

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING ORDINANCE 3850 APPROVING AND AUTHORIZING
THE CITY MANAGER TO EXECUTE DOCUMENTS NECESSARY TO
IMPLEMENT THE TERMS OF AN AMENDED AND RESTATED LEASE
WITH BAY SHIP AND YACHT CORPORATION TO CLARIFY THE
PARTIES OBLIGATIONS, MODIFY THE LEASED PREMISES AND
ADJUST RENT PAYMENTS FOR THE TIDELAND PROPERTY
LOCATED AT 2900 MAIN #2100 AND SURROUNDING AREA

WHEREAS, In 1984, the City of Alameda and Alameda Gateway, Ltd. (AGL) entered into the Tidelands lease as AGL owned property immediately adjacent to the Tidelands parcel and in November 1993, AGL entered into a series of lease agreement with Bay Ship & Yacht Co. (BSY) on its property and subleased portions of the Tidelands parcel; and

WHEREAS, In February 2000, the City and BSY entered into a Nondisturbance and Attornment Agreement under which the City agreed of the Tidelands Lease was terminated with AGL, the City would not disturb BSY's lease and it would assume the role of landlord for the Tidelands parcel; and

WHEREAS, In 2009, the lease between the City and AGL expired and the City declined to renew the term on the ground of AGL's nonperformance of certain obligations, which was upheld in subsequent litigation and in April 2009, the City commenced a direct landlord-tenant relationship with BSY; and

WHEREAS, in 2012, under City of Alameda Ordinance No. 3058, the City approved a 66 year lease with BSY which included land and portions of the Sawtooth Building

WHEREAS, in 2014, through an affiliate company, Alameda Commercial Properties (ACP), BSY entered into a license agreement to acquire the AGL property which resulted in the premises being controlled by the City and BSY, via its affiliate.

WHEREAS, under this lease amendment the City looks to acknowledge BSY's affiliate ownership of the former AGL premises and remove reference to agreements and arrangements relating to AGL; and

WHEREAS, under this lease amendment, the neighboring premises that was previously leased by another tenant, and most recently licensed to BSY, will be added to the lease approved under Ordinance 3058; and

WHEREAS, under this lease amendment there is a revision to the leasehold mortgage language provision of BSY's lease to facilitate additional financing based on BSY's control of the entire premises and allow for administrative approval; and

WHEREAS, per this lease amendment, as long as ACP owns the property and BSY is the tenant each party will maintain the utilities on each of their properties. If ACP were to no longer own the adjacent property, the City and ACP would need to renegotiate a utility maintenance agreement; and

WHEREAS, this lease amendment will convert BSY's entire lease to a triple net with \$50,000 per year reduction in the proposed rent and the City will retain no maintenance obligations; and

WHEREAS, the starting rent under the triple net will be \$39,786 per month. At years twenty and forty there will be a market rate adjustment which is not to exceed 15% of the prior base year rent and has a floor of 90% of the prior base year rent. At no time will the rent go below the beginning rent of \$38,486 per month.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda that by four affirmative votes that:

Section 1. The City Manager of the City of Alameda or his designee is hereby authorized to negotiate, execute, for and on behalf of the City of Alameda, an amended and restated lease with Bay Ship & Yacht Corporation for the Tideland property located at 2900 Main #2100 and Surrounding Area, subject to such technical or clarifying revisions as are reasonably determined necessary by the City Manager and approved by the City Attorney, and the City Clerk is hereby authorized and directed to attest to the same.

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance if, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsections, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared to be invalid and unconstitutional.

Section 3. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2017.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda