

**MEMORANDUM**

**To:** Honorable Members, Public Works Committee  
**From:** Jeff Osterman, Legislative Reference Bureau  
**Date:** June 16, 2008  
**Subject:** PROPOSED SUBSTITUTES FOR FILE NO. 080195

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On June 5, 2008, the Zoning Code Technical Committee reviewed File Number 080195, an ordinance relating to storm water management regulations, for administrative efficiency, consistency with the format of the zoning code, and legality and enforceability. The Committee moved to recommend approval of the ordinance with certain changes and subject to further City Attorney examination of the proposed dedicated green space fund provision and redrafting of that provision. The changes recommended by the Zoning Code Technical Committee are contained within Proposed Substitute A, dated June 11, 2008.

Following the Zoning Code Technical Committee meeting, Shirley Krug, MMSD, Assistant City Attorney Stuart Mukamal and I discussed the legally problematic provision of the proposed ordinance, namely the provision that would allow a property owner or developer of a general retail establishment to exceed the maximum number of parking spaces permitted if the owner or developer makes a one-time contribution of \$1,000 per excess space to a dedicated green space fund. Monies deposited in this fund could be used for acquisition of land to be preserved as open space, improving existing open space, funding storm water best management practices, etc., off-site and potentially at a location some distance from the parking lot. Mr. Mukamal suggested, as an alternative to the green space fund provision, that the Commissioner of City Development be given limited discretion to approve exceptions to the maximum number of parking spaces. An exception could be made if the Commissioner finds that one or more of 4 specific criteria are met. A determination of the Commissioner could be appealed to the Board of Zoning Appeals, which would treat the appeal in the same manner it considers a request for a dimensional variance.

Proposed Substitute B, dated June 13, 2008, contains the alternative language just described (see paragraph "e" in Part 29 on pages 15 and 16). Your honorable body may wish to consider Proposed Substitute B in lieu of Proposed Substitute A, since it deletes the legally problematic green space fund provision.

c: Zoning, Neighborhoods and Development Committee

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