges by auto hotels and parking lots.
8. Food, confections and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere.
9. Advertising of all kinds, types and character including any and all devices used for advertising purposes and the servicing of any advertising devices, except as provided in Subsection 15 or Section 9 hereof.

10. Dues or fees to clubs, and the sale of tickets or admission to places of amusement, to athletic, entertainment, recreational events, or dues or fees for the privilege of having access to or the use of amusement entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, dues or fees are hereby declared to have a value equivalent to the sale price of tickets, passes, admissions, fees or dues of like kind or character.
11. For the purpose of this article, sales of service and tangible personal property made for the purpose of developing real estate even though such real estate is intended for resale as real property, are hereby declared to be sales to consumers or users. Sales of service and tangible personal property, including materials, supplies and equipment made to contractors who use same in the performance of any contract, are hereby declared to be sales to consumers or users and not sales for resale. Sales of tangible personal property to persons who are primarily engaged in selling their services shall be deemed sales to consumers or users and, therefore, taxable. Sales of tangible personal property to peddlers, solicitors, and other salesmen who do to have established places of business shall be therefore taxable.

Sec. 8-9. Exemptions.

There is hereby specifically exempted from the tax levied by this ordinance the gross receipts or gross proceeds exempted from the Sales Tax Law of Oklahoma inclusive but not exclusive of, and derived from the:

1. Sale of non-intoxicating beverages taxed as provided by state law.
2. Sales of cigarettes and such tobacco products as are taxed by state law.
3. Sale of raw products from the farm, orchard, or garden, where such sale is made by the producer of such raw products directly to the consumer or user; gross receipts or gross proceeds derived from the sale of livestock, poultry products, and dairy products by the producers; exemptions granted by its subdivision shall not apply when such articles are sold, even though by the producer thereof, at or from an "established business place" not on a farm; neither shall this exception apply unless said articles are produced or grown within State of Oklahoma. The provisions of this subsection are intended to exempt the sale by livestock producers of livestock sold at special livestock sales. Provisions of this subsection are intended to exempt sale of dairy products when sold by a dairyman or farmer who owns all of the cows from which dairy products he sells are produced. The provisions of this subsection shall not be construed to exempt sales of dairy products by any other business. The provisions of this subsection shall not be construed to exempt sales by florists, nurserymen and chicken hatcheries.

4. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of an individual member or members thereof to exclusion of other members.
5. Sale of tangible personal property or services to or by churches, except where such organizations may be engaged in business for profit or savings, competing with other person engaged in the same or similar business.
6. Gross receipts and gross proceeds deriving from the transportation of school children to and from schools in motor and other vehicles.
7. Transportation of persons where the fare of each person does not exceed fifteen cents (\$.15), or local transportation of persons within the corporate limits of cities and towns except by taxicabs.
8. Sale of food in public, common, high school or college cafeterias and lunchrooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit.
9. Carrier sales made directly to consumers or users of newspapers or any other periodicals where any individual transaction does not exceed fifteen cents (\$.15).
10. Sales to the United State Government, State of Oklahoma, or any of its political subdivisions.
11. Sales of gasoline or motor fuel on which the Motor Fuel Tax, Gasoline Excise Tax or special Fuels Tax has been paid to the State of Oklahoma.
12. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax under the provisions of the laws of the State of Oklahoma. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas.
13. Sale of motor vehicles, attached optional equipment and accessories, on which the Oklahoma Motor Vehicle Excise Tax has been paid.
14. Sales by county, district and state fairs.
15. Sale of space in newspapers and periodicals and billboard advertising service, and sale of time for radio and television broadcasts of advertising.

16. Sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued by the Oklahoma Tax Commission as provided by law. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have sales tax permits or established places of business.
17. Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling or preparing for the sale shall be classified as having been sold for the purpose of resale or the subject matter of resale only in the event (a) such goods, wares, merchandise or property are purchased for the purpose of being manufactured into a finished article and if it becomes a recognizable, integral part of the manufactured, compounded, processed, assembled or prepared products or, (b) if it is consumed in the process of manufacturing, compounding, processing, assembling or preparing products for resale.
18. Sale of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in Oklahoma, and machinery and equipment purchased and used by persons established in Oklahoma, provided, this exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in the process of manufacturing property subject to taxation hereunder. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such.
19. Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state.
20. Sale of an interest in tangible personal property to a partner or other person who after such sale owns a joint interest in such tangible personal property where the Oklahoma Sales or Use Tax has previously been paid on such tangible personal property.
21. Sales of containers shall be exempt when sold to a person regularly engaged in the business of reselling empty or filled containers, or when he purchases such containers for the purpose of packaging raw products of farm, garden or orchard for resale to the consumer or processor, provided, this exemption shall not apply to the sale of containers used more than once and which are ordinarily known as returnable containers unless a tax under this title is collected and paid to the tax

collector with respect to each and every transfer by such person of title or possession of such returnable container if made to any consumer or user within this state; nor shall it apply to the sale of labels or other materials delivered along with items sold but which are necessary or absolutely essential to the sale of the sold merchandise.

22. Exemptions of poultry and livestock feed and farm machinery as prescribed by the State Sales Tax Code shall be equally applicable as exemptions from the tax herein levied.

23. Sales of agricultural fertilizer to persons regularly engaged for profit in the business of farming and/or ranching which are exempt from the state sales taxes under provision of Title 68 O.S. , Section 1305 b (a) shall likewise be levied.

Sec. 8-10. Other Exempt Transfers.

Also there is hereby specifically exempted from the tax herein levied the transfer of tangible personal property exempted from the Sales Tax Law of Oklahoma inclusive but not exclusive of the following:

1. From one corporation to another corporation pursuant to a reorganization. As used in this subsection the term "reorganization" means:
 - a. A statutory merger of consolidation.
 - b. The acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation.
2. In connection with winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation.
3. To a corporation for the purpose of organization of such corporation where the former owners of the property transferred are immediately after the transfer in control of the corporation, and the stock or securities received by each is substantially in proportion to his interest in the property prior to the transfer.
4. To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer, members of such partnership and the interest in the partnership, received by each, is substantially in proportion to his interest in the property prior to the transfer.

5. From a partnership to the members thereof when made in kind in the dissolution of such partnership.

Sec. 8-11. Tax Due When; Returns; Records.

The tax levied hereunder shall be due and payable at the time and in the manner and form prescribed for payment of the State Sales Tax under the State Tax Law of the State of Oklahoma.

Sec. 8-12. Payment of Tax; Brackets.

1. The tax herein levied shall be paid to the tax collector at the time in form and manner provided for payment of state sales tax under the Sales Tax Law of Oklahoma.
2. The bracket system for the collection of the two and one-half percent (2½ %) city sales tax by the tax collector shall be as the same is hereafter adopted by the agreement of the City of Wilburton, Oklahoma, and the tax collector in the collection of both the two and one-half percent (2½ %) city sales tax and the Four and one-half percent (4½%) state sales tax and one and one-half percent (1½%) county sales tax.

Sec. 8-13. Tax Constitutes Debt.

Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as any other debt.

Sec. 8-14. Vendor's Duty to Collect Tax.

1. The tax levied hereunder shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this city to collect from the consumer or user, the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof.
2. Vendors shall add the tax imposed hereunder, or the average equivalent thereof, to the sales price or charge, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

3. A vendor as defined herein, who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by this article, or willfully or intentionally fails, neglects or refuses to comply with the provisions or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax herein levied, or makes in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of an offense, and upon conviction thereof shall be fined not more than Two Hundred Fifteen dollars (\$215.00) including costs.

Sec. 8-15. Returns and Remittances; Discounts.

Returns and remittances of the tax herein levied and collected shall be made to the tax collector at the time and in the manner, form and amount as prescribed for returns and remittances required by the State Sales Tax Code; and remittances of tax collected hereunder shall be subject to the same discount as may be allowed by said code for collection of state sales tax.

Sec. 8-16. Interest and Penalties; Delinquency.

Section 217 of Title 68 O.S., is hereby adopted and made a part of this article, and interest and penalties at the rates and in amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this article. Provided, that the failure or refusal of any taxpayer to make and transmit the reports and remittances of tax in the time and manner required by this article shall cause such tax to be delinquent. In addition, if such delinquency continues for a period of five (5) days, the taxpayer shall forfeit his claim to any discount allowed under this article.

Sec. 8-17. Waiver of Interest and Penalties.

The interest or penalty or any portion thereof accruing by reason of a taxpayer's failure to pay the city tax herein levied may be waived or remitted in the same manner as provided for said waiver or remittance as applied in administration of the State Sales Tax provided in Title 68, O.S. Section 220; and to accomplish the purposes of this section, the applicable provisions of said Section 220 are hereby adopted by reference and made a part of this article.

Sec. 8-18. Erroneous Payments; Claim for Refund.

Refund of erroneous payment of the city sales tax herein levied may be made to any taxpayer making such erroneous payment in the same manner and procedure, and under the same limitations of time, as provided for administration of the State Sales Tax as set forth in Title 68, O.S. Section 227, and to accomplish the purposes of this section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this article.

Sec. 8-19. Fraudulent Returns.

In addition to all civil penalties provided by this article, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this article shall be an offense, and upon conviction thereof the offending taxpayer shall be subject to a fine of not more than Two Hundred Fifteen Dollars (\$215.00) including costs.

Sec. 8-20. Records Confidential.

The confidential and privileged nature of the records and files concerning the administration of the city sales tax is legislatively recognized and declared, and to protect the same the provisions of Title 68, O.S. Section 205 of the State Sales Tax Code and each subsection thereof is hereby adopted by reference and made fully effective and applicable to administration of the city sales tax as is here set forth in full.

Sec. 8-21. Amendments.

The people of the City of Wilburton, Oklahoma, by their approval of this article at the election hereinabove provided, hereby authorize the mayor and city council by ordinances duly enacted to make such administrative and technical changes or additions in the method and manner of administration and enforcing this article as may be necessary or proper for efficiency and fairness except that neither the rate of the tax herein provided or the uses to which said revenue is put shall be changed without approval of the qualified electors of the city as provided by law.

Sec. 8-22. Provisions Cumulative.

The provisions hereof shall be cumulative, and in addition to any and all other taxing provision of city ordinance.

Sec. 8-23. Provisions Severable.

The provisions hereof are hereby declared to be severable; and if any section, paragraph, sentence or clause of this article is for any reason held invalid or inoperative by any court of competent jurisdiction, such decisions shall not affect any other section, paragraph, sentence or clause hereof.



Article 1.1. Use Tax

Section 8-24. Use Tax Provision. *[Adopted 2/2006, ORD. NO. 06-1039]*

WHEREAS, 68 O.S., 1998 Supplement, Section 1402, allows any Municipality which has a Sales Tax to levy an excise tax (or Use Tax) on the storage, use or other consumption of tangible personal property; and

The following Use Tax provisions are hereby adopted, and shall read as follows:

Section 8-24.1. Excise Tax on Storage, Use or Other Consumption of Tangible Personal Property Levied.

There is hereby levied and there shall be paid by every person storing, using or otherwise consuming within the City of Wilburton, Oklahoma, tangible, personal property purchased or brought into this Municipality, an excise tax on the storage, use or otherwise consuming within the Municipality of such property at the rate of two percent and one-half (2½%) of the purchase price of such property. Such tax shall be paid by every person storing, using or otherwise consuming, within the Municipality, tangible, personal property purchased or brought into the Municipality. The additional tax levied hereunder shall be paid at the time of importation or storage of the property within the Municipality and shall be assessed to only property purchased outside Oklahoma; provided, that, the tax levied herein shall not be levied against tangible, personal property intended solely for use outside the Municipality, but which is stored in the Municipality pending shipment outside the Municipality or which is temporarily retained in the Municipality for the purpose of fabrication, repair, testing, alteration, maintenance or other service. Any person liable for payment of the Use Tax previously paid on such good or services; provided, that, the amount deducted shall not exceed the amount that would have been due of the taxes imposed by the Municipality had been levied in the sale of such goods or services.

Section 8-24. 2. Exemptions.

The provisions of this Ordinance shall not apply:

1. In respect to the use of an article of tangible, personal property brought into the Municipality by a non-resident individual visiting in this Municipality for his or her personal use or enjoyment while within the Municipality;
2. In respect to the use to tangible, personal property purchased for re-sale before being used;

3. In respect to the use of any article of tangible, personal property on which a tax, equal to or in excess of that levied by both the Oklahoma Use Tax Code and the City of Wilburton, Oklahoma, Use Tax Ordinance, has been paid by the person using such tangible, personal property in the Municipality, whether such tax was levied under the Laws of Oklahoma or some other State or Municipality of the United States. If any article of tangible, personal property has already been subjected to a tax by Oklahoma or any other State or Municipality in respect to its sale or use, in an amount less than the tax imposed by both the Oklahoma Use Tax Code and the City of Wilburton, Oklahoma, Use Tax Ordinance, the provisions of this Article shall also apply to it by a rate measured by the difference only between the rate provided by both the Oklahoma Use Tax Code and the City of Wilburton, Oklahoma, Use Tax Ordinance, and the rate by which the previous tax upon the sale or use was computed; provided, that, no credit shall be given for taxes paid in another State or Municipality, if that State or Municipality does not grant like credit for taxes paid in Oklahoma and the Municipality;
4. In respect to the use of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in the Municipality, and machinery and equipment purchased and used by the persons in the operation of manufacturing plants already established and the machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to the taxation under the Sales Tax Code of the City of Wilburton, Oklahoma. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;
5. In respect to the use of tangible, personal property now specifically exempted from taxation under the Sales Tax Code of the City of Wilburton, Oklahoma;
6. In respect to the use of any article of tangible, personal property brought into the Municipality by an individual with intent to become a resident of this Municipality where such personal property is for such individual's personal use or enjoyment;
7. In respect to the use of any article of tangible personal property used, or to be used, by commercial airlines or railroads; or
8. In respect to livestock purchased outside Oklahoma and brought into this Municipality for feeding or breeding purposes, and which is later re-sold.

Section 8-24. 3. Time Due; Returns; Payment.

The tax levied by this Ordinance is due and payable at the time and in the manner and form prescribed for payment to the State Use Tax under the Use Tax Code of the State of Oklahoma.

Section 8-24. 4. Tax Constitutes Debt.

Such taxes, penalty or interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors, and may be collected by suit as with any other debt.

Section 8-24. 5. Collection of Tax by Retailer or Vendor.

Every retailer or vendor maintaining places of business both within and without the State of Oklahoma, and making sales of tangible, personal property from a place of business outside this State for use in the City of Wilburton, Oklahoma, shall, at the time of making such sales, collect the Use Tax levied by this Article from the purchaser and give to the purchaser a receipt therefore in the manner and form prescribed by the Oklahoma Tax Commission, if said Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with said Tax Commission the name and address of all his agents operating in this Municipality and location of any and all distribution or sales houses or offices or other places of business in this Municipality.

Section 8-24.6. Collection of Tax by Retailer or Vendor not Maintaining a Place of Business within State or Both Within and Without State; Permits.

The Oklahoma Tax Commission may, at its discretion, upon application, authorize the collection of the Use Tax herein levied by any retailer or vendor not maintaining a place of business within this State but who makes sales of tangible personal property for use in this Municipality, and by the out-of-State place of business of any retailer or vendor maintaining places of business both within and without Oklahoma and making sales of tangible, personal property at such out-of-State place of business for use in this Municipality. Such retailer or vendor may be issued, without charge, a Permit to collect such taxes, by said Tax Commission in such manner and subject to such regulations and agreements as it shall prescribe. When so authorized, it shall be the duty of such retailer or vendor to collect the Use Tax upon all tangible, personal property sold to his knowledge for use within this Municipality. Such authority and Permit may be canceled when, at any time, said Tax Commission considers that such Use Tax can more effectively be collected from the person using such property in this Municipality; provided, however, that, in all instances where such sales are made or completed by delivery to the purchaser within this Municipality by the retailer or vendor in such retailer's or vendor's vehicle, whether owned or leased (not common carrier), such sales

or transactions shall continue to be subject to applicable Municipal Sales Tax at the point of delivery and the tax shall be collected and reported under the taxpayer's Sales Tax Permit number accordingly.

Section 8-24. 7. Revoking Permits.

Whenever any retailer or vendor not maintaining a place of business in this State, or both within and without this State, authorized to collect the Use Tax herein levied, fails to comply with any of the provisions of this Ordinance or the Oklahoma Use Tax Code or any other, rules or regulations of the Oklahoma Tax Commission, said Tax Commission may, upon notice and hearing as provided for in 68 O.S. 1998, Section 1408, by order, revoke the Use Tax Permit, if any, issued to such retailer or vendor, and if any such retailer or vendor is a corporation authorized to do business in this State may, after notice and hearing above provided, cancel said corporation's license to do business in this State and shall issue a new license only when such corporation has complied with the obligations under this Ordinance, the Oklahoma Use Tax Code, or any order, rules or regulations of the Oklahoma Tax Commission.

Section 8-24.8. Remunerative Deductions Allowed Vendors or Retailers of Other States.

Returns and remittances of the Use Tax herein levied and collected shall be made to the Oklahoma Tax Commission at the time and in the manner, form and amount prescribed for returns and remittances required by the Oklahoma Use Tax Code; remittances of Use Taxes collected hereunder shall be subject to the same discount as may be allowed by said Code for the collection of State Use Taxes.

Section 8-24.9. Interest and Penalties; Delinquency.

Section 217 of Title 68 O.S. 1998, is hereby adopted and made a part of this Ordinance, and interest and penalties at the rates and in the amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the Use Tax levied by this Ordinance; provided, that, the failure or refusal of any retailer or vendor to make and transmit the reports and remittances of Use Tax in the time and manner required by this Ordinance shall cause such Tax to be delinquent. In addition, if such delinquency continues for a period of five (5) days, the retailer or vendor shall forfeit his claim to any discount allowed under this Ordinance.

Section 8-24.10. Waiver of Interest and Penalties.

The interest and penalty, or any portion thereof, accruing by reason of a retailer's or vendor's failure to pay the Use Tax herein levied may be waived or remitted in the same manner as provided for said waiver or remittance as applied in administration of the State Use Tax provided in 68 O.S. 1998, Section 227; to accomplish the purpose of this Section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this Ordinance.

Section 8-24.11. Erroneous Payments; Claims for Refund.

Refund of erroneous payment of the Municipal Use Tax herein levied may be made to any taxpayer making such erroneous payment in the same manner and procedures, and under the same limitations of time provided for administration of the State Use Tax as set forth in 68 O.S. 1998, Section 227; to accomplish the purpose of this Section, the applicable provisions of said Section 227 are hereby adopted by reference and made part of this Ordinance.

Section 8-24. 12. Fraudulent Returns.

In addition to all civil penalties provided by this Article, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false and fraudulent report for the purpose of avoiding or escaping payment of any Use Tax, or portion thereof, rightfully due under this Ordinance, shall be an offense, and upon conviction thereof the offending taxpayer shall be punished by a fine of not more than Two hundred dollars (\$200.00). Each day of noncompliance with this Ordinance shall constitute a separate offense.

Section 8-24.13. Records Confidential.

The confidential and privileged nature of the record and files concerning the administration of the Municipal Use Tax is legislatively recognized and declared, and to protect the same, the provisions of 68 O.S. 1998, Section 205, of the State Use Tax Code, and each Subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the Municipal Use Tax as if herein set forth in full.

Section 8.24.14. Provisions Cumulative.

The provisions hereof shall be cumulative, and in addition to any and all other taxing provisions of Municipal Ordinances.

Section 8-24.15. Provisions Severable.

The provisions hereof are hereby declared to be severable, and if any Section, paragraph, sentence or clause of this Ordinance, is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other Section, paragraph, sentence or clause hereof.

Section 8-24.16. Definitions.

The definitions of words, terms and phrases contained in the Oklahoma Use Tax Code, Section 1401, 68 O.S. 1998, are hereby adopted by reference and made a part of this Ordinance; in addition thereto, the following words and terms shall be defined as follows:

1. City shall mean the City of Wilburton, Oklahoma.
2. Transaction shall mean sale.
3. The term "Tax Collector", as used herein, means the Department of the Municipality or the Official Agency of the State, duly designated according to Law or contract authorized by Law, to administer the collection of the Use Tax herein levied.

Section 8-24.17. Classification of Taxpayers.

For the purpose of this Article, the classification of taxpayers hereunder shall be as prescribed by State law for purposes of the Oklahoma Use Tax Code.

Section 8-24.18. Subsisting State Permits.

All valid and subsisting Permits to do business issued by the Oklahoma Tax Commission pursuant to the Oklahoma Use Tax Code are, for the purpose of this Ordinance, hereby ratified, confirmed and adopted in lieu of any requirement for an additional Municipal Permit for the same purpose.

Section 8-24.19. Purpose of Revenue.

It is hereby declared to be the purpose of this Article to provide revenues for the support of the functions of the Municipal Government of the City of Wilburton, Oklahoma, and any and all revenues derived hereunder may be expended by the City of Wilburton for any purpose for which funds may be lawfully expended and authorized.

Section 8-24.20. Penalty.

Any violation of this Ordinance shall be liable for a fine not to exceed two hundred dollars (\$200.00) per day, or the maximum legal limit.

Section 8-24.21. Effective Date.

The collection of this Use Tax shall begin April 1, 2006.



Article 2. Budget

Sec. 8-25. Municipal Budget Act

1. The City of Wilburton elects to comply with and operate in accordance with the terms and provisions of the Municipal Budget Act sections 17-201 through 17-216 of the Oklahoma State Statutes 1995.
2. The Mayor , as defined in the act ,is hereby authorized to take such action as are necessary to meet the requirements of the Act.

Sec. 8-26. Transfer of Appropriation Balances

The City throughout its fiscal year to amend its annual operating budget through supplemental appropriations, decreases in appropriations or appropriation transfers. The City Council desires to provide limited budget control flexibility to the Mayor in amending certain budget categories as needed without council action as provided in Title 11 section 17-215

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Article 3. Funding, Accounting, etc.

Sec. 8-27. Funding and Accounting Generally.

The revenues and other resources of the city shall be divided into funds as provided by Oklahoma Statutes, Title 62, Section 331, and other applicable provision of law; and accounted for as provided thereby.

Sec 8-27.a. Police Department Fund Raising. *[Adopted 3/2004, Ord. No. 04-1029]*

1. All proceeds from Police Department fundraising events, including but not limited to calendar sales, will be paid or remitted to the City Treasurer and accounted for as Police Fund Raising Revenue within the General Fund. Such revenues will be restricted for use by the Police Department for departmental public purposes as allowed by law. With express approval by the City Council, the City Treasurer shall remit such revenue proceeds received to the Police Department designee in charge of the final accounting of such receipts and disbursements who shall maintain the net receipts as Police Department Cash On Hand.
2. The Police Department designee shall maintain a complete accounting of all receipts and disbursements of this Cash On Hand, along with appropriate supporting documentation. Disbursements from this Cash On Hand will require written approval of the Police Chief but will not require further approval by the City Council. A schedule listing detail receipts and disbursements from and remaining balance of this Cash On Hand will be provided monthly to the City Council and City Treasurer for further accounting and informational purposes.
3. If at any time the City Council determines that the Cash On Hand is not being expended for public purposes or is unable to obtain an appropriate accounting of such sources and uses of these restricted funds, the City Council may direct the Police Department designee to remit the balance of the Cash On Hand to the City Treasurer who shall then be responsible for receipting and disbursing such funds.

Sec. 8-28. Investment of Meter Deposits.

Money deposited with the city as water meter deposits may be invested as provided by Oklahoma Statutes.

Sec. 8-29 Penalty.

Every person convicted of a violation of any provision of this article shall be punished by a fine of not more than Two Hundred Fifteen dollars (\$215.00) and costs.

Article 4. Deposit of Funds

Sec. 8-30. Deposit of Funds; Security.

1. The funds of the city shall be deposited as required by law.
2. The city council shall select and designate by resolution a bank within the city for depository for the funds of the city. The City Clerk shall deposit daily all public funds received by city in this bank. Funds may be transferred from one depository to another as the Council may direct by motion or resolution.
3. The deposits of the city shall be secured by the Unit Collateral System provided by Oklahoma Statutes, Title 62, Sections 516.1-516.8; and the provisions of these sections are hereby adopted insofar as they are applicable to the city.



Article 5. Purchases, Contracts, Etc.

Sec. 8-31. Councilmen and Other Officers: Purchases, Contracts, Etc.

1. No member of this city council may sell, or furnish for a consideration, any materials or supplies for use of the city; and any member of the council voting for, or consenting to, or being a part to, such contract or purchase is personally liable as provided by Oklahoma Statutes, Title 62, Sections 355-357.
2. The City Council shall not make any contract with any of its members, or in which any of its members shall be directly or indirectly interested, such contracts being prohibited by Oklahoma Statutes, Title 62, Section 271.
3. No officer of the city may become directly or indirectly interested individually in any sale, lease, or contract which he is authorized to make, such being prohibited by Oklahoma Statutes,, Title 21, Section 344.

Sec. 8-32. Purchases and Sales: Who to Make.

All purchases of supplies, materials, equipment, and contractual services for the city, and any sales thereof by the city, shall be made by the city council, or pursuant to authorizations granted by it, and subject to its supervision and control.

Sec. 8-33. Purchases: Competitive Bidding.

1. Before any city employee makes any purchase of, or contract for, supplies, materials, equipment or contractual services except as otherwise provided below, he shall submit to at least three persons, firms or corporations dealing in and able to supply the same, or to a smaller number if there are not three dealing in and able to supply the same, a request for quotation (or invitation to bid) and specifications, to give them opportunity to bid; and/or publish notice of the proposed purchase in a newspaper of general circulation within the city.
2. He shall favor a person, firm or corporation in the city when this can be done without additional cost to the city; but he shall submit requests for quotation to those outside the city when this may be necessary to secure bids or to create competitive conditions, or when he thinks that by so doing he can make a saving for the city; and shall purchase from them when he can make a saving for the city.
3. All bids shall be sealed and shall be opened in public at a designated time and place.

4. He may repeatedly reject all bids, and again may submit to the same or other persons, firms or corporation the request of quotation (or invitation to bid), and/or again publish notice of the proposed purchase.
5. He shall purchase from the bidder whose bid is most advantageous to the city, considering price, quality, date of delivery, etc.; and, in case of a tie, may cast lots to determine from whom to make a purchase, or may divide the purchase among those tying, always accepting the bid or bids most advantageous to the city.



Article 6. Claims

Sec. 8-34. Claims: How Made and Processed.

Claims against the city shall be made and processed as provided by Oklahoma Statutes, Title 62, Sections 301-304.2, and any other applicable provisions of law.



Article 7. Sales

Sec. 8-35. Sales: Council to Declare Surplus or Obsolete, Competitive Bidding.

1. No surplus or obsolete supplies, materials or equipment may be sold until the council shall have declared them obsolete or surplus.
2. Before a city employee sells any surplus or obsolete supplies, materials or equipment, except as otherwise provided below, he shall advertise them for sale in a newspaper of general circulation in the city or in such other manner as he deems necessary adequately to reach prospective buyers to give them an opportunity to make bids.
3. All bids shall be sealed and shall be opened in public at a designated time and place, except when the sale is by auction.
4. The employee may repeatedly reject all bids and advertise again.
5. He shall sell such supplies, materials or equipment to the highest responsible bidder, and if necessary shall cast lots in case of a tie to determine to whom to sell.

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Article 8. Warrants, Etc.: Disbursement of Funds.

Sec. 8-36. Warrants, etc.: Disbursement of Funds.

Warrants shall be issued and processed, and funds of the city disbursed, only for legal purposes and in accordance with Oklahoma Statutes, Title 62, Sections 372, 471-485, and 551-555.



Article 9. Bonds

Sec. 8-37. Bonds: Issuance, Sale, Etc.

Bonds of the city shall be issued, sold, paid, and handled in all respects as provided by Oklahoma Statutes, Title 62, Sections 351 et seq., and other applicable provisions of law.



Article 10. Examination and Audit of Books and Records

Sec. 8-38. Financial Books and Records: Examination and Audit.

1. The books of the city treasurer shall be subject to examination by the city council at all times, as provided by Oklahoma Statutes, Title 11, _ 1026. Likewise, the records of the City Clerk and of all other officers and employees of the city shall be subject to inspection by the city council at all times.
2. The city council shall designate a qualified public accountant to audit the financial records and transactions of the city treasurer, the City Clerk, and all other personnel of the city who keep financial records and make financial transactions, as of the end of every fiscal year at least; and such accountant shall make such audit and shall report to the city council.
3. Upon petition of a number of voters of the city equal at least to one-fourth (1/4) of the number of people voting at the last general city election for the city office receiving the highest number of votes, the financial books and records of the city will be audited by the State Examiner and Inspector, as provided by Oklahoma Statutes, Title 74, §§ 212 and 215.

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Article 11. Insurance

Sec. 8-39. Insurance: Property, Vehicle.

1. The city council may insure property of the city as authorized by Oklahoma Statutes, Title 11, §§1004 and Title 19, §§627. Any money received as a result of destruction, damages, or loss of such insured property, shall be accounted for and used as provided by said State Statute 627.
2. The city council may purchase insurance to pay damage to persons sustaining injuries or damages to property as a result of negligent operation of motor equipment of the city, as authorized by Oklahoma Statutes, Title 36, §§130.1.



Article 12. Telephone Exchanges.

Sec. 8-40. Fee Levied on Telephone Exchanges.

1. There is hereby levied an annual inspection fee and service charge upon each and every person, firm or corporation operating a telephone exchange in this city, in an amount equal to Two percent (2 %) of the gross revenues for each current year for exchange telephone transmission service rendered wholly within the limits of the city, to compensate the city for the expenses incurred and services rendered incident to the exercise of its police power, supervision, policy regulation and police control of the construction of lines and equipment of said telephone company in the city.
2. The said inspection fee and charge shall be due and payable to the city on or before the first day of May of each year, and shall be paid into and appropriated and expended from the General Revenue Fund of the city.

Sec. 8-41. Fee to be in Lieu of Other Fees, Taxes, etc.

During continued substantial compliance with the terms of this ordinance by the owner of any telephone exchange, the charge levied hereby shall be and continue to be in lieu of all concessions, charges, excise, franchise, license, privilege and permit fees or taxes or assessments except ad valorem taxes; provided, however, that it is not intended hereby to extinguish or abrogate any existing arrangement whereby the city is permitted to use underground conduit, duct space or pole contacts of said company for the fire alarm and/or police call systems of the city.

Article 13. Residential and Commercial Gas Sales.

Sec. 8-42. Fee Levied on Sales of Gas. *[Adopted 9/2004, Ord. No. 04-1033]*

1. There is hereby levied and assessed an annual tax of Two Percent (2%) upon the gross receipts from residential and commercial sales of gas in said City of Wilburton, Oklahoma, which tax shall be in lieu of any other franchise, license, occupation or excise levied by such city, all as provided by 68 O.S. 199 §§ 2601-2605.
2. The tax levied under this Ordinance shall, when levied, apply to all persons, firms, associates, or corporations, engaged in the business of furnishing gas within the city limits of Wilburton, Oklahoma, except it shall not apply to any person, firm, association or corporation operating under a valid franchise from such said city, nor to the City of Wilbuton, Oklahoma when providing such services.
3. The tax levied under this Ordinance shall be levied for a term of not less than one (1) year and shall be payable annually in January of each year and placed in the general revenue fund of the city.
4. Any person, firm or corporation failing or refusing to pay such tax when levied shall be regarded as a trespasser and may be ousted from such city and in addition thereto, an action may be maintained against such person, firm or corporation for the amount of the tax, and all expenses of collecting same, including reasonable attorney's fees.
5. The tax so imposed shall constitute a first and prior lien on all assets located within the said city of any person, firm or corporation engaged in the business of selling gas within the city limits of the City of Wilburton, Oklahoma.
6. Any person, firms, associations, or corporations engaged in the business of furnishing gas within the city limits of Wilburton, Oklahoma, not operating under a valid franchise from said city, is hereby granted a revocable permit by said city for so long as this ordinance remains in effect and the taxes are paid in accordance with the terms of this ordinance to acquire, construct, erect, install, extend, repair, remove, relocate, replace, operate and maintain a system of works, pipes, pipelines, apparatus, structures, and appurtenance in, across, upon and under the streets, alleys, avenues, boulevards, lanes, parks, parkways, sidewalks, parkings, driveways, rights of way, utility easements, and other public ways, places, areas and grounds, all being sometimes referred to herein as "streets, alleys, avenues, and other public ways, places and grounds," in the City of Wilburton, Oklahoma as now constituted, and as may be added to hereafter, for the purpose of transporting, distributing, and selling gas to said city, its inhabitants

and the public generally for domestic, commercial, and industrial uses, and for any and all other purposes for which gas, during the period of this revocable permit may be used, together with the right to enter upon the streets, alleys, avenues, and public way, places, and grounds of said city for the purpose of constructing, erecting, installing, extending, relocating, operating, maintaining, removing, and repairing said works, pipes, pipelines and all necessary apparatus, machinery, structures, and appurtenances.

Sec. 8-43. Fee to be in Lieu of Other Fees, Taxes, etc.

Tax levied by this ordinance shall be in lieu of any other franchise, license, occupation or excise levied by such city, all as provided by 68 O.S. 199 §§ 2601-2605.

