

ORDINANCE NO. 18-05

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE OFFICIAL ZONING MAP BY CHANGING THE ZONING OF 3201 SOUTH NOVA ROAD, FROM "LIGHT INDUSTRIAL" TO "PLANNED COMMERCIAL DEVELOPMENT" (PCD); PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owners of 3201 S. Nova Road have requested that the subject property be rezoned to "Planned Commercial Development" (PCD) from "Light Industrial"; and

WHEREAS, the subject property covers an area that is suitable for a wide variety of commercial and light-industrial uses, a number of which are not classified as "permitted uses" under the current zoning; and

WHEREAS, the proposed PCD zoning would allow the property to be used for a wider variety of business uses and would offer opportunities for a wider variety of occupancies, thus facilitating the utilization and productivity of the property, which is in the best interest of both the property-owner and the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA, THAT:

SECTION 1-Identification of Property Rezoned to Planned Commercial Development (PCD).

The following property is hereby rezoned to Planned Commercial Development (PCD) for the purpose of developing a flex-use business:

- **South Nova Road** (Volusia County tax parcels #6337-01-01-0041 and #6337-01-01-0044).
- **SECTION 2-Legal description of Property Rezoned to Planned Commercial Development (PCD).** The legal description of the subject property is attached hereto as Attachment "A".

SECTION 3-Master Development Agreement. Attachment "B", attached hereto and considered an integral part of this Ordinance, is the Master Development Agreement for the PCD property.

SECTION 4-Repealer. All ordinances made in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5-Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 6-Effective date. This Ordinance shall become effective immediately upon adoption by the City Council.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 22 day of May, 2018.

PASSED AND ADOPTED on final reading and public hearing at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida on the 10 of July, 2018.

SIGNED:

William C. Hall, Mayor

ATTEST:

Joseph W. Yarbrough, City Manager

APPROVED AS TO FORM:



SCOTT E. SIMPSON, City Attorney

**CITY OF SOUTH DAYTONA
PLANNED COMMERCIAL DEVELOPMENT (PCD)
MASTER DEVELOPMENT AGREEMENT**

THIS PLANNED COMMERCIAL DEVELOPMENT DISTRICT MASTER DEVELOPMENT AGREEMENT (this "Agreement") is entered into and made as of the ____ day _____, 201__, by and between the CITY OF SOUTH DAYTONA, FLORIDA (hereinafter referred as the "City"), and P & L CREECH, INC., located at 3102 South Nova Road, South Daytona, FL 32129 (hereinafter referred to as the "Owner/Developer").

WITNESSETH

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 1 below and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer desires to facilitate the orderly use and development of the Subject Property for commercial uses in compliance with the laws and regulations of the City and other pertinent governmental authorities, and the Owner/Developer also desires to ensure that its development is compatible with other properties in the area; and

WHEREAS, the Owner/Developer has sought the approval of the City to permit the use of the property described in Paragraph 1 in a manner consistent with this Agreement; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement between the parties concerning the matters contained herein; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Ownership**. The Owner/Developer represents that it is the present owner of the property described in Exhibit A attached hereto (hereinafter referred to as the "Subject Property").
2. **Title Opinion/Certification**. The Owner/Developer shall provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing inalterable title to the Subject Property to be in the name of the Owner/Developer and showing all liens, mortgages, and other encumbrances not satisfied or released of record.
3. **Subordination/Joinder**. Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement, or else the lienholder must join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain any such subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.
4. **Permitted Uses**. The Subject Property may be used for the purposes set forth on Exhibit "B" attached hereto and incorporated by reference. Uses permitted by this Agreement shall also include customary accessory uses and structures.

5. Development Standards. The Subject Property is currently developed as more particularly shown on the Planned Commercial Development Plan, attached hereto and incorporated by reference as Exhibit "C". Further development or redevelopment of the Property shall be in accordance with the City's Land Development Regulations and this Agreement for the Light Industrial (LI) Zoning District. In addition, the following development standard shall apply:

a. Construction materials sorted on site may be temporarily stored in the areas designated on the Planned Commercial Development Plan in accordance with the following time limits:

- i. Metal and Concrete: 3 weeks
- ii. All Other Materials: 1 week

Construction materials means discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project.

All non-construction materials shall be placed in covered containers and the Owner shall review the Subject Property daily to ensure that the non-recyclable materials on site, are properly placed in the covered containers for disposal to meet the time limits in this section.

b. Hours of operation shall be limited to Monday through Friday 7 A.M. to 6 P.M. and Saturday from 7 A.M. to 4 P.M. Hours may be extended during emergencies and disaster relief to seven days a week from 7 A.M. to 7 P.M. Emergencies and disaster relief shall be those events declared by the State to be such events.

c. The frontage of the Subject Property shall be landscaped as shown on Planned Commercial Development Plan. The Owner shall provide a tree survey of the 30-foot buffer along all property lines and also ensure that existing trees within the 30-foot buffer around the Subject Property, as identified on Planned Commercial Development Plan, are maintained.

d. The existing 6-foot privacy fencing along the south and west property lines of the Subject Property shall be maintained by the Owner and replaced as needed.

6. Environmental Considerations. The Owner/Developer agrees to comply with all federal, state, county, and city laws, rules and regulations regarding the protection of wetlands and endangered species.

7. Sewage Disposal and Potable Water. Provision for sewer disposal and potable water needs of the PCD shall be provided in accordance with the City of South Daytona Comprehensive Plan and Land Development Code, as amended, and the State of Florida Administrative Code.

8. Stormwater Drainage. Provision for stormwater retention/detention shall be in accordance with the Land Development Code, as amended, the requirements of the St. Johns River Water Management District, and of the Florida Department of Environmental Protection.
9. Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of South Daytona Land Development Code, as amended. The driveway entrance area and apron up to the gate for the Subject Property, as identified on the Planned Commercial Development Plan, shall be paved. A gravel (57 stone) truck wash area as shown on the Planned Commercial Development Plan shall be placed and maintained inside of and up to the entrance gate on the property. The owner shall be responsible for any costs associated with the cleanup of any materials from this operation that are found in the right-of-way adjacent to this business.
10. Enforcement. In the event that enforcement of this Agreement by either party becomes necessary, the non-prevailing party shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary, and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.
11. Recording and Effective Date. This Development Agreement and all subsequent amendments shall be filed with the Clerk of Court of Volusia County, Florida, and recorded following execution of the document by the City Council, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the City of South Daytona. The date of receipt of this document by the City shall constitute the effective date of the Planned Commercial Development zoning, or any amendments thereto. The applicant shall be responsible for and pay all legal and filing costs for recording documents.
12. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement and the City's Land Development Code, including but not limited to, the site plan regulations of the City existing as of the date of this Agreement, which are incorporated herein by reference. The City may, after forty-five (45) days written notice and commercially reasonable period of time to cure deficiencies without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals to the Subject Property should the Owner/Developer fail to comply with the terms of this Agreement. Unless otherwise specifically stated in this Agreement, all current and future ordinances and regulations of the City and other applicable regulatory bodies shall apply to this Agreement.
13. Amendments to this Agreement. The City Manager or his designee is authorized to approve minor amendments to this Agreement. Major deviations from this Agreement, as determined by the City Manager, shall require City Council approval as provided in Ordinance 05-24.

14. **Notices.** Where notice is herein required to be given, it shall be by certified mail, return receipt requested, addressee only, by hand delivery or courier. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE:

Aaron Creech, Vice President
P & L Creech, Inc.
3102 South Nova Road
South Daytona, FL 32129

CITY'S REPRESENTATIVE:

Joseph W. Yarbrough, City Manager
City of South Daytona
1672 S. Ridgewood Avenue
South Daytona, FL 32119

Should any party identified above change, it shall be said party's obligation to notify the other parties of the change in the manner required for notices herein. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties in the manner required for notices herein.

15. **Other City Approvals and Permits.** The approval and execution of this Agreement by the City does not exempt the Owner/Developer of the Subject Property from obtaining any and all other approvals and permits necessary to obtain Development Orders and Building Permits for the development of the Subject Property. The Owner/Developer shall apply and receive approval for a lot combination to combine all tax parcels making up the Subject Property into one tax parcel.
16. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
17. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest, and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.
18. **Severability.** If any part of this Developer's Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Developer's Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Developer's Agreement is declared severable.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Print Name: _____

Print Name: _____

**OWNER/DEVELOPER
P & L CREECH, INC.**

By: _____
Aaron Creech, Vice President

CITY OF SOUTH DAYTONA:

By: _____
William C. Hall, Mayor

ATTEST:

Joseph W. Yarbrough
City Manager

CERTIFIED AS TO FORM:

Scott Simpson
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel No. 6337-01-01-0041

N 220 FT OF LOT 4 BLK 1 DUNLAWTON EXC E 230 FT OF N 200 FT W OF C/L OF
CANAL RD & EXC NEW R/W FOR NOVA RD PER OR 2847 PG 0910

Parcel No. 6337-01-01-0044

S 110 FT OF N 330 FT OF W 459.7 FT OF LOT 4 BLK 1 BEING 459.7 FT ON N/L & 456.4
FT ON S/L DUNLAWTON PER OR 3410 PG 0303

EXHIBIT "B"

PERMITTED USES

Construction, Demolition and Vegetative Debris Sorting and Temporary Storage.

Uses Permitted in the "LI - Light Industrial" zoning district as of the adoption of this Agreement, except that Retail Sales, including walk-in customers, shall be prohibited.

EXHIBIT "C"
PLANNED COMMERCIAL DEVELOPMENT PLAN

