

# CITY OF SAXMAN

## ORDINANCE NO. 20-11

### **An Ordinance of the City of Saxman Adopting the Alaska Remote Seller Sales Tax Code, Authorizing the Alaska Remote Seller Sales Tax Commission to Collect Sales Tax on Remote Sales for the City of Saxman, Amending City of Saxman Code Chapter 3.30**

#### **RECITALS**

- A. WHEREAS**, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and
- B. WHEREAS**, the harm from the loss of revenue is especially serious in Alaska because the State has no income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and
- C. WHEREAS**, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and
- D. WHEREAS**, the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; and
- E. WHEREAS**, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring; and
- F. WHEREAS**, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy as well as burdening local infrastructure and services; and
- G. WHEREAS**, delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and,

- H. **WHEREAS**, given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions; and
- I. **WHEREAS**, due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax codes to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and
- J. **WHEREAS**, this ordinance is not retroactive in its application; and
- K. **WHEREAS**, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and
- L. **WHEREAS**, amending local sales tax codes reflects the 2018 Supreme Court "*Wayfair*" decision to allow for the application of the taxing jurisdiction's sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction; and
- M. **WHEREAS**, the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and
- N. **WHEREAS**, the City of Saxman has entered into a cooperative agreement with other local governments called the Alaska Remote Seller Sales Tax Agreement ("the Agreement"); and
- O. **WHEREAS**, the Agreement authorized the formation of the Alaska Remote Seller Sales Tax Commission (the "Commission") which was established to provide an efficient single point of collection and enforcement for local sales taxes levied throughout the State of Alaska; and
- P. **WHEREAS**, the Agreement also required signatory municipalities to adopt a uniform code of provisions for collection and enforcement of municipal sales tax applicable to sales made by remote sellers similar to the Streamlined Sales and Use Tax Agreement. The Ketchikan Gateway Borough has done so through adoption of a new Chapter 4.75 to the Ketchikan Gateway Borough Code; and
- Q. **WHEREAS**, the City of Saxman desires to satisfy the requirement to adopt uniform code provision by incorporating the provisions adopted by the Ketchikan Gateway Borough by reference; and
- R. **WHEREAS**, the uniform code of provisions developed by the Commission, in the form of the Alaska Remote Seller Sales Tax Code is set forth in the provisions in this ordinance which, if adopted, will satisfy the obligations of the city relative to its membership in the Commission; and

**S. WHEREAS**, if adopted, the Remote Seller Sales Tax Code will allow the Commission to begin collecting sales taxes on remote sales into the city on the city’s behalf.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SAXMAN CITY COUNCIL** as follows:

**Section 1.** Saxman Municipal Code 3.30.020 (Definitions) is hereby amended to include a definition of Physical presence as follows:

“Physical presence” means a seller who establishes any one or more of the following within the city:

- (1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
- (2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the city or engages in activities in the city that are significantly associated with the seller’s ability to establish or maintain a market for its products in the city;
- (3) Provides services or holds inventory within the city;
- (4) Rents or Leases property located within the boundaries of the city.

A seller that establishes a physical presence within the city in any calendar year will be deemed to have a physical presence within the city for the following calendar year.

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**Section 2.** Saxman Municipal Code 3.30 (Sales Tax) is hereby amended by adding a new section, 3.30.170, to read as follows:

**SMC 3.30.170 Remote Seller Sales Tax Code Adoption and Applicability**

- (a) Adoption by reference. The City of Saxman hereby adopts, and incorporates herein by reference, the provisions of Ketchikan Gateway Borough Code Chapter 4.75, as adopted by Ketchikan Gateway Borough ordinance 1917-substitute, effective August 1, 2020 as the City of Saxman Remote Seller Sales Tax Code subject to the modifications in this section.
  - 1. Where that Chapter 4.75 refers to the Ketchikan Gateway Borough it shall be read as applying to the City of Saxman for purposes of collection and enforcement of the Remote Seller Sales Tax Code.

- 2. In section 4.75.010, Interpretation, subsection (c), the reference to KGBC 4.50 shall be read as referring to SMC 3.30.120.
  - 3. In section 4.75.050, Imposition; rate, subsection (b) shall be read as referring to the rates of sales tax levied in SMC 3.30.050.
  - 4. In section 4.75.050, Imposition; rate, subsection (d) shall be read as referring to the exemptions in SMC 3.30.120.
  - 5. In section 4.75.270, Savings Clause, the references to KGBC Chapter 4.50 shall be read as references to SMC 3.30.010-3.30.160.
- (b) Applicability. The City of Saxman Remote Seller Sales Tax Code adopted by this section shall apply as follows:
- 1. Sellers with no physical presence in the city that have remote or internet-based sales in the city are subject to the City of Saxman Remote Seller Sales Tax Code instead of SMC 3.30.030 – 3.30.120.
  - 2. Sellers with a physical presence in the city that have remote or internet-based sales delivered to a taxing jurisdiction in Alaska outside the city boundaries are subject to the City of Saxman Remote Seller Sales Tax Code and of SMC 3.30.030 – 3.30.120.
  - 3. Sellers with a physical presence in the city that have remote or internet-based sales delivered within the city boundaries are subject to SMC 3.30.010-120.

**Section 3.** The Alaska Remote Seller Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of SMC 3.30.170, the City of Saxman Remote Seller Sales Tax Code in accordance with the terms of the Alaska Remote Seller Sales Tax Agreement. This authority remains in full force and effect until the City Council revokes this authorization or otherwise withdraws from membership in the Alaska Remote Seller Sales Tax Commission.

**Section 4.** Effective date. This ordinance shall be effective at 12:01 a.m. on October 1, 2020.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

EFFECTIVE the \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Saxman City Mayor

ATTEST:

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Saxman City Clerk