PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: **May 3, 2006**

TO: **Planning Commission**

FROM: **Albert Elias, AICP**
Executive Secretary

SUBJECT: **Land Use Code Amendment – Rio Nuevo and Downtown Overlay Zone Modification of Development Regulation**

Issue: - This item was inadvertently not legally noticed and is scheduled as an informational item before the Planning Commission for tonight's agenda. While the Planning Commission voted to send this item to public hearing for tonight's agenda during the last meeting, it did so with a date certain of May 3, 2006. Therefore, the Planning Commission will be required to vote on scheduling a special public hearing date of May 17, 2006. Since the last meeting Staff has made a number of changes to the draft and would like to share those changes with the Commission during this meeting.

The City Manager has requested that staff bring forward a Land Use Code (LUC) amendment that provides greater flexibility for development proposed in the Rio Nuevo and Downtown Overlay Zone (RND).

Recommendation: - Staff recommends that the Planning Commission schedule this item for a public hearing on May 17, 2006. The proposed amendment meets the intent of the RND Zone to expedite mixed-use development in the downtown. Staff also recommends that the Modification of Development Regulations procedure be revisited within one-year after the date of adoption to gauge its effectiveness. In addition, staff has provided an option for the discretionary expansion of the notification area to 150 feet. This additional notice could be approved by the Mayor and Council as policy at the time the ordinance is adopted and then reviewed after one year.

Introduction: - The amendment proposed for the RND Overlay Zone was discussed by the Planning Commission in a study session on April 5, 2006. The Planning Commission focused their discussion on: more definitive findings, increasing the required notification area, exempting parking requirements in the RND Zone, changes to the process flow chart and whether these decisions should be made by the DSD Director. These items are addressed below and a copy of the proposed amendment is included as Attachment A.

Summary of Concerns

Findings should be more specific: The findings associated with the DSD Director's evaluation have been clarified and are separated into four subsections instead of the three included in the previous draft. Subsection B has been revised to include the two basic requirements that must be met in all cases: no adverse impact on other properties and the provision of benefits through the design modification. Subsection C has been revised with additional design criteria. At least one of the criteria in subsection C must be met along with all those in subsection B. Subsection D provides specific restraints regarding parking modifications. Subsection E clarifies that the modification cannot alter the underlying density or intensity of the applicable zoning. The phrase "quality of life" has been replaced by more specific performance standards. Staff has included a checklist for the Director to use in evaluating these standards as Attachment B. The checklist would be adopted as a development standard with the adoption of the MDR.

Broader Notification may be appropriate: Currently there are three notification options. Two options are within the Tucson Code, namely the Limited Notice Procedure (50 feet notification area) and the Full Notice Procedure (300 feet notification area). The Limited Notice Procedure takes a minimum of 19 days and a maximum of 34 days to complete.

The Full Notice Procedure requires additional steps including: a neighborhood meeting held 15-60 days prior to application submittal, notice to all property owners within 300 feet of the project site and notice to all neighborhood associations within one mile. Public comments received are addressed as part of the application. The Full Notice Procedures takes approximately one and a half to two months to complete.

Staff has revised the draft to supplement the basic Limited Notice Procedure to address the Commissions concerns. The Limited Notice Procedure would be retained as the procedure for approval of minor modifications. This procedure would be supplemented by additional discretionary notice to property owners within 150 feet of the property and to neighborhood associations that border the RND. This modification would be approved as a policy by Mayor and Council yet would allow the extended notice area to be implemented when the MDR is approved. That policy would be in effect for the first year and would during that time be evaluated by staff. See Attachment C. Prior to the expiration of the policy, the Mayor and Council would consider whether to continue the policy, modify it or formalize it through code revisions.

In addition, staff has provided that where the DSD Director determines that the requested modification impacts more than those entitled to notice, it may be reviewed and approved by through the Board of Adjustment Full Notice Procedure.

If any person receiving notice in the Limited Notice Procedure files a protest to the proposed MDR, it automatically becomes a major modification that must be approved by the Board of

Adjustment. Although the automatic protest provision would not legally extend to those receiving the discretionary notice, the DSD Director would be able to require approval by the Board of Adjustment based upon objections from those within the discretionary notice area.

Exempt parking requirements from modification: The Commission discussed the possibility of exempting parking requirements from MDR within the RND Overlay Zone. The *City of Tucson/ParkWise Downtown Five-Year Master Plan* identifies parking requirements for downtown parking districts and presents a scenario for location and size of possible future parking structures to meet downtown's projected five-year parking needs. As part of the MDR process, Parkwise staff will be asked to provide comments to the DSD director. This could include the requiring of in-lieu fees to ParkWise for the creation of additional public parking downtown. A policy for in-lieu fees to ParkWise has not been established at this time. The City Manager's office is initiating a land use analysis of the RND zone and parking will be addressed in a more comprehensive manner through that process.

Position making the decision: There were several options discussed by the Commission regarding who should be empowered to decide upon MDR applications. These included the DSD Director, the Design Review Board, the Planning Director and the City Manager. Staff believes that the DSD Director is the appropriate administrator because he is the official responsible for plan review. The Design Review Board as it is currently organized as an advisory body to the DSD Director. The development plan review process is not established in the City to have items approved by the Planning Director or the City Manager.

Enhance the process flow chart: In addition, the Commission asked that staff enhance the process flow chart that was included in the study session packet. The flow chart was intended to provide one example of how the process would track under a certain set of circumstances. The two procedures are actually parallel, independent procedures with the exception that the MDR must be approved sometime before there can be final approval of the project, including before, during or after the DRB review. In some cases, the initial design may demonstrate a need for a MDR. The application could be submitted with the initial submittal and approved prior to DRB review of the full project's design. In other cases, the MDR may arise out of suggested design changes from staff or the DRB, and the application would be submitted following such comments. Rather than try to show these two procedures in a single chart, the Commission may refer separately to the Limited Notice Procedure and the Administrative Design Procedure in the Development Compliance Code.

An applicant may appeal the Director's denial or a noticed property owner may appeal a proposal to the Board of Adjustment. Staff has provided a narrative evaluation of a sample project in Attachment C.

Finally, the Commission asked about fees associated with the process. Fees are established by DSD. There has been no decision made on whether a fee will be charged for this action.

Summary of the MDR Draft : - Staff proposes an administrative process that applies to development proposed in the Rio Nuevo and Downtown Zone only. The intent is to allow a flexible process to modify certain development regulations in conformance with the Limited Notice Procedures specified in the Development Compliance Code, Sec. 23A-40. Supplemental discretionary notice would be provided to property owners within 150 feet and neighborhood associations bordering the RND. In addition, the Board of Adjustment will hear appeals from either the applicant or anyone entitled to notice. The appeals to the Board of Adjustment will be reviewed to determine that all the requirements for a MDR have been met. The amendment does not replace or alter the DRB review currently required. It simply adds a provision to facilitate modifications and alleviates additional regulatory processes that impede timely development review. The main components of the *LUC* amendment include:

- Providing for the modification of development regulations associated with bicycle and vehicle parking, off-street loading landscaping and screening, etc., by the DSD Director
- Requiring conformance with the Limited Notice Procedure, Sec. 23A-40 of the Development Compliance Code with supplementary notice.
- Establishing findings by which the modification must conform.
- Providing for appeals through the Board of Adjustment.

Under the current ordinance, proposed projects are reviewed for compatibility with the established design criteria in the RND. Since the MDR is proposed as a subsection of the RND, all MDRs must comply with all design criteria in the RND. Procedures established for the review are administered by the Development Services Department (DSD) and include three review processes depending upon the scope of the project proposed: 1) a minor review, handled by staff in a short time period, 2) a full review by the Development Review Board (DRB) with recommendation to the DSD Director and, 3) a major review that includes both a preliminary review and a full review process. This process would not change under the proposed ordinance.

The BOA Variance Issue: Two problems identified in the current RND Overlay Zone and discussed in the study session communication included: 1) complying with the standard provisions for setbacks, parking and loading and refuse areas may be difficult downtown and, 2) designs that may be welcomed by the DRB and meet the RND purpose, may require variances. However, these desired modifications would be self-imposed making it difficult to obtain a variance.

As an example, the *LUC* requires that all vehicle maneuvering associated with off-street loading must be done on-site. In the downtown, this particular requirement presents a problem for parcels with size constraints and/or for uses that may require loading space for an occasional delivery vehicle. Another example is a development proposal that includes a sidewalk café. In this case, the developer may request zero setback for the structure to create a more urban, pedestrian environment. Whereas, the RND Overlay Zone requires that all new construction maintain the prevailing setback within its development zone. The third example

involves landscaping. The *LUC* requires a landscape border along streets of 10 feet in width. However, in the downtown area a more effective/desirable design may be to provide street trees planting in tree wells, grates or planters within the street right-of-way to enhance the pedestrian environment and to articulate entry ways.

In each of these examples, the applicant would be required to apply for a variance following completion of the administrative design review conducted by DSD staff and the Design Review Board. Prior to the BOA public hearing, an application must be filed at least one month prior to the hearing and public notice is required 15 – 30 days prior to the date of the public hearing. The BOA may elect to close the public hearing or continue to a specific date not more than 120 days from the original public hearing date. The BOA may consider a request for reconsideration at the following month's meeting. This process generally takes two to three months and could take up to six months to complete.

The proposed process eliminates the need for the variance and in appeals to the BOA, and will require the Board to review the protest and the Director's findings against the same criteria used by the DSD Director, rather than by the standards requirement for a variance.

AE:JM:JI/Code Rev/Downtown Zoning/PCSS2Communication

Attachments:
A – Proposed *LUC* Amendment
B – Draft Evaluation Form
C – Draft Notification Policy
D - Evaluation of Sample Project