

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: November 20, 2018

SUBJECT: Report on Bill 22-963, “Relocation of a Passageway Easement in Square 696 Act of 2018”

The Committee of the Whole, to which Bill 22-963, the “Relocation of a Passageway Easement in Square 696 Act of 2018” was referred, reports favorably thereon and recommends approval by the Council.

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I. BACKGROUND AND NEED

On September 18, 2018, Bill 22-963, the “Relocation of a Passageway Easement in Square 696 Act of 2018,” was introduced by Chairman Mendelson. Bill 22-963 would approve the relocation of the non-exclusive perpetual surface easement with in Square 696, which abuts Lots 812 and 813 bounded by Eye, First, K, and Half Streets, S.E., in Ward 6. The applicant is Tishman Speyer Development (the “Applicant”). The purpose of the easement relocation is to facilitate a residential apartment project with ground floor retail..

Legal Background

The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) (“Act”) establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other

procedures related to streets and alleys. The Act authorizes the Council to close all or part of a street or alley, and establishes one standard for reviewing a street or alley closing application: whether the street or alley is determined by the Council to be needed for street or alley purposes. The Act also authorizes the Council to make approval of a street or alley closing contingent upon: (1) the dedication of land for street or alley purposes if the public interest would be served by such action; (2) the granting to the District of specific easements for public purposes; and (3) any other condition that the Council considers necessary.

Pursuant to the Act, street and alley closing applications are submitted to the Surveyor of the District of Columbia who assigns a Surveyor's Order (S.O.) number and collects applicable fees. The Surveyor requests comments from executive branch agencies and public utilities. A plat is prepared and the application is forwarded through the Mayor's Office of Policy and Legislative Affairs, which also solicits comments from executive branch agencies. When these reviews are completed, the application is transmitted to the Council in the form of a bill from the Mayor. Councilmembers may also initiate action on an alley or street closing on their own by introducing a bill. In such cases, the Act provides that the Council cannot consider such a bill until the required reviews have been completed. Regarding Bill 22-963, all of the reviews have been completed without objection.

The Act establishes notice requirements for street and alley closing legislation. The Council is required to publish notice of a street or alley closing in the *District of Columbia Register*. Further, the applicant is required to give written notice to all property owners abutting a block or alley affected by the proposed street or alley closure. The applicant is also required to post signs at each end of a block or each entrance to an alley affected by the street or alley closing legislation. The applicant is required to give the Council certification of compliance with these requirements. Regarding Bill 22-963, these requirements have been met.

After the street or alley closing legislation becomes law and all conditions required by the Council and the Act have been satisfied, the Surveyor records a copy of the act and plat in the Office of the Surveyor. Thereafter, the street or alley is deemed closed and title to the land reverts or vests in fee simple to the abutting record owners as shown on the plat. The land becomes subject to taxation and zoning in the same manner as the abutting land. The right of the public to use the street or alley typically ceases, and any proprietary interest of the United States or the District of Columbia in the street or alley ceases. If a closing plat shows an easement or dedication of land for public purposes, the land encompassed by the easement or dedication becomes available for the specified public purposes.

Relocation of the Easement

The proposed easement relocation is located in Square 696. The original alley was closed and an easement authorized by D.C. Law 17-120, the "Closing of a Public Alley in Square 696, S.O. 07-8302, Act of 2007." That legislation approved the closing of a north-south alleyway conditioned on recording a new 20-foot wide public passageway easement across the middle of the site to provide pedestrian access between I and K Streets, SE. The passageway was to provide non-motorized access through the site. At the time, the District Department of Transportation (DDOT) conditioned its support for the closing of the original alley on the new easement not less

than 20 feet in width and 16 feet in height, and maintenance of the passageway as a public space. After the Council approved the alley closing legislation, a covenant was recorded on March 27, 2008 satisfying the conditions of the closing, and a plat was recorded on April 29, 2010 showing the easement.

After redesign of the original development concept, the Applicant wished to move the easement approximately 90-100 feet to the west of the easement recorded in 2010. However, because the recording of the previous plat showing the easement finalized the alley closing process, it was determined by DDOT and the Office of the Surveyor that in order to ensure that a new easement is lawful, it was necessary for the Council to extinguish the previous easement and allow the Surveyor to modify the location of the passageway easement as shown on a new plat. The quality of the new easement is unchanged – that is the size is the same and the conditions for maintenance of the space remains unchanged.

The conditions affecting the original alley closing remain unchanged. The Applicant only requests that the physical location of the easement be modified. Therefore, the Committee recommends approval of Bill 22-963.

II. LEGISLATIVE CHRONOLOGY

- September 18, 2018 Bill 22-963, the “Relocation of a Passageway Easement in Square 696 Act of 2018” is introduced by Chairman Mendelson and referred to the Committee of the Whole.
- September 28, 2018 Notice of Intent to Act on Bill 22-963 is published in the *District of Columbia Register*.
- October 5, 2018 Notice of a Public Hearing on Bill 22-963 is published in the *District of Columbia Register*.
- October 23, 2018 The Committee of the Whole holds a public hearing on Bill 22-963.
- November 20, 2018 The Committee of the Whole marks-up Bill 22-963.

III. POSITION OF THE EXECUTIVE

Roland Driest, the Surveyor for the District of Columbia, presented the Executive Branch testimony. Mr. Driest testified that the purpose of the passageway relocation was to allow for a new public access easement agreement. Mr. Driest stated that the Executive Branch agencies have no objection to the relocation.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission (ANC) 6D provided a letter dated October 28, 2018, stating its support for the passageway relocation. ANC 6D voted 7-0-0 on October 15, 2018 to support Bill 22-963.

V. NATIONAL CAPITAL PLANNING COMMISSION REVIEW

The Committee received no comments from the National Capital Planning Commission.

VI. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 22-963, on Tuesday, October 23, 2018. The testimony summarized below is from that hearing specific to Bill 22-963. Copies of written testimony are attached to this report.

Norman Glasgow, Holland & Knight LLP, testified in support of the alley closing on behalf of the applicant Tishman Speyer Development. Mr. Glasgow provided background on the past alley closing and the need for the relocation of the passageway.

Cynthia Bowden, Tishman Speyer Development, testified to the current site conditions of the project, including excavation and permitting.

Roland Dreist, Surveyor for the District of Columbia, provided testimony which is summarized above.

VII. IMPACT ON EXISTING LAW

Bill 22-963 has no impact on existing law. The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) (“Act”) establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other procedures related to streets and alleys. Additionally, it authorizes the Council to close all or part of a street or alley. In approving Bill 22-963, the Committee affirms its past approval of the closure of the public alley and authorizes a relocation of the easement authorized in D.C. Law 17-120.

VIII. FISCAL IMPACT

The attached December 6, 2018 fiscal impact statement states that funds are sufficient in the FY 2019 through FY 2022 budget and financial plan to implement the bill.

IX. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	The Council approves the relocation of the easement and authorizes the Surveyor to modify the location of the Passageway Easement.
<u>Section 3</u>	Adopts the Fiscal Impact Statement.
<u>Section 4</u>	Establishes the effective date by stating the standard 30-day congressional review language.

X. COMMITTEE ACTION

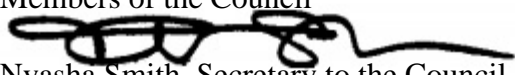
XI. ATTACHMENTS

1. Bill 22-963 as introduced
2. Written Testimony and comments.
3. Plat of original alley closing and easement.
4. Letter from ANC 6D.
5. Surveyor's Plat and aerial view of site location and context.
6. Fiscal Impact Statement for Bill 22-963
7. Legal Sufficiency Determination for Bill 22-963
8. Committee Print for Bill 22-963

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : October 01, 2018

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Friday, September 21, 2018. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Revised Transfer of Jurisdiction over U.S. Reservation 724 (Lots 896 and 897 within Square 620) Act of 2018 ", B22-0979

INTRODUCED BY: Chairman Mendelson

The Chairman is referring this legislation to the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services



Chairman Phil Mendelson

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the relocation of the non-exclusive perpetual surface easement with in Square 696, which abuts Lots 812 and 813 bounded by Eye, First, K, and Half Streets, S.E., in Ward 6.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act be cited as the "Relocation of a Passageway Easement in Square 696 Act of 2018."

Sec. 2. Notwithstanding of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Codes 9-202.12), the Council authorizes the relocation of the public-use easement recorded pursuant to the Closing of a Public Alley in Square 696, S.O. 07-8302, Act of 2007, effective March 20, 2008 (D.C. Law 17-0120; 55 DCR 1475), to the location shown on the Passageway Easement Plat.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code §1-206-02(c)(3)).

36 Sec. 4. Effective date.

37 This act shall take effect upon its approval by the Mayor (or in the event of veto by the
38 Mayor, action by the Council to override the veto), and a 30-day period of Congressional review
39 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
40 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1) and publication in the District of
41 Columbia Register.

Good Morning Mr. Chairman and Members of the Council:

For the record my name is NMG, Jr. of the law firm of Holland & Knight, here with me today are Henry Ross and Cynthia Bowden of Tishman Speyer Development, representing the owners of Square 696. We are requesting the Council to permit the extinguishment of the existing pedestrian passageway easement and its relocation as a pedestrian access easement approximately 90-100 feet to the west of the current location for a residential apartment project with approximately 800 units and ground floor retail and amenity space. In this regard, we have been working the DC Surveyor and the Office of the General Counsel to DDOT on the terms and language of a new public access easement which would be recorded after the extinguishment of the existing pedestrian access easement.

We recently appeared before the Advisory Neighborhood Commission, on October 15 ANC 6D business meeting, at which a quorum was present and received a vote of 7-0-0

to support the relocation. We understand a copy of the ANC letter is in the record.

We appreciate the Council scheduling a prompt public hearing after the introduction of the legislation so this important project can continue to move forward.

Should you have any questions, we will be pleased to answer them and we feel that this is a very straightforward matter which is in effect a technical cleanup by the Council so that the attorneys are satisfied as to the process being undertaken in this case.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs



Public Hearing on

**Bill No. 22-963, the “Relocation of a Passageway easement in Square 696 Act of 2018”
and**

**Bill No. 22-979, the “Revised Transfer of Jurisdiction over U.S. Reservation 724 (lots 896
and 897 within Square 620) Act of 2018”**

**Testimony of
Roland Dreist
Surveyor of the District of Columbia
Department of Consumer and Regulatory Affairs**

Before the

Committee of the Whole

Chairman Phil Mendelson

Council of the District of Columbia

October 23, 2018

11:00 am

Room 120

**John A Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Testimony of Roland Dreist regarding B22-906 and B22-979

Good Morning, Chairman Mendelson, Committee Members, and staff. I am Roland Dreist, Surveyor of the District of Columbia. I appear before you today to present the Executive's testimony on Bill No. 22-963, "Relocation of a Passageway Easement in Square 696 Act of 2018" and Bill No. 22-979, "Revised Transfer of Jurisdiction over U.S. Reservation 724 (Lots 896 and 897 within Square 620) Act of 2018."

Bill 22-963 would relocate an existing passageway easement that was originally shown on an alley closing plat recorded April 29, 2010, in Subdivision Book 203, Page 7 in the Office of the Surveyor. Lot 23 in Square 696 is a single lot encompassing the entire Square. The Square is bounded by I street S.E., 1st Street S.E., K Street S.E., and Half Street S.E. The owner of the lot, Congressional Square, is working with the District Department of Transportation (DDOT) to establish a new public access easement, which will be recorded at the Recorder of Deeds. The new instrument number as well as the closing or extinguishment of the existing easement will be reflected on a plat recorded in the Office of the Surveyor. For reference, I have included a copy of the plat with my testimony. The existing covenant for the easement being extinguished, recorded on March 27, 2008, would be released under the bill because it is tied to the easement location. As a result, the new public access easement agreement for the care of the relocated easement will be recorded to replace the original covenant.

Bill 22-979 would approve the transfer of jurisdiction over U.S. Reservation 724 in the District of Columbia (Lot 896, less and except the northern portion previously retained by the District, and Lot 897, within Square 620). The transfer would be from the United States of America, acting by and through the Department of Interior, National Park Service, to the District of Columbia. The Council previously adopted resolutions (R22-0298 and R22-0299) approving this transfer. This bill would correct a scrivener's error in the resolutions and the plat concerning

Testimony of Roland Dreist regarding B22-906 and B22-979

Lot 896, which described the entirety of the lot as being transferred. The current bill correctly states that a portion of the lot will be transferred. A Transfer of Jurisdiction plat will be recorded in the Office of the Surveyor reflecting this transfer. I have included a copy of this plat with my testimony.

This concludes my testimony. I appreciate the opportunity to appear before you today and am happy to answer any questions you may have. Thank you.

PURSUANT TO D.C. EMERGENCY ACT 17-244 EFFECTIVE JANUARY 23, 2008 THE ALLEY SHOWN THUS [XXXX] IS CLOSED AND TITLE VESTS AS SHOWN UPON RECORDBATION OF THIS PLAT. ALSO, THE EASEMENT SHOWN THUS [XXXX] IS ESTABLISHED FOR NON VEHICULAR USE AND IS SUBJECT TO THE PROVISIONS OF THE DECLARATION OF COVENANTS AND IS RECORDED IN THE RECORDER OF DEEDS AS INSTRUMENT # 2008033312 DATED MARCH 27, 2008.

OFFICE OF THE SURVEYOR, D.C.

Paul E. 29, 2008

I CERTIFY THAT THIS PLAT IS CORRECT AND IS RECORDED.

SURVEYOR, D.C.

SURVEYOR'S OFFICE, D.C.

Made for: HOLLAND & KNIGHT
Drawn by: L.E.S. Checked by: ES
Record and computations by: F. BLEEM
Recorded at: F.20 PM ON APRIL 29, 2008
Recorded in Book: 203 Page: 7 S.O. 08177
Scale: 1 inch = 30 feet File No. 07-08302

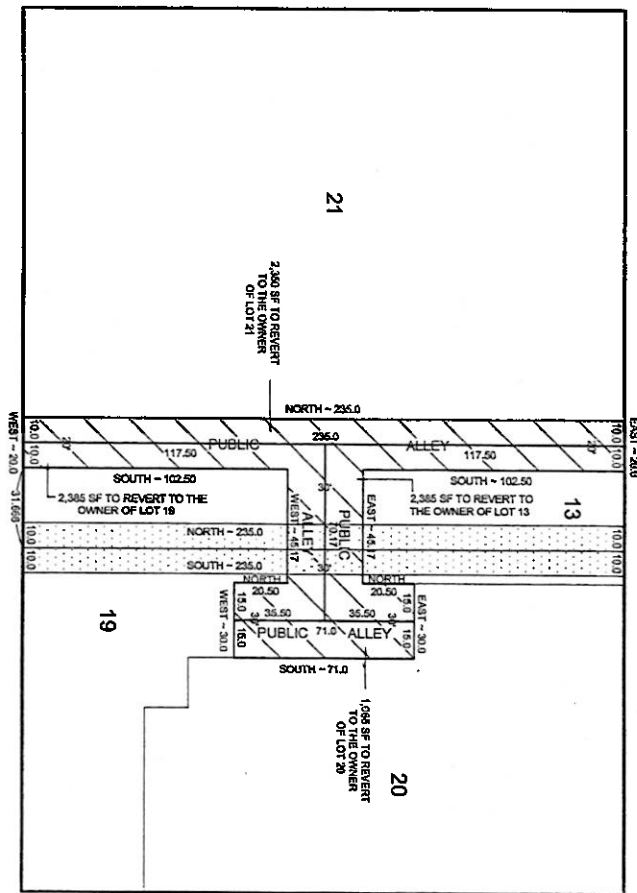
2007/ALLEY CLOSING/90-84177-03.036

PUBLIC ALLEY CLOSED AND EASEMENT ESTABLISHED SQUARE 696

I STREET, S.E.

HALF STREET, S.E.

K STREET, S.E.



1st STREET, S.E.



Southwest / Navy Yard / Buzzard Point
Advisory Neighborhood Commission 6D

1101 Fourth Street, SW
Suite W 130
Washington, DC 20024
202.554.1795
Email: office@anc6d.org
Website: www.anc6d.org

October 20, 2018

Councilmember Charles Allen
1350 Pennsylvania Avenue NW
Suite 110
Washington, DC 20004

OFFICERS

Chairperson
Meredith Fascett
Vice Chairperson
Andy Litsky
Secretary
Gail Fast
Treasurer
Ronald Collins

Transmitted via email

RE: Bill No. 22-963 – Relocation of a Passageway Easement in Square 696

Dear Chairman Mendelson:

At a regularly scheduled and properly noticed public meeting on October 15, 2018 with a quorum being present, a quorum being 4 Commissioners, Advisory Neighborhood Commission (ANC) 6D voted 7-0-0 for the motion to support Bill No. 22-963 – Relocation of a Passageway Easement in Square 696 – Act of 2018 which would allow the relocation of a nonexclusive perpetual surface easement located within Square 696, so that the easement can be moved to the west. Square 696 is the parcel in the Navy Yard neighborhood owned by Tishman Speyer at the 88 K St. SE address.

COMMISSIONERS

SMD 1 *Gail Fast*
SMD 2 *Cara Shockley*
SMD 3 *Ronald Collins*
SMD 4 *Andy Litsky*
SMD 5 *Roger Moffatt*
SMD 6 *Rhonda Hamilton*
SMD 7 *Meredith Fascett*

The relocation of the easement is consistent with curb cuts that were already approved by the ANC for access to the site for both parking and loading.

Should you have any questions, please contact me at 6D07@anc.dc.gov or 202-750-0295.

Sincerely,

Meredith Fascett
Chair, ANC 6D
Southwest, Navy Yard, & Buzzard Point

CC: Ward 6 Councilmember Charles Allen
Cynthia Bowden, Tishman Speyer
Norman Glasgow, Holland & Knight

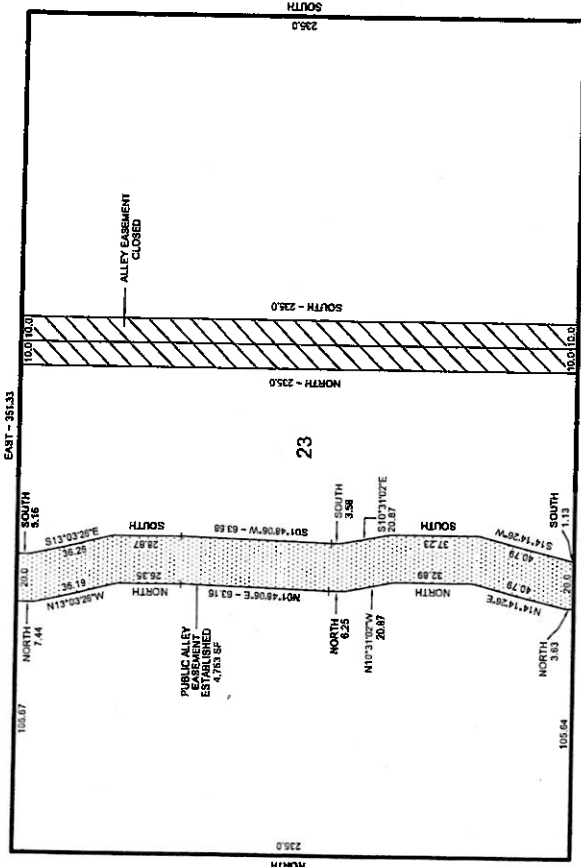
PUBLIC ALLEY EASEMENT CLOSED AND A PUBLIC ACCESS EASEMENT SHOWN SQUARE 696

PURSUANT TO D.C. LAW EFFECTIVE
THE PUBLIC ALLEY EASEMENT SHOWN THUS: IS CLOSED
AND PUBLIC EASEMENT SHOWN THUS: IS ESTABLISHED
FOR NON VEHICULAR USE AND RECORDED AT THE RECORDER OF
DEEDS AS INSTRUMENT # _____ DATED _____

OFFICE OF THE SURVEYOR, D.C.
_____, 2016

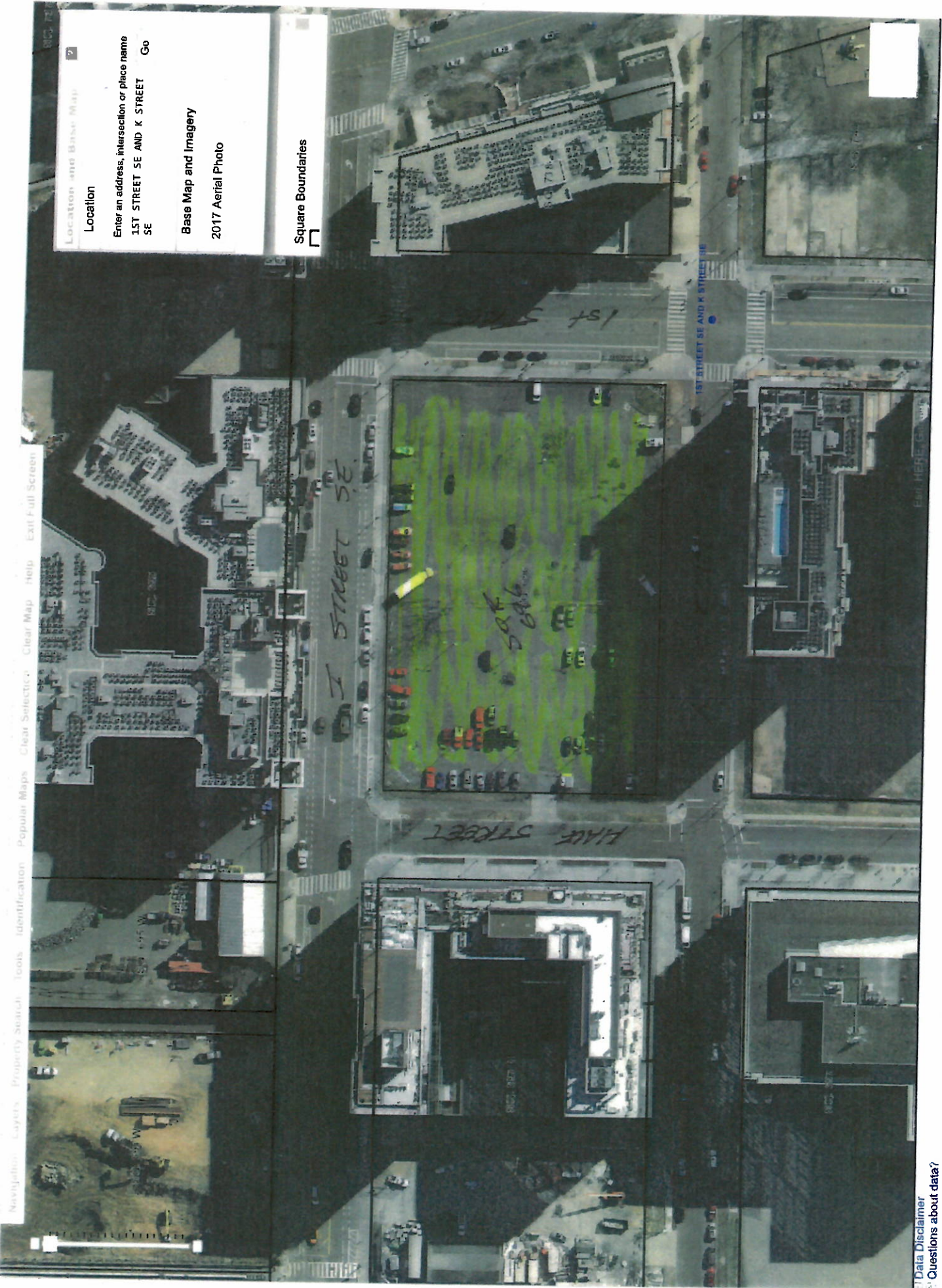
I CERTIFY THAT THIS PLAT IS CORRECT AND IS RECORDED.

SURVEYOR, D.C.



SURVEYOR'S OFFICE, D.C.

Made by: HOLLAND & KINSHT
 Drawn by: L.E.S. Checked by: _____
 Record and computation by: B. JAYERS
 Recorded at: _____ Page: 3A-19-00135
 Record in Book: _____ File No: 19-041749
 Scale: 1 inch = 30 feet
 2016 ALLEY CLOSING 690-19-00135-50.688



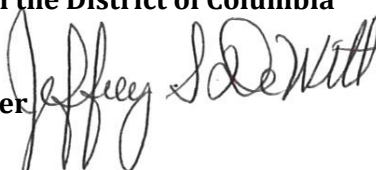
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 16, 2018

SUBJECT: Fiscal Impact Statement – Relocation of a Passageway Easement in Square 696 Act of 2018

REFERENCE: Committee Print of Bill 22-963 as shared with the Office of Revenue Analysis on November 6, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

A north-south public alley in Square 696 near I Street, S.E. was closed¹ in 2010 to allow for the development of a residential and retail development project. The closing was approved by Council contingent on the recording of a non-exclusive passageway easement no less than 20 feet in width and 16 feet in height, to allow pedestrian access between I and K Streets, S.E.

The bill authorizes the Surveyor to approve the relocation of the passageway easement to the west of the original easement. The size, quality, and maintenance requirements of the original easement will remain unchanged, but it is expected the easement will move approximately 90 feet west.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. Relocating the easement has no impact on the budget or financial plan.

¹ Closing of a Public Alley in Square 696, S.O. 07-8302, Act of 2007, effective March 20, 2008 (D.C. Law 17-120; 55 DCR 1475).

1 **DRAFT COMMITTEE PRINT**
2 **Committee of the Whole**
3 **November 20, 2017**

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6 A BILL

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8 22-963
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11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16 To authorize the relocation of the non-exclusive perpetual surface easement with in Square 696,
17 which abuts Lots 812 and 813 bounded by Eye, First, K, and Half Streets, S.E., in Ward
18 6.
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20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
21 act be cited as the “Relocation of a Passageway Easement in Square 696 Act of 2018.”

22 Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved
23 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and notwithstanding section
24 212 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10,
25 1983 (D.C. Law 4-201; D.C. Official Code § 9-202.12), the District of Columbia Council
26 authorizes the Office of the Surveyor to relocate the non-exclusive perpetual surface easement
27 (the “Passageway Easement”) established pursuant to the Closing of a Public Alley in Square
28 696, S.O. 07-8302, Act of 2008, effective March 20, 2008 (D.C. Law 17-120; 55 DCR 1475) to
29 the west side of Square 696, as shown on the alley-closing plat included in the committee report.

30 Sec. 3. Fiscal impact statement.

31 The Council adopts the fiscal impact statement in the committee report as the fiscal
32 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
33 approved December 24, 1973 (87 Stat. 813, D.C. Official Code §1-206-02(c)(3)).

34 Sec. 4. Effective date.

35 This act shall take effect upon its approval by the Mayor (or in the event of veto by the
36 Mayor, action by the Council to override the veto), and a 30-day period of Congressional review
37 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
38 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1) and publication in the District of
39 Columbia Register.

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