

**KODIAK CITY COUNCIL**

**WORK SESSION AGENDA**

**Tuesday, March 12, 2019**

**Kodiak Public Library Multi-Purpose Room**

**7:30 p.m.**

*Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.*

**Discussion Items**

1. Public Comments (limited to 3 minutes)
2. Online Sales Tax
  - a. Municipal Contribution to AML
  - b. Review Ordinance for Collecting Tax for Online Sales ..... 1
3. Nonprofit Grant Policy Review..... 6
4. New Fire Station Location Update ..... 9
5. Elected Officials Training/Travel Requests
6. March 14, 2019, Agenda Packet Review

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**MEMORANDUM**

**To:** Mike Tvenge  
City Manager



**From:** Brooks Chandler

**Date:** March 7, 2019

**Re:** Sales Tax Ordinance Changes

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This memorandum summarizes and explains proposed amendments to city sales tax code provisions intended to establish clear authority for the city to require certain internet sellers to collect and remit city sales tax. As previously advised in our memorandum of February 21, 2019 it is now “legal” to tax such sales as a result of the South Dakota v. Wayfair decision. It is no longer necessary for a seller to have a physical presence in Kodiak. A “virtual” presence based on the volume of sales made in the entire State of Alaska is enough.

The draft ordinance applies the new legal authority by replacing the phrase “solicitation inside of the city” with language requiring larger internet sellers to collect tax. The threshold levels of sales required to trigger the obligation to collect tax are identical to those approved by the United States Supreme Court in the Wayfair decision. A corresponding change has been made to subsection 3.08.010( d)(2) pertaining to services. The language requiring a physical presence has been replaced with language based on the volume of services provided within Alaska.

Alaska is used as the basis for sales volume rather than Kodiak because the constitutional provision on which Wayfair and the old legal rule were based is one relating to interstate commerce. Using Alaska rather than Kodiak will maximize the number of sellers required to collect tax. If the city council prefers to use Kodiak a much lower threshold gross sales amount should be substituted.

Specific language indicating the City will not retroactively seek tax based on the old “solicitation within the city” language is included in the effective date section. The Supreme Court specifically mentioned similar language in the South Dakota statute it upheld in the Wayfair case.

Please note the new change applies to borough residents as well as city residents. We had initially intended to limit application of taxation of internet sales to purchases delivered within city boundaries. But when we realized that existing code (Section 3.08.010 ( c)(2)) taxes items delivered to borough residents by Kodiak businesses we applied the same rule to internet businesses. This is consistent with a policy of putting city businesses on an equal footing with internet sellers. We are not familiar with the policy rationale for the existing language about taxing borough residents on items delivered by businesses located in Kodiak. It is possible that rationale would not apply equally to internet sellers. If so, the draft should be amended to delete the phrase “or within the Kodiak Island Borough” from subsection (c)(3). There also may be practical problems created in situations where other cities within the Borough seek to tax internet purchases. This could easily be addressed by adding language “unless such delivery to a resident of the borough is subject to tax by another city” to the draft ordinance.



**CITY OF KODIAK**  
**ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING SECTION 3.08.010 OF THE KODIAK CITY CODE TO CLARIFY APPLICATION OF CITY SALES TAX TO SALES MADE BY SELLERS LOCATED OUTSIDE CITY BOUNDARIES AS A RESULT OF THE DECISION OF THE UNITED STATES SUPREME COURT IN SOUTH DAKOTA V. WAYFAIR**

WHEREAS, Section 3.08.040(n) of the Kodiak City Code currently exempts from sales tax sales which the City is prohibited from taxing by the Constitution of the United States; and

WHEREAS, historically the Constitution of the United States prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska who did not have a physical presence within city boundaries; and

WHEREAS, the United States Supreme Court decided on June 21, 2018 in the case South Dakota v. Wayfair that the United States Constitution no longer prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska who did not have a physical presence within city boundaries; and

WHEREAS, Section 3.08.010(c)(3) of the Kodiak City Code levies city sales tax on sales made by businesses located outside the city “as a result of solicitation inside the city” if delivery occurs inside the city; and

WHEREAS, it is not perfectly clear if companies who make sales using the internet are making a “solicitation inside the city” or are making a solicitation outside the city; and

WHEREAS, it is preferable for sales tax provisions to be clear and precise;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

**Section 1:** Sections 3 and 4 of this ordinance are of a permanent and general nature and shall be included in the Kodiak City Code.

**Section 2:** Legislative Findings.

- (1) The inability to effectively collect city sales tax from remote sellers who deliver tangible personal property, any products transferred electronically, or services directly to the citizens of Kodiak and the Kodiak Island Borough is seriously eroding the sales tax base of Kodiak, causing revenue losses and imminent harm to this city through the loss of critical funding for services;
- (2) The harms from the revenue losses are especially serious in Kodiak because sales tax revenues are essential in funding local services;

- (3) The structural advantages of remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that further erosion of this city's sales tax base is likely soon;
- (4) Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from this state's market, including the economy generally, as well as state and city infrastructure;
- (5) In contrast with the expanding harms caused to the city from this exemption of sales tax collection duties for remote sellers, the costs of that collection have fallen. 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 generally and Kodiak and the Kodiak Island Borough specifically.

**Section 3:** Section 3.08.010( c) of the Kodiak City Code, is hereby amended to read as follows: [deleted text is ~~struck through~~; added text is underlined]

(c) For the purposes of the tax levied by this section, a sale of tangible personal property is made within the city if:

- (1) The sale is made by a business located within the city and delivery occurs within the city;
- (2) The sale is made by a business located within the city, the order is received or solicited within the city or payment is received within the city, and delivery is made to a purchaser within the Kodiak Island Borough; or
- (3) The sale is made by a business located outside of the city whose gross revenue from the delivery of tangible personal property, any product transferred electronically or services into the State of Alaska in the previous calendar year or the current calendar year exceeds one hundred thousand dollars; or who sold tangible personal property or electronically transferred any product or services for delivery in Alaska in two hundred or more separate transactions in the previous calendar year or the current calendar year . as a result of solicitation inside of the city and payment or delivery occurs within the city or within the Kodiak Island Borough.

**Section 4:** Section 3.08.010( d) of the Kodiak City Code, is hereby amended to read as follows: [deleted text is ~~struck-through~~; added text is underlined]

d) For the purposes of the tax levied by this section, services are made within the city if, regardless of the location of the business rendering the services:

- (1) The services, or any essential or substantial part thereof, are rendered within the city; or
- (2) ~~The order for the services is solicited or received within the city or payment is received within the city, the~~ services are rendered by a business ~~maintaining an office, agent, or employee within the city,~~ whose gross revenue from services provided in the State of Alaska in the previous calendar year or the current calendar year exceeds one hundred thousand dollars or who provided services in Alaska in two hundred or more separate transactions in the previous calendar year or the current calendar year and the services benefit or directly relate to any person, property, or organization within the city.

**Section 3:** This ordinance shall be effective one month after final passage and publication. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

**CITY OF KODIAK  
RESOLUTION NUMBER 2018-06**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK RESCINDING RESOLUTION NO. 2017-13 AND ESTABLISHING FUNDING CRITERIA FOR NONPROFIT GRANTS**

WHEREAS, the City Council recognizes and supports local nonprofit organizations and has historically made funding and in-kind contributions available to these organizations on an annual basis; and

WHEREAS, it has been determined that the appropriate total amount of City funds to grant to nonprofit organizations is a maximum of one percent of budgeted general fund revenues, not to exceed \$175,000 until such time as the fund balance of the General fund reaches an accumulation of six months of operating expenditures, exclusive of any fund balance appropriation and transfers to capital project funds; and

WHEREAS, City funds and in-kind contributions have been provided to nonprofit organizations that supplement and compliment the services provided to residents by the City; and

WHEREAS, it is the intent of the City Council to update this policy statement.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska hereby establishes the following additional funding criteria for nonprofit grants provided by the City:

1. Organizations receiving funds must be legally recognized by the Internal Revenue Service.
2. Organizations are limited to one funding criteria or program per year, not including in-kind contributions authorized by the Council.
3. Funding will be granted only for the following kinds of programs/activities and up to the maximum identified funding amount per organization and program type as defined:
  - a. Youth Recreation Programs \$5,000

Indoor and outdoor recreational activities typically include games and pursuit of hobbies and activities that one engages in, for entertainment. Typically included in this category are activities like baseball, football, hockey, swimming, basketball, wrestling, cheerleading singing, reading, listening to music, watching movies, dancing, and aerobics.

- b. Adult Recreation Programs \$5,000

Indoor and outdoor recreational activities typically include games and pursuit of hobbies and activities that one engages in, for entertainment. Typically included in this category are activities like baseball, football, hockey, swimming, basketball, wrestling, cheerleading singing, reading, listening to music, watching movies, dancing, and aerobics.

- c. Public Safety Support Programs \$15,000

Programs serving the entire Kodiak area through its emergency shelters and food service programs. Typically included in this category are food banks, soup kitchens, sleeping shelters, crisis centers, senior services and animal shelters.

- d. Emergency Response Support Programs \$15,000

Programs that provide humanitarian relief, disaster relief and education designed to mitigate local disasters. Typically included in this category are emergency temporary shelters, counseling, public awareness and basic humanitarian needs.

4. Subject to available funding, the Council may authorize a special one-time funding increase for a special project.

CITY OF KODIAK

  
MAYOR

ATTEST:

  
CITY CLERK

Adopted: March 8, 2018



**CITY OF KODIAK**  
**Nonprofit Grant Applications**  
**Fiscal Year 2020**  
**Calendar**

- March 12 Council review of City’s nonprofit application and award process
- Week of May 13 Mail applications, FY19 financial reports *(if no change to criteria)*
- June 21 Applications and FY19 financial reports due to the City Manager’s Office
- July 9 or 23 City Council evaluates applications
- July 11 or 25 Nonprofit funding resolution on agenda for Council approval
- July 26 Check requests prepared and forwarded to finance
- July 29 FY20 award notification letters and agreements mailed
- August 2 Checks returned to City Manager’s Office
- August 2 Grant checks available upon execution of grant agreements and verification of FY19 reports filed

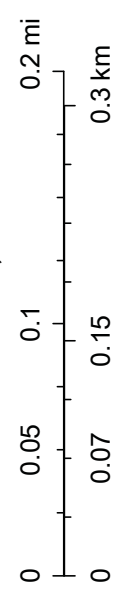


# New Fire Station Sites



February 7, 2019

1:9,028

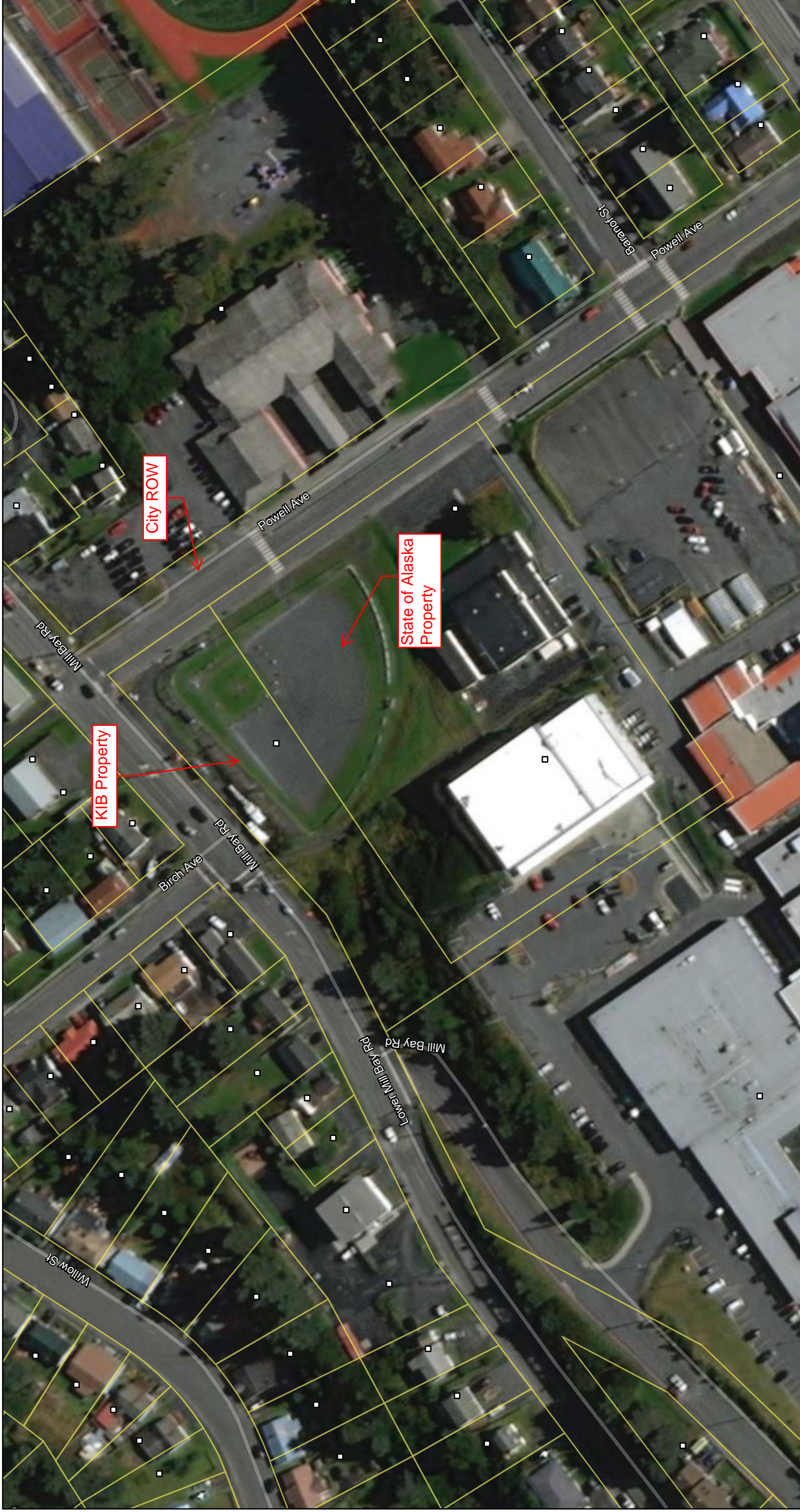


- Parcels
- Mobile Homes
- Corporate Boundaries
- City of Kodiak
- Unclassified
- Roads
- Kodiak Island Borough Boundary
- Home Rule City
- Geographic Names

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

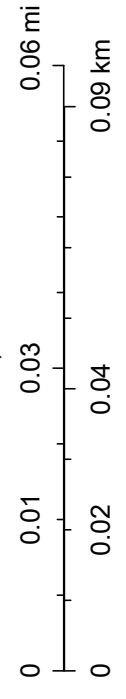


# Coon Field Site



March 6, 2019

1:2,257

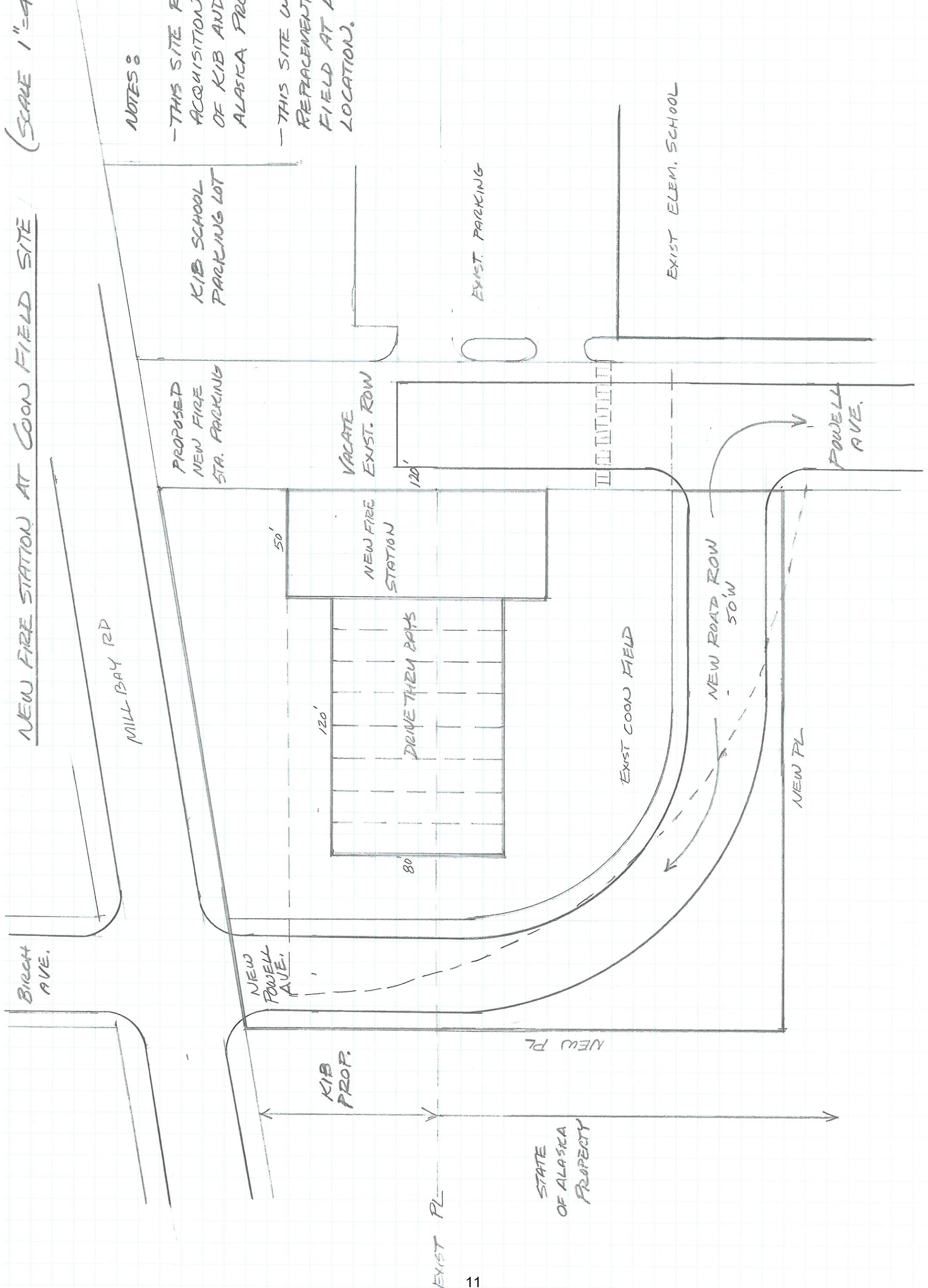


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



# NEW FIRE STATION AT COON FIELD SITE

(SCALE 1"=40')



## NOTES:

- THIS SITE REQUIRES ACQUISITION OF A PORTION OF KIB AND STATE OF ALASKA PROPERTIES
- THIS SITE WILL REQUIRE REPLACEMENT OF COON FIELD AT ANOTHER LOCATION.

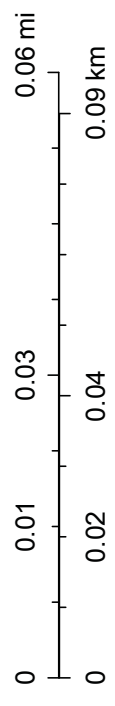


# Dog Park Site



March 6, 2019

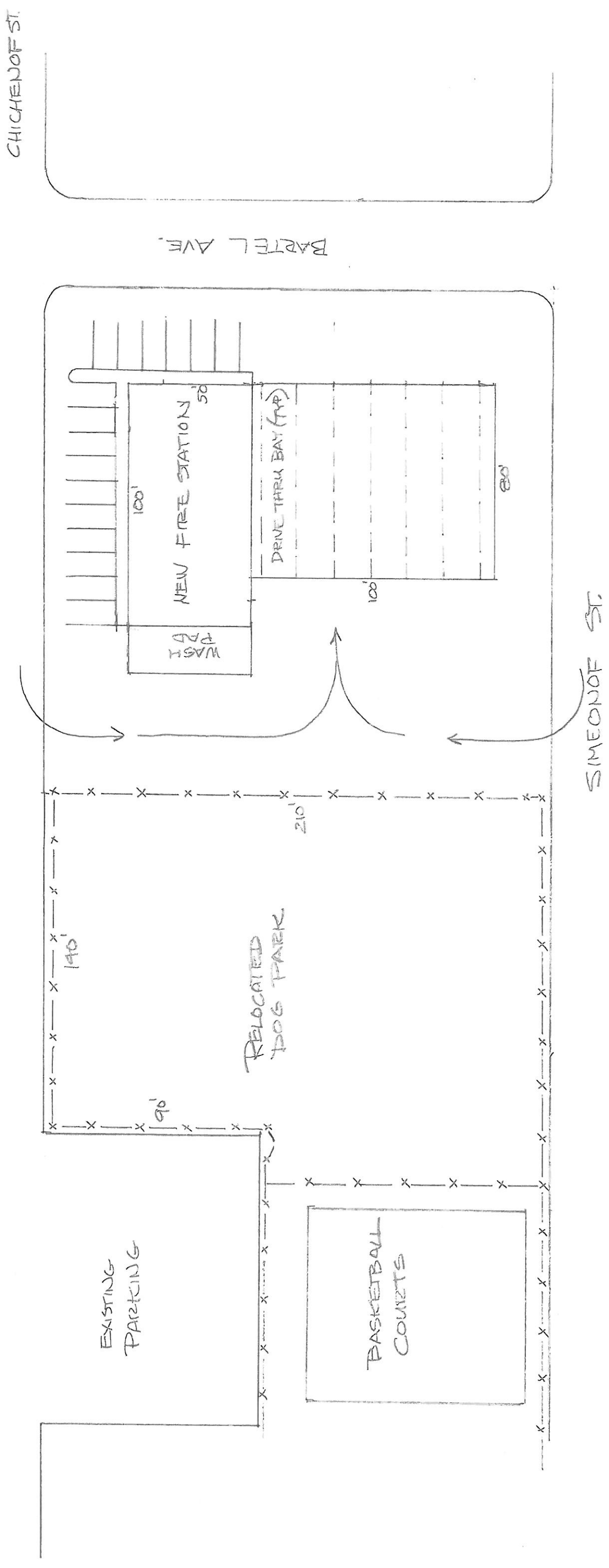
1:2,257



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



PRELIMINARY SITE SKETCH FOR NEW COLE FIRE STATION SITE  
 1" = 40'



- NOTES:
- THIS SITE REQUIRES WETLAND MITIGATION
  - THIS SITE WILL REQUIRE RELOCATION OF THE DOG PARK AND OTHER P&R FACILITIES