



Mission Statement

To provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage and thrive.

YANKTON BOARD OF CITY COMMISSIONERS

Work Session Meeting beginning at 6:00 P.M.

Monday, January 22, 2024

City of Yankton Community Meeting Room

Located at the Career Manufacturing Technical Education Academy formerly known as Technical Education Center • **1200 W. 21st Street • Room 114**

If you would like to watch the City Commission meeting you can do so by accessing the City of Yankton's YouTube Live Channel. <https://www.youtube.com/c/cityofyankton/live>

TV Schedule: Mondays at 7:03 p.m. and Tuesday following meeting at 1:00 p.m. on Midco Channel 3 and Bluepeak Channel 98.

1. **Roll Call**
2. **Public Appearances**
3. **Strategic Plan and Food Sales Tax-Initiated Measure**
4. **Other Business**

Other business is a time for City Commissioners to address the commission regarding matters not on the agenda. These items will be not deliberated by the governing body and will not be acted upon at this time. Items mentioned may be added to a future City Commission meeting or work session for deliberation or action.

5. **Adjourn the Work Session of January 22, 2024**

MEMORANDUM

TO: Yankton City Commission

FROM: Amy Leon, City Manager 

RE: Sales Tax on Consumables

DATE: January 19, 2024

As the Commission is aware, many of the City of Yankton's operations depend primarily on the collection of sales tax. The State of South Dakota currently collects 4.2% sales tax on many products sold within the state. This sales tax was recently lowered from the previous rate 4.5% in the 2023 South Dakota State Legislature until 2027. In addition, South Dakota municipalities receive a 2% sales tax. These are often called the First and Second Penny tax. Municipalities can also choose to levy another 1% on certain products. This is the tax that is commonly called the Bed, Board, and Booze or Triple B tax because of the nature of the goods and services on which it is applied.

In 2022, our total first penny sales tax generated \$6,876,602.

The total second penny generated \$5,187,612.

The State of South Dakota requires that the first penny collected be directed toward the General Fund.

The second penny may be restricted, or it can be utilized for General Fund Operations.

In Yankton, the General Fund expenses include the following departments:

- City Attorney
- City Commission
- City Manager
- Community Development
- Dispatch*
- Engineering
- Finance
- Fire
- Huether Family Aquatics Center
- Human Resources
- Information and Technology Services
- Library
- Parks
- Police
- Recycling
- Solid Waste
- Streets
- Cemetery
- Airport
- Summit Activities Center
- City Hall
- Traffic Control
- Outside Agencies & Contractual Services
- Senior Citizens Center
- Marne Creek
- Fox Run

*Dispatch does receive some funding from E911 funds in addition to the General Fund.

Departments like Water and Wastewater are not considered General Fund, because we have rates to cover the cost of the operation. We call these "Enterprise Funds."

In Yankton the second penny is restricted by an ordinance. That ordinance is 22 ½-23.

Sec. 22½-23. - Use of revenue from rate over one per cent up to one and eighty-six hundredths per cent.

Any revenues received under sections 22½-17 and 22½-20 in excess of one (1) per cent up to one and eighty-six hundredths (1.86) per cent, may be used only for the purpose of capital improvements, land acquisition, street maintenance and operations, and debt retirement for a joint building project with the city school district (Summit Activities Center) including parking, street improvements, and utility improvements attendant thereto and for street construction and storm sewer improvements. Any revenues up to one (1) per cent and in excess of the one and eighty-six hundredths (1.86) per cent will have no restrictions on use.

Sales Tax on Consumables

Not many states have sales tax on consumables. There are approximately 13 states that have sales tax on food and only three (South Dakota along with Mississippi and Alabama) that levy the full sales tax rate on groceries without a credit or rebate to offset the cost.

Certainly, these types of taxes hurt the lowest earners the hardest. In addition, any sales tax is sometimes believed to be as good of a tax as there is (if there is one) because it is based on what you choose to purchase or consume. Any type of sales tax is also often argued as tax that is offset by non-residents, considering all the people who come to South Dakota to travel. In Yankton, specifically as a border City, and regional sales hub, we benefit from a lot of sales tax coming from Nebraska and other visitors. Keep in mind, nonresidents do benefit from many of our services but do not pay property taxes as residents.

What are Consumables?

The word consumables will likely have to be defined for the purposes of the initiated measure. From what we are hearing today it appears that consumables include primarily food but would not include alcohol or packaged food. I think it is uncertain right now if items like supplements, cigarettes, vaping products, etc. would be defined as consumables.

What could the implication be if the City of Yankton can no longer receive tax on consumables?

The South Dakota Municipal League has asked the State Department of Revenue to provide the total sales tax from consumables and to provide each community's total amount of food sales tax. City staff estimates that it is approximately \$1,000,000.00 annually in the City of Yankton.

That scale of loss would require the City Commission to either make substantial spending cuts and/or identify a revenue source somewhere else in the budget to account for this loss, find additional new revenues to make up the short fall or opt out for certain General Fund operations. Unrestricting the second penny or amending the ordinance pertaining to the second penny is also an option, however, would have an impact on capital purchases, capital projects or the facilities operated through the second penny.

Other Considerations

It has been discussed that the intention of the initiated measure may not be to eliminate the sales tax on consumables that local governments (cities) receive. However, the current draft language does not seem to parse that out. Municipalities do not collect tax, rather the state collects the tax. Therefore, if the state no longer has the ability or authority to collect a tax on a specific item it could be well argued that there would be no tax forwarded to cities even if we had the local process in place.

When this would go into effect is also a question that has yet to be answered.

AG explanation

<https://atg.sd.gov/docs/November%2016%202022%20ltr.Barnett%20Batllot%20Explanations%20Initiated%20Measure.%20Sales%20Tax%20Final.pdf>