



Dear Councilmembers:

In the November General Election, South Dakota voters will weigh in on Initiated Measure 28. If this measure passes, it will have significant impacts on your community.

Objections to IM-28

IM-28 was launched as a repeal of the state's 4.2% sales tax on groceries. At least, that is what they would have you believe. However, the poorly drafted ballot measure has unintended consequences that the proponents have failed to acknowledge.

Definition: The ballot measure repeals the state's ability to impose a tax on "anything sold for human consumption." A quick search of state law produces no definition of items for "human consumption." Therefore, we look to Black's Law Dictionary which would add numerous items beyond food items.

Far-reaching Tax Cuts: Due to the vague definition, items that the state, cities and tribes can no longer tax include unprepared food items, candy, soda, tobacco products, CBD, over the counter medicines, and hygiene products like mouthwash and toothpaste. IM-28 proponents deny the impact to tobacco, but they're wrong. SDCL 34-46-1(7) defines tobacco products as "any item made of tobacco intended for human consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products as defined in § 34-46-20."

Conflicts with State Law: Despite the ballot measure's language that cities can continue to impose a sales tax, it is in direct conflict with South Dakota Codified Law 10-52-2, which allows municipalities to impose a tax on the sale, use, storage and consumption of items that conform in all respects to the state tax on such items up to two percent. In fact, the Attorney General's explanation states "Judicial or legislative clarification of the measure will be necessary." This means, as it is today, passing IM-28 would eliminate your city's ability to tax anything sold for human consumption except prepared food and alcohol.

Revenue Loss: Due to the reasons listed above, cities throughout South Dakota will see major losses to sales tax revenue. There is no immediate replacement for those losses.

Fiscal Impacts

The fiscal note for IM-28 estimates a potential annual loss to the state of \$646 million.

Impact to Brookings

The local city impact will also be significant. Based on a recent analysis, we estimate Sioux Falls to see a 8.3% loss in sales tax revenue equaling \$1,631,000 if IM-28 passes.

Note: our estimate is based on 2023 sales tax reports and SIC codes. We then assigned a percentage of tax due to each code division that is from sales of consumables.

Also, as the Attorney General has pointed out, IM-28 could conflict with multi-state agreements allowing municipalities to collect online (remote) sales taxes (Streamlined Sales Tax Agreement), which could greatly increase the potential lost revenue to municipalities

How You Can Help

Get on the official record and adopt a resolution stating the impacts of IM-28 to your city. Attached is a template resolution.

Use your pulpit as a local leader to inform your residents about why they should oppose IM-28. If you would like help writing a column for your local paper, please let me know.

While public funds cannot be used to influence elections, you may know people locally willing to donate financially to the IM-28 committee at nosdincometax.com

Conclusion

IM-28 is bad for South Dakota, and it is especially bad for South Dakota communities. It is crucial that the grassroots effort to defeat IM-28 includes local leaders like you across the entire state. Together, we can defeat this irresponsibly drafted ballot measure that will hurt South Dakotans more than it will help them.

Please feel free to reach out with questions.

Thank you!

Sara Rankin, Executive Director
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RESOLUTION 2024-
CITY OF _____, SOUTH DAKOTA

WHEREAS Initiated Measure 28 was certified for the November 2024 General Election Ballot by the South Dakota Secretary of State;

WHEREAS Initiated Measure 28, if passed, would remove state, municipal and tribal taxes on all items sold for human consumption except alcohol and prepared food;

WHEREAS “human consumption” is undefined in South Dakota Codified Law or the South Dakota Constitution. Black’s Law Dictionary defines “consumption” as “the act of destroying a thing by using it; the use of a thing in a way that exhausts it.”;

WHEREAS South Dakota Codified Law 34-45-1(7) defines tobacco products as “any item made of tobacco intended for human consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products as defined in § 34-46-20.”;

WHEREAS South Dakota Codified Law 10-52-2 allows incorporated municipalities to impose a tax on the sale, use, storage and consumption of items that conform in all respects to the state tax on such items up to two percent;

WHEREAS the Attorney General’s explanation of the measure states legislative or judicial clarification would be needed if the measure passes;

WHEREAS The City of _____ levies a two-percent sales tax and collected \$ _____ in the 2023 fiscal year and \$ _____ .00 year-to-date in the 2024 fiscal year;

WHEREAS The City of _____ estimates annual lost revenue of \$ _____ unless Initiated Measure 28 is rejected by voters in South Dakota.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of _____, that Initiated Measure 28 would negatively impact the municipal budget in our community.

Dated this _____ day of August 2024

, Mayor

ATTEST:

, Finance Officer