City Council Special Meeting Agenda

August 04, 2026 at 6:00 PM

City Council Chambers, Whittier Alaska

Mayor: Victor Shen

City Manager: Jackie C. Wilde

City Clerk: Shelby Carlson

City Attorney: Holly Wells

Council Members: Tom Wagner, Seat B, Jamie Loan, Seat C, Renner Macaltao, Seat D, David Pinquoch, Seat E, Peter Denmark, Seat F, Lorianne Borg, Seat G

Call to Order

Opening Ceremony

Roll Call

Citizen Comments on Any Agenda Item Except Those Items Scheduled For Public Hearing: Those who have signed in will be given the first opportunity to speak on any agenda item except those scheduled for Public Hearing. Time is limited to two (2) minutes per speaker and thirty (30) minutes total time for this agenda item.

Approval of Agenda

Conflict of Interest: Immediately after the Council approves the agenda at a regular or special meeting, each Council member shall declare any financial interest in a matter appearing on the agenda. Any Council member or member of the public present at the meeting may question whether another Council member has a financial interest in a matter appearing on the agenda.

Special Meeting Business

1. *Introduce Non-Code Ordinance 2026-004, Exempting Incumbent Leaseholders and Sublessees of City Property Interests from Whittier Municipal Code 3.38.480 and Adopting an Application Process that Allows Such Lessees and Sublessees to Apply for Direct Negotiation of a New Lease with the City on the Same Property Leased or Subleased by Applicants So Long as the Lease or Sublease Expired or Will Expire in 2026 and the Application is Received within 14 Days of the Effective Date of this Ordinance, and set for public hearing at the August Regular Meeting
2. *Introduce Ordinance 2026-005, Amending Portions of WMC Chapter 3.38 "Lease of City Lands" to Prioritize Leases Serving the Needs of the Community and to Deprioritize Lease Application Criteria Regarding Fair Market Value, and set for public hearing at the August Regular Meeting
3. Resolution 2026-035 Declaring that No Interest in Property Held by the City Shall Be Available for Long-Term Lease until October 1, 2026 Unless Otherwise Approved by Council

4. Resolution 2026-036 Authorizing the City Manager to Negotiate a Sole Source Contract with QAP to Dispose of Stockpiled Debris and Materials at the Buckner Building and Appropriating Funds
5. Reschedule August Regular Meeting to August 19
6. Reschedule September Regular Meeting to September 29

Council Comments

Citizen Discussion: Those signed-in will be given the first opportunity to speak on any subject over which the Council has control. Time is limited to five (5) minutes per speaker.

Council and Administration Response to Citizen Comments

Executive Session

Adjournment

Birch Horton Bittner & Cherot

MEMORANDUM

TO:	**WHITTIER CITY COUNCIL**
FROM:	**HOLLY C. WELLS**
RE:	**RESOLUTION NO. 2026-035 AND ORDINANCE NO. 2026-004**
CLIENT:	**CITY OF WHITTIER**
CLIENT NO:	**507456.96**
DATE:	**JULY 28, 2026**

I. INTRODUCTION

Ordinance No. 2026-004 (the "Ordinance") and Resolution No. 2026-035 (the "Resolution") were drafted at the direction of City Council to amend the City's leasing procedures to allow incumbent leaseholders and sublessees on City property to apply for direct negotiations with the City for leasehold interests on property owned or leased by the City. This memorandum summarizes the purpose, intent, and substance of the Ordinance and the Resolution and discusses the laws that govern and inform City Council's consideration of the proposed instruments.

II. SUMMARY AND BACKGROUND

On September 19, 2023, the City of Whittier adopted Ordinance 2023-003, which repealed outdated leasing provisions governing leases and subleases of City property and interests in City property. This ordinance was adopted after the City held three public hearings on the same to ensure maximum public participation, notice, and knowledge of the changes. The City knew any changes to its leasing policies would be highly contentious and of great interest to the community, especially the business community, and the City Administration. City Council wanted to ensure that all voices were heard during that process in 2023. Members of the business community attended these public hearings and shared comments regarding the process. Certain provisions were incorporated into the ordinance that allowed incumbent leaseholders an opportunity to apply for an exemption from competitive bidding. But an application was required to be submitted approximately one year before the expiration of a lease to ensure that a decision would be made regarding the future disposition of the property before the lease expiration. Further lease provisions were drafted to require City Council's approval of any long-term lease award, regardless of whether the lease was disposed of through a lease application process or competitive bidding.

The 2023 lease provisions require City Council to consider and annually update a Land Allocation Plan. The Land Allocation Plan requires City Council to identify City parcels available for lease/sublease and identify the method of disposition of the interest in available parcels. All leases/subleases that are not specifically subject to competitive bidding by City Council are leased through a lease application process. While the application process does not require competition, it does provide a method for City Administration to consider lease applications when more than one lease application was submitted for a single parcel.

On May 26, 2026, City Council adopted Ordinance No. 2026-002 suspending the City's Land Allocation Plan requirement through December 31, 2027. The suspension allowed the City to complete negotiations with the Alaska Railroad Corporation regarding land sales and exchanges that would necessarily affect the parcels addressed in the City's Land Allocation Plan. Although the Land Allocation Plan provisions are suspended, WMC 3.38.330 is still effective:

> Unless dedicated or reserved to another purpose, all real property including tide, submerged or shore lands to which the city has a right, title and interest as owner or lessee, or to which the city may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any local, state or federal law governing the leasing of city lands, this chapter shall prevail to the greatest extent permitted by law.

However, City Council did not designate which City parcels are available for lease and how these leases will be awarded; yet its right to do so remains.

City Administration consulted with legal counsel on how to navigate expiring leases given the suspension of the Land Allocation Plan and the lack of Council direction on how parcels would be leased in its absence. While the Administration considered simply accepting lease applications on the parcels at issue, the criteria for considering lease applications is established by City Council in the Land Allocation Plan process under WMC 3.38.360. Thus, in light of the suspension of the Land Allocation Plan and the lack of criteria for considering a lease application, the City Manager proposed the use of the competitive bidding process, which has clear criteria identified in the Code that remains in effect despite the suspension of the Land Allocation Plan. In an attempt to address the lease issues as governed by the Code, Administration brought forward resolutions for extensions of all expiring leases, recommending that City Council extend leases where the leaseholder was operating a compliant business on the leased/subleased premises. Administration did not recommend extending leases where parcels were used for storage or where the existing leaseholder subleased property and the sublessee, rather than the current leaseholder, was engaged in business operations. Instead, Administration recommended that those leases expire without renewal, allowing the City to put those parcels out for competitive bid, to ensure the City could consider all options for the lease of such property and apply the criteria under the Code. Administration ultimately proposed that all leases be subject to competitive bidding once the lease, or the lease extension, expired – Legal Counsel confirmed Administration's approach was proprietary.

In furtherance of its approach, City Administration developed a comprehensive presentation for Council and the public regarding the proposed competitive bid process. Council members made it clear during Administration's presentation that it did not want to dispose of the properties via competitive bid. Instead, City Council wanted to explore other options that would allow incumbent leaseholders, many of which had built improvements on the leasehold property and had been operating businesses for decades, an opportunity to directly negotiate with the City for a new lease.

City Administration also attempted to allow at least one incumbent leaseholder to apply for an exemption from competitive bidding. Indeed, WMC 3.38.480 allows City Council, "upon written recommendation by the City Manager," to exempt the renewal of a lease from competitive bidding if "Council finds such an exemption serves the City's best interests." City Administration intended to recommend exemption for: (a) the parcels on which the incumbent leaseholders are directly operating businesses, and (b) those businesses were in full compliance with the lease terms, and (c) improvements were constructed and properly maintained. However, Legal Counsel advised Administration that this application process was no longer available because a lessee seeking such an exemption must submit a lease application and written request for a new lease at least one year before the expiration of their lease.

Despite recommendations by the City Manager that were grounded in the actual use and operations of incumbent leaseholders, City Council weighed different factors. City Council ultimately granted the lease extensions recommended by the City Manager as well as other lease extensions that were not recommended by the City Manager. City Council appeared to second-guess its direction regarding lease extensions at a subsequent meeting, passing recommending that the City Manager enter into short-term leases with all incumbent leaseholders to allow City Council to make changes to existing law. At least one Council member implied that Administration would refrain from removing improvements while City Council considered how to move forward. These comments by City Council created confusion among incumbent leaseholders and the Administration, who were unsure what action would be taken under the expired lease terms.

Legal Counsel informed City Council of the available options, including: (a) adopting a law to extend the time period for applying for an exemption from competitive bidding via ordinance; (b) approving the competitive bid process; or (c) approving the lease application process for all parcels. But no City Council member independently requested an ordinance or resolution either adopting an application for direct negotiation process or approving a specific lease disposition method until the June City Council meeting. At the meeting, City Council again discussed the options available to it and directed Legal Counsel to prepare the Ordinance adopting an application that allows incumbent leaseholders and sublessees to apply for direct negotiation and the Resolution suspending long-term leasing on the property until October 2026 unless otherwise approved by Council. The Ordinance and Resolution reflect Legal Counsel's best attempt to capture the objectives of City Council in proposed legislation.

III. SUBSTANCE OF THE ORDINANCE AND RESOLUTION

The following provides a summary of the purpose and substance of the Ordinance and the Resolution.

A. <u>The Ordinance</u>

The Ordinance, as proposed, permits all lessees and sublessees of City property or an interest in City property with long term leases or subleases that expired or expire in 2026 to apply for direct negotiation of a new lease so long as all of the following provisions are met:

A. The applicant was the lessee or sublessee of a lease or sublease on the same property for which the lessee or sublessee is applying for direct negotiation of a new lease.

B. The applicant, if lessee, was in full compliance with the terms of the lease at the time of its expiration.

C. The lease expired in 2026.

D. There are no outstanding payments owed to the City by the applicant.

The Ordinance requires a lessee or sublessee who seeks direct negotiations with the City for a new lease to submit an application within 14 days from the effective date of the Ordinance. The Ordinance also provides specific criteria that must be considered by City Council, which include:

1. Applicant's past capital investment and binding commitment to future capital investment on the property;
2. Applicant's financial condition and prior lease history;
3. The number of persons employed and the prospect for future employment;
4. Tax revenues and other financial benefits to the City anticipated in the future if direct negotiation is permitted and a new lease is executed without the acceptance of other lease applications or competitive bidding;
5. Consistency of past use and intended future use with all applicable laws, including land use codes and regulations, the comprehensive plan, and overall economic development plan;
6. Other opportunities for use of the property that may provide greater benefit to the public; and

7. Other social, policy, and economic considerations as determined by City Council.

The criteria provided mirror the criteria in WMC 3.38.480, as that criteria was adopted by Council after careful consideration and three public hearings and ensures that the Ordinance does not deviate from the intent and purpose of the City's existing leasing policies. City Council may not approve an application for direct negotiation unless it finds that doing so serves a legitimate public purpose and all of the criteria weigh in favor of granting the application. The Ordinance also permits City Council to impose any conditions on approval that City Council finds are necessary to serve the public interest.

B. <u>The Resolution</u>

The Resolution provides a declaration of City Council's intent regarding the lease of City property and property interests while the Land Allocation Plan is suspended, at least until October 1, 2026. Specifically, it declares that "no interest in property held by the City shall be available for long-term lease until October 1, 2026 unless otherwise approved by City Council via resolution or ordinance." The Resolution defines "long-term lease" for purposes of the Resolution to include "any lease that is not a short-term lease or lease amendment or extension." It preserves the authority vested in the City Manager to enter short-term leases, execute lease amendments, grant short-term lease extensions, and approve permits on all property in which the City has an interest so long as the action complies with the Whittier Municipal Code. The Resolution also allows the City Manager to accept and evaluate applications for direct negotiations on property in which the City has an interest so long as City Council adopted a law permitting such applications. It also makes clear that the Resolution does not limit the City Manager's authority and duty to exercise custody over all real and personal property of the City, or to supervise enforcement of municipal law under AS 29.20.500 and Whittier Municipal Code. The Resolution does not affect the lease extensions, short term leases, enforcement of holdover provisions under expired leases or any enforcement actions taken by the City Manager under their authority under AS 29.20.500 and Whittier Municipal Code.

IV. NEXT STEPS IF THE ORDINANCE AND RESOLUTION ARE NOT ADOPTED

If the Ordinance and/or the Resolution are not passed by City Council, and the Code is not otherwise amended, we highly recommend that City Council provides City Administration with clear direction on the next steps and that City Council apply its Code provisions in doing so. Without any change to applicable laws, the City Manager will presumably take action to enforce the terms of the expired leases, which is necessary to minimize the City's liability and exposure under those expired leases. While the City Manager has extended leases, permits, and attempted to create clarity on property where leases have expired during City Council's uncertainty, a continued lack of direction puts the City's Administration in an extremely difficult position and prevents any use of the parcels, which directly contradicts the purpose of the City's lease provisions. To that end, if City Council does not adopt the Resolution, we recommend City Council:

1. Adopts a resolution declaring each parcel available for lease and identifying disposal by either lease application or competitive bidding under the Code. If a parcel is subject to lease applications, we recommend City Council identify the criteria to be considered when reviewing a lease application or simply specify the use of criteria in WMC 3.38.380. This process fully complies with existing City Code.

This approach essentially creates a Land Allocation Plan as it applies to the available parcels.

If City Council does not introduce the Ordinance or ultimately fails to adopt it, we again recommend the proposed Resolution above. If the Resolution is adopted but the Ordinance is not, we recommend the adoption of an ordinance amending the Code before October 1, 2026.

V. CRITERIA CONSIDERED IN COMPETITIVE BIDDING AND COMPETING LEASE APPLICATIONS

During Council discussions, there were many expressions of fear regarding the criteria considered when analyzing a lease application or competitive bid for a lease with the City. It is important for City Council to note that the criteria currently adopted in the City Code clearly accounts for consideration regarding many of the unique benefits that incumbent leaseholders may possess. Specifically, this criteria includes, *but is not limited to*:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Whittier Comprehensive Plan;

2. The development plan including all phases and timetables;

3. The proposed capital investment;

4. Experience of the applicant in the proposed business or venture;

5. Financial capability or backing of the applicant including credit history, prior lease history, and assets that will be used to support the proposed development;

6. The number of employees anticipated;

7. The proposed rental rate;

8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease;

9. Other long-term social and economic development; and

10. The residency or licensure of the applicant in the city and/or the State of Alaska, as identified in the city's request for proposal and permitted under state and federal law.

The above criteria also allows for flexible considerations when determining rental rates, which include not just the appraisal but the highest and best use of the land, existing and planned development, economic development objectives, the location of the property, and even alternative valuation methodologies as negotiated by both parties. *See* WMC 3.38.380(B).

When City Council drafted its lease provisions in 2023, it considered all of the concerns currently reflected by City Council. Council ensured that a lease application award could be based on consideration of the totality of the circumstances and not just on the highest rental rate offered. It carefully crafted criteria to ensure that the value and contributions and value of incumbent leaseholders and longstanding business operations within the City were weighed and reflected in the criteria. Further, the Code ensures that no lease application or competitive bid is awarded without Council approval.

The Ordinance allows City Council to essentially extend the application for direct negotiation currently reflected in its Code, and otherwise preserves the integrity of the lease provisions as adopted.

City Council is afforded substantial flexibility in considering lease applications for City-owned or leased property, but the City Council does have limitations on its considerations placed upon it by the Equal Protection Clause of the Alaska and United States Constitutions. Further, the City has obligations to the voters and the public as it essentially holds public property in trust for the public. Thus, City Council must consider and weigh criteria and determine that any lease awarded serves a legitimate *public* purpose. An award of a lease to an incumbent leaseholder simply because that leaseholder had it previously would not constitute a legitimate public purpose. The criteria outlined in the Ordinance and the criteria included in the Code are designed to ensure that both the City Council and the City Manager consider criteria that satisfies the constitutional requirements and also satisfies the obligations Council has to its constituents and the public at large.

Like the City Council, the City Manager also has a duty to consider criteria to ensure a legitimate public purpose in granting interests in City property. For this reason, it is imperative that the City Council respect the City Manager’s decisions regarding whether to grant short-term leases based upon the interests of the public in the property at issue. The City Manager consistently and diligently tried to apply the Code in her decisions and she sought legal counsel regarding the legal compliance of those decisions. The only action Legal Counsel advised against was the City Manager’s attempt to extend the application for exemption process to an incumbent leaseholder despite their failure to meet the deadline. In all other cases, the City Manager objectively weighed criteria when making permitting and lease extension recommendations.

VI. CONFLICTS OF INTEREST

Finally, when considering the proposed Ordinance and Resolution, we recommend that Council member Denmark and any other City Council member with an interest in a lease or sublease with the City disclose a conflict of interest and refrain from participating in discussions and decisions regarding any lease provision or practice. In a small area like the Whittier waterfront, the businesses awarded leases and the terms of those leases all impact one another. The adoption of an application for direct negotiation now provides a basis for demanding such an application process later. Competitive bidding on lease parcels near a Council member's leased parcels may bring unknown competition. Or, an incumbent leaseholder may have preestablished relationships or benefits from an existing leaseholder. While Council member Denmark declared his conflict of interest at the last meeting, City Council rejected his disclosure and required him to participate in motions and discussions regarding lease provisions and practices. While there was little harm in that participation, provided there was no ordinance or resolution before City Council at that time, there will be substantial risk of a violation if City Council again requires Council member Denmark's participation or vote. Whittier Municipal Code Chapter 3.38 governing City leases was adopted without Council member Denmark's participation, which preserved the integrity of those provisions. We highly recommend that City Council afford that same integrity to all ordinances and resolutions regarding leases in the harbor area going forward.

Similarly, to the extent Mayor Shen feels that his father's leasehold interest makes it difficult to objectively take action that directly affects his father's leasehold interest, we recommend that Council member Shen declare the conflict of interest under Alaska common law and that Council declare a common law conflict of interest and allow or require Mayor Shen to abstain from participation in actions and discussions directly pertaining to his father's leasehold interest. When considering conflicts of interest, it is necessary to consider both the City's conflict of interest provisions and the court's consideration of conflicts of interest under common law. Under common law, the Alaska Supreme Court previously found that a City Council member has a "substantial financial interest" when his or her property value or tax base would be impacted by an official action. In so finding, the Alaska Supreme Court did not rely upon a monetary threshold (i.e., more than $500). Instead, it applied the intangible concept of "substantial financial interest". *See Griswold v. City of Homer*, 925 P.2d 1015, 1031 (Alaska 1996).

For this reason, and especially in light of the emotionally charged discussions surrounding Mr. Shen's lease with the City, we recommend City Council and its members consider conflicts of interest carefully both under common law and City Code. It is worth noting that while a common law conflict of interest would likely not exist when considering certain leasehold decisions, such as assignments, the refusal to grant an application for direct negotiation or to enforce or take action under a lease, for example, may trigger a common law conflict of interest. While a bright line rule for Council to follow similar to the substantial financial interest provision in the Code is ideal, it is important that Council consider the reality of conflicts under both common law and Code, especially when navigating an issue that incited extreme reactions from Council members, members of the public, and Administration.

VII. CONCLUSION

This memorandum provides City Council with an introduction to the Ordinance, the Resolution, and general considerations surrounding the lease provisions and potential actions facing City Council. We are available in person to discuss this memo and the proposed legislation with Council at its upcoming meeting.

Sponsored by: Mayor Shen
Introduction Date: August 4, 2026
Public Hearing/Enactment Date: _______________, 2026

CITY OF WHITTIER, ALASKA
NON-CODE ORDINANCE 2026-004

A NON-CODE ORDINANCE OF THE CITY COUNCIL OF WHITTIER, ALASKA EXEMPTING INCUMBENT LEASEHOLDERS AND SUBLESSEES OF CITY PROPERTY INTERESTS FROM WHITTIER MUNICIPAL CODE 3.38.480 AND ADOPTING AN APPLICATION PROCESS THAT ALLOWS SUCH LESSEES AND SUBLESSEES TO APPLY FOR DIRECT NEGOTIATION OF A NEW LEASE WITH THE CITY ON THE SAME PROPERTY LEASED OR SUBLEASED BY APPLICANTS SO LONG AS THE LEASE OR SUBLEASE EXPIRED OR WILL EXPIRE IN 2026 AND THE APPLICATION IS RECEIVED WITHIN 14 DAYS OF THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City of Whittier adopted new laws governing leasing of interests in City property in 2023; and

WHEREAS, many long-term leaseholders failed to comply with provisions that allowed incumbent leaseholders to apply for an exemption from competitive bidding procedures when certain criteria were met; and

WHEREAS, City Council finds that it is in the best interest of the City to allow incumbent leaseholders to apply for exemption both from competitive bidding and competition in the lease application process given that many of these leaseholders may have longstanding businesses in full operation and improvements in which such leaseholders have made substantial investment and the City and the public has an interest in fostering these investments in the community; and

WHEREAS, the City Administration attempted to give some of these incumbent leaseholders an opportunity to apply for an exemption under WMC 3.38.480 but the City Attorney recommended against doing so as the time period in which an application for exemption may be filed had expired; and

WHEREAS, allowing incumbent leaseholders an opportunity to apply for an exemption from competitive leasing provisions serves a legitimate public purpose because it allows the City Manager, and ultimately the City Council, the ability to consider the reasons for allowing an exemption but ensures an exemption is only granted when specific criteria are met demonstrating that an exemption promotes the best interest of the City, its taxpayers, economic development, and growth within the community,

NOW, THEREFORE, THE WHITTIER CITY COUNCIL ORDAINS:

Section 1. <u>Exemption</u>. Leases expiring in 2026 shall not be subject to WMC 3.38.480 or any other provision of Chapter 3.38, “Lease of City Lands,” that would prohibit lessees or sublessees with leases expiring in 2026 from applying for an exemption from competition in the lease application process.

Section 2. Application for Direct Negotiation of A New Lease-Eligible Applicants. All lessees and sublessees of City property or an interest in City property with long term leases or subleases that expired or expire in 2026 may apply for direct negotiation of a new lease so long as all provisions of this section are met:

A. The applicant was the lessee or sublessee of a lease or sublease on the same property for which the lessee or sublessee is applying for direct negotiation of a new lease.

B. The applicant, if lessee, was in full compliance with the terms of the lease at the time of its expiration.

C. The lease expired in 2026.

D. There are no outstanding payments owed to the City by the applicant.

Section 3. Direct Negotiation Application Criteria.

A. A lessee or sublessee seeking to enter into a new lease with the City under this Ordinance must submit a lease application within 14 days from the effective date of this ordinance. At a City Council meeting held no more than 45 days after the deadline for applications, the City Manager shall submit all timely and complete applications, along with the City Manager's recommendation for approval, denial, and conditions of the applications, to City Council.

B. An application for direct negotiation shall be submitted on the same form as an application for lease renewal or approval under WMC 3.38.480 or another form that the City Manager makes available on the Effective Date of this ordinance.

C. City Council shall consider the following factors when determining whether to approve an application for direct negotiation under this ordinance:

1. Applicant's past capital investment and binding commitment to future capital investment on the property;

2. Applicant's financial condition and prior lease history;

3. The number of persons employed and the prospect for future employment;

4. Tax revenues and other financial benefits to the City anticipated in the future if direct negotiation is permitted and a new lease is executed without the acceptance of other lease applications or competitive bidding;

5. Consistency of past use and intended future use with all applicable laws, including land use codes and regulations, the comprehensive plan, and overall economic development plan;

6. Other opportunities for use of the property that may provide greater benefit to the public; and

7. Other social, policy, and economic considerations as determined by City Council.

D. City Council may consider other factors so long as those factors are applicable to supporting legitimate public interests and not solely the personal interest of the applicant.

E. City Council may approve an application, deny the application, or approve the application with conditions. No applicant has a right to a lease of City property. No applicant has an existing property interest in the approval of an application for direct negotiation. Council's consideration of an application for direct negotiations is based on the best interest of the public and thus constitutes a legislative, not quasi-judicial consideration. City Council may not approve an application for direct negotiation unless it finds that doing so serves a legitimate public purpose and all of the criteria weigh in favor of granting the application. City Council may impose any conditions on approval that City Council finds are necessary to serve the public interest.

F. An application for approval of direct negotiations under this ordinance shall be subject to all other requirements under Chapter 3.38 of the Whittier Municipal Code and all other applicable federal, state, and local laws.

G. There is no right to appeal a denial of an application for direct negotiation.

Section 4. **<u>Classification.</u>** This Ordinance is not permanent and is a non-code ordinance.

Section 5. **<u>Effective Date</u>**. This ordinance shall become effective upon adoption and shall cease to be in effect on January 1, 2027.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this ___day of _____________, 2026.

____
Victor Shen
Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

____
Shelby Carlson
Acting City Clerk

(City Seal)

Birch Horton Bittner & Cherot

MEMORANDUM

TO: WHITTIER CITY COUNCIL

FROM: HOLLY C. WELLS

RE: ORDINANCE REVISING WMC CHAPTER 3.38

CLIENT: CITY OF WHITTIER

CLIENT NO.: 507456.

DATE: July 28, 2026

I. INTRODUCTION

This memo provides a summary of the revisions proposed in Ordinance No. 2026-005

II. PROPOSED CHANGES IN ORDINANCE

Ordinance 2026-005 sponsored by Council member Pinquoch and Wagner proposes several changes to WMC Chapter 3.38 governing lease provisions in the City. These changes are as follows:

1. WMC 3.38.330(D) was revised to emphasize that Council must identify property that is subject to competitive bidding in the Land Allocation Plan. This change adds clarity but does not change existing law.

2. WMC 3.38.360 adds a sentence that emphasizes that the City Manager's long term lease award is subject to Council approval via resolution under WMC 3.38.350. This addition adds clarity but does not change existing law.

3. WMC 3.38.370 is changed to add a purpose statement that essentially defines what constitutes a bid that is "most advantageous to the City" and expressly acknowledges that the bid with the highest rental rate is not necessarily most advantageous to the City.

4. WMC 3.38.400 is amended to ensure City Council is presented with information regarding all bids and to adopt a process for City

Council to reject the recommendations of the City Manager regarding an award and to direct the City Manager to prepare a resolution reflecting Council's selection of an alternate winning applicant and the reasons for its selection.

5. WC 3.38.420 removes a provision that states that payments of a higher than fair market rent are generally in the public interest. While this premise may remain true, it was removed from the Code to avoid any confusion regarding the importance of a "totality of the circumstances" analysis under the specified criteria.

6. WMC 3.38.460 was amended to allow requests for options to renew up to 60 days before expiration of the lease.

7. WMC 3.38.480 is amended to allow Council to grant an application for exemption without it being recommended by the City Manager. It also allows leaseholders to apply for the exemption so long as they do so at least 90 days before the expiration of their existing lease rather than 12 months before such expiration.

III. CONCLUSION

In drafting these proposed revisions, Council member Pinquoch attempted to increase Council's authority in the lease selection process as well as its awareness of the applications removed in the competitive bidding process. Further, the Ordinance aimed at making the application for exemption from competitive bidding a more accessible process available to all qualified applicants. Finally, the Ordinance also creates greater clarity in what constitutes the most "advantageous" bid for the City and the public by emphasizing that the highest rental rate does not necessarily make a bid the most advantageous bid and that the analysis requires consideration of all criteria listed in the Code.

Sponsored by: Pinquoch
Introduction Date: August 4, 2026
Public Hearing/Enactment Date: _________, 2026

CITY OF WHITTIER, ALASKA
ORDINANCE 2026-005

AN ORDINANCE OF THE CITY COUNCIL OF WHITTIER, ALASKA, AMENDING PORTIONS OF WMC CHAPTER 3.38 "LEASE OF CITY LANDS" TO PRIORITIZE LEASES SERVING THE NEEDS OF THE COMMUNITY AND TO DEPRIORITIZE LEASE APPLICATION CRITERIA REGARDING FAIR MARKET VALUE

WHEREAS, it is in the best interest of the Whittier Community, including the City of Whittier (the "City"), its residents, businesses, and local economy contributors to utilize its real property to best meet the need of the local economy; and

WHEREAS, the City seeks to adopt leasing policies that are fair and non-discriminatory; and

WHEREAS, the City is dedicated to collaborating with and supporting both its private residents and the businesses that provide much needed employment, goods, and services in the City; and

WHEREAS, transparent and efficient lease policies ensure new and existing businesses have equal opportunities to thrive in the City and are essential to the City's collaboration with and support of its business community members.

NOW, THEREFORE, THE WHITTIER CITY COUNCIL ORDAINS:

Section 1. Amendment. Whittier Municipal Code Section 3.38.330 "Land allocation plan—Property available for lease," is amended as follows:

3.38.330 - Land allocation plan—Property available for lease.

A. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shore lands to which the city has a right, title and interest as owner or lessee, or to which the city may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any local, state or federal law governing the leasing of city lands, this chapter shall prevail to the greatest extent permitted by law.

B. The city shall maintain a list of all city-owned properties authorized for lease by council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the "Whittier Land Allocation Plan" and will be made available to the public at the city clerk's office.

C. Council shall adopt a land allocation plan that identifies:

1. City-owned property available for lease;

2. The property description, lease rate, preferred length of the lease term for each available parcel; and

3. Any requirements, preferences or restrictions regarding use and/or development.

D. Council ~~may~~ **shall** identify **any** property in the land allocation plan that is subject to competitive bidding. Property subject to competitive bidding in the land allocation plan need only identify the property description in the land allocation plan but all other terms required in subsection (C) of this section shall be identified in the request for proposal for such properties.

E. Prior to the adoption of the land allocation plan, council shall hold a work session. Planning commission members and city staff may provide recommendations to council during the work session regarding city-owned property available for lease and the terms of such leases.

F. The city shall provide public notice of the adoption of the land allocation plan and the city-owned real property available for lease identified in the land allocation plan no more than 60 days after its adoption.

G. All uses and activities on city-owned real property available for lease are subject to all applicable local, state, and federal laws and regulations.

H. Council may restrict specific city-owned properties to certain uses or classes of use that serve the city's best interest.

Section 2. Amendment. Whittier Municipal Code Section 3.38.360 "Lease applications," is amended as follows:

3.38.360 - Lease applications.

Except for property subject to competitive bidding under this chapter, persons interested in entering a long-term or short-term lease with the city may submit a lease application to the city clerk. The city manager shall consider all applications and determine if an application is complete and meets the criteria identified in the land allocation plan. When the city receives more than one lease application for a parcel that meets the criteria established for that parcel in the land allocation plan, the city manager shall evaluate the applications using the criteria in section 3.38.380 and award the lease most advantageous to the city. If both applicants are equally advantageous to the city, the city manager shall award the lease to the applicant who submitted a completed application first. **A city manager's long-term lease award is subject to the council's approval via resolution pursuant to section 3.38.350.** Applicants may be charged a fee for processing a lease application.

Section 3. Amendment. Whittier Municipal Code Section 3.38.370 "Requests for proposals—Competitive bidding process," is amended as follows:

3.38.370 - Requests for proposals—Competitive bidding process.

A. **The purpose of this section is to ensure that the City awards the lease that serves the best interests of the City and the public. The most advantageous lease to the City is the lease that promotes the interests, fulfils the needs of the community and the public. While the highest lease rate is one criteria considered by the City in evaluating bids, the bid with the highest lease rate will not necessarily constitute the most advantageous bid. The City Council shall award the lease that is most advantageous to the City based upon consideration of all of the criteria.**

~~A.~~ **B.** The city manager may issue a request for proposals to lease any property that has been subject to competitive bidding under the land allocation plan at any time after posting the notice required in subsection 3.38.330(f).

~~B.~~ **C.** A request for proposal advertised by the city must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the city intends to use to score and rank proposals.

~~C.~~ **D.** The city manager must obtain approval from council before requesting proposals to lease property not identified in the land allocation plan as property available for lease.

Section 4. Amendment. Whittier Municipal Code Section 3.38.400 "Notice to award," is amended as follows:

3.38.400 - Notice to award.

A. The city manager shall consider all responses to the city's request for proposals that are timely and responsive. Untimely submissions shall be returned to the proposer without review and that proposer shall not be considered.

B. The city manager may, in the city manager's sole discretion, and upon a determination that none of the proposals are in the city's best interest, recommend rejection of all proposals to city council.

C. Upon a determination that a proposal is the most advantageous to the city, the city manager shall recommend the proposal to council for acceptance. If council approves the recommendation, the city manager shall issue a notice to award the lease to the successful proposer. The city manager's recommendation shall be presented to council in a written memorandum identifying the recommended winning proposer, the property description, the essential terms of the proposed lease, and the reasons the city manager recommends the award. **<u>In a separate document presented to council, the city manager shall list any other applicants and the reason for the city manager's rejection. Upon request, the City Manager shall provide City Council with all responsive proposals.</u>**

D. If council adopts the city manager's recommendation, the city manager shall negotiate with the winning applicant and present a final lease to council for approval. A notice to award is conditional upon the city manager's successful negotiation of a final written lease consistent with the terms upon which the award was based. **<u>If City Council does not adopt the City Manager's recommendation but selects an alternative winning applicant. City Council must direct the City Manager to prepare a resolution reflecting City Council's reasons for rejecting the City Manager's recommendation and selecting the alternative winning applicant. The resolution shall be presented to City Council for approval at its next meeting.</u>**

E. The city manager may, with council approval, rescind a notice to award. A notice to award becomes void on the date the city manager provides written notice to the proposer that the award has been rescinded.

F. The city manager may rescind a notice to award at any time prior to the execution of a lease if the proposer can no longer meet the terms of the proposal.

G. If the city manager rescinds a notice to award, the city manager may negotiate with the next most responsive proposer and submit a new recommendation for award to council and council may approve the award of the proposal to that recommended proposer. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.

H. Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution.

Section 6. <u>Amendment</u>. Whittier Municipal Code Section 3.38.420 "Lease rental rates," is amended as follows:

3.38.420 - Lease rental rates.

A. Except as otherwise provided in this section, all property shall be leased at no less than "fair market rent."

~~B. Payments of a higher than fair market rent resulting from a proposal or lease application are generally in the public interest and will help establish fair market rent using current market forces.~~

~~C.~~ **B.** Council may establish a minimum rent or "asking price." It may set a minimum rent at an amount equal to or higher than the estimated "fair market rent" if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.

~~D.~~ **C.** Except as otherwise provided in this chapter, council may approve a lease of city land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.

~~E.~~ **D.** The lease shall provide for payment of interest, a late fee for rent past due, attorneys' fees and costs arising from enforcing the terms and conditions of the lease to the maximum extent allowed by law.

~~F.~~ **E.** Lease amounts shall be adjusted annually based on the Anchorage Consumer Price Index.

F~~G~~. No assignment of a lease shall be approved unless the rental rate is at or above "fair market rent" at the time the assignment is executed.

Section 7. Amendment. Whittier Municipal Code Section 3.38.460 "Options to renew," is amended as follows:

3.38.460 - Options to renew.

A. Leases may contain no more than two options to renew.

B. A lessee may not exercise an option to renew unless the city manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

C. **Except for leases with a valid remaining option to renew, lessee may request an option to renew a long-term lease up to 24 months, but not less than 60 days, prior to the lease expiration date. The city shall notify lessee in writing, verified by certified mail or other form of verified receipt, within 18 months of renewal if lessee has not submitted a renewal application.**

~~C.~~ **D.** A lessee whose initial lease and all options to renew have expired shall have no automatic right of further renewal or extensions.

Section 8. Amendment. Whittier Municipal Code Section 3.38.480 "Lease renewal or approval—Competitive bidding exemption," is repealed and enacted as follows:

3.38.480 - Lease renewal or approval—Competitive bidding exemption.

A. Council, ~~upon written recommendation by the city manager,~~ may exempt the renewal of a lease from competitive bidding if council finds such exemption serves the city's best interests.

B. A lessee seeking to enter into a new lease with the city exempted from competitive bidding under this section must submit a lease application and a written request for a new lease to the city manager at least **90 days**~~12 months~~, but no more than 18 months, prior to the expiration of the existing lease. The city manager shall notify council of new lease requests under this section. The city will review the application but is under no obligation to enter into a new lease.

C. If council approves a new lease exempted from competitive bidding under this section, it must do so by resolution within six months of the date the lease application is filed with the city. Failure to do so acts as a denial of the new lease application.

D. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this section:

1. Lessee's past capital investment and binding commitment to future capital investment;
2. Lessee's financial condition and prior lease history;
3. The number of persons employed and the prospect for future employment;
4. Tax revenues and other financial benefits to the city anticipated in the future if the lease is renewed;
5. Consistency of past use and intended future use with all applicable laws, including land use codes and regulations, the comprehensive plan, and overall economic development plan;
6. Other opportunities for use of the property that may provide greater benefit to the city; and
7. Other social, policy, and economic considerations as determined by council.

Section 9. Classification. This Ordinance is a permanent code ordinance.

Section 10. Severability. If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 11. Effective Date. This ordinance shall become effective upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this ___day of _____________ 2026.

____
Victor Shen
Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

____
Shelby Carlson
Acting City Clerk

(City Seal)

Sponsored by: Mayor Shen

CITY OF WHITTIER, ALASKA
RESOLUTION 2026-035

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER DECLARING THAT NO INTEREST IN PROPERTY HELD BY THE CITY SHALL BE AVAILABLE FOR LONG-TERM LEASE UNTIL OCTOBER 1, 2026 UNLESS OTHERWISE APPROVED BY CITY COUNCIL

WHEREAS, Whittier Municipal Code 3.38.330 requires the City to adopt the Whittier Land Allocation Plan annually, through which the City maintains a list of all property available for lease by the City; and

WHEREAS, The City adopted Ordinance no. 2026-002 suspending WMC 3.38.330 (B) through (F) until December 31, 2027 to permit the Whittier City Council to finalize certain land holdings within the City before engaging in the annual allocation plan process; and

WHEREAS, the suspension of the Whittier Land Allocation Plan requirement created uncertainty regarding the methods of disposal for leasehold interests that became available for lease during the suspension; and

WHEREAS, the City has been unable to agree on the availability of those properties for lease and, more specifically, whether or not those parcels should be subject to a competitive bid process,

NOW, THEREFORE, THE WHITTIER CITY COUNCIL HEREBY RESOLVES:

Section 1. Except as provided in Section 2 and 3 of this resolution, no interest in property held by the City shall be available for long-term lease until October 1, 2026 unless otherwise approved by City Council via resolution or ordinance. A long-term lease for purposes of this resolution is any lease that is not a short-term lease or lease amendment or extension.

Section 2. The City Manager may enter into short-term leases, execute lease amendments, grant short-term lease extensions, and approve permits on all property in which the City has an interest so long as the action complies with the Whittier Municipal Code. The City Manager may also accept and evaluate applications for direct negotiations on property in which the City has an interest so long as City Council has adopted law permitting such applications.

Section 3. This resolution in no way limits the City Manager's authority and duty to exercise custody over all real and personal property of the City or to supervise enforcement of municipal law under AS 29.20.500 and Whittier Municipal Code. It does not affect the lease extensions, short term leases, enforcement of holdover provisions under expired leases or any enforcement actions taken by the City Manager under the authority vested in the City Manager under AS 29.20.500 and Whittier Municipal Code.

Section 4. This Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by the City Council of City of Whittier, Alaska, this ____ day of _______________, 2026.

____
Victor Shen
Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

____
Shelby Carlson
Acting City Clerk

(City Seal)

Agenda Statement

CITY OF WHITTIER

Meeting Date: August 4, 2026

To: City Council

Through: Jackie C. Wilde, City Manager

Agenda Item: Resolution 2026-036 Authorizing the City Manager to Negotiate a Sole Source Contract with QAP to Dispose of Stockpiled Debris and Materials at the Buckner Building and Appropriating Funds

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BACKGROUND, JUSTIFICATION, & INTENT:

The Buckner Building is a vacant structure that continues to present public safety and security concerns due to unauthorized entry and trespass. Over the course of various public works and construction projects, excess soil, gravel, and other material has been temporarily stockpiled around or near the building. The location and height of the stockpiled material may make it easier for unauthorized individuals to access portions of the Buckner Building.

The intent of this resolution is to reduce an avoidable safety and security risk by removing the stockpiled debris and materials from the area at or near the Buckner Building. Removing the material will not resolve all risks associated with the structure, but it will help reduce opportunities for trespass, lessen an attractive nuisance, and support the City's ongoing efforts to manage known safety concerns at the site.

Resolution 2026-036 appropriates an amount to be negotiated from the General Fund Major Repair and Replacement Fund for removal and disposal of the stockpiled debris and materials. The resolution also authorizes the City Manager to negotiate and execute a sole source contract with QAP, together with any related documents necessary to complete the work, in an amount not to exceed the appropriated funds.

Administration recommends the sole source approach because QAP is already present in Whittier with significant heavy equipment, allowing the City to avoid duplicative mobilization and demobilization costs, avoid delays associated with a fully competitive procurement process, utilize a contractor with a positive record of providing reliable service at reasonable cost, and take advantage of economies of scale while advancing public safety and community beautification. This action is intended to be a practical, limited risk-reduction measure; it does not represent a full redevelopment, remediation, or long-term disposition plan for the Buckner Building.

CONSISTENCY CHECKLIST:

	Yes	No	N/A
1. Legislative Priorities: *Buckner Building Environmental Remediation*	☒	☐	☐
2. Comprehensive Plan: *2.1.3.2, Clean up City-owned land.*	☒	☐	☐
3. Whittier Code: *WMC 3.32.210 Sole Source Procurement*	☒	☐	☐
4. Other	☐	☐	☒

FISCAL NOTE: Funding for this contract will come from the General Major Repair and Replacement Fund account no 72-900-9200.

ATTORNEY REVIEW: ☐ Yes ☒ No ☐ Not Applicable

RECOMMENDATION: Administration recommends approval of Resolution 2026-036.

Sponsored by: Wilde

CITY OF WHITTIER, ALASKA
RESOLUTION 2026-036

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE A SOLE SOURCE CONTRACT WITH QAP TO DISPOSE OF STOCKPILED DEBRIS AND MATERIALS AT THE BUCKNER BUILDING AND APPROPRIATING FUNDS

WHEREAS, the Buckner Building is a vacant structure that presents ongoing public safety and security concerns due to unauthorized entry and trespass; and

WHEREAS, over the course of various public works and construction projects, excess soil, gravel, and other material has been temporarily stockpiled around or near the Buckner Building; and

WHEREAS, the location and height of the stockpiled material may make it easier for unauthorized individuals to access portions of the Buckner Building; and

WHEREAS, removal of the excess material will help reduce opportunities for trespass and support the City's ongoing efforts to manage safety risks associated with the Buckner Building; and

WHEREAS, the City Council finds it necessary and appropriate to appropriate funds for removal and disposal of the excess material; and

WHEREAS, the City Council finds it in the public interest to authorize a sole source contract with QAP for disposal of the stockpiled debris and materials because QAP is already present in Whittier with significant heavy equipment, allowing the City to avoid duplicative mobilization and demobilization costs, avoid delays associated with a fully competitive procurement process, utilize a contractor with a positive record of providing reliable service at reasonable cost, and take advantage of economies of scale to beautify the community while reducing an attractive nuisance that can facilitate trespass into the Buckner Building, increase public safety response demands, and threaten the health of individuals accessing a contaminated site.

NOW, THEREFORE, THE WHITTIER CITY COUNCIL HEREBY RESOLVES:

Section 1. The City Council hereby appropriates Funding in an amount negotiated between the City of Whittier and QAP is hereby appropriated from General Fund MRRF Reserves account no 72-000-3000 to capital expenses account no 72-900-9200.

Section 2. The City Council hereby finds it in the public interest to enter into a sole source contract with QAP for this project based on the recitals above, which are incorporated herein by this reference.

Section 3. The City Manager is authorized to negotiate and execute a sole source contract with QAP, together with any related documents necessary to complete the removal and disposal of the stockpiled debris and materials at or near the Buckner Building, in an amount not to exceed the funds appropriated by this resolution.

Section 4. This resolution shall be effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this _______day of ___________, 2026.

____
Victor Shen
Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

____
Shelby Carlson
Acting City Clerk

(City Seal)