Public Law 90-596

October 17, 1968
[S. 1247]

AN ACT

To authorize the Commissioner of the District of Columbia to fix and collect rents for the occupancy of space in, on, under, or over the streets of the District of Columbia, to authorize the closing of unused or unsafe vaults under such streets and the correction of dangerous conditions of vaults in or vault openings on public spaces, and for other purposes.

District of Columbia Public Space Rental Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE, STATEMENT OF FINDINGS, AND POLICY DEFINITIONS

SEC. 101. This Act may be cited as the "District of Columbia Public Space Rental Act".

SEC. 102. The Congress finds that there is demand in the District for the use of public space for private gain by the owners of property abutting such space, or by the operators of businesses on such property. The Congress further finds that much of the use that is presently being made of such space by such owners or operators, and much of the use that is proposed to be made thereof, would not be in derogation of the rights of the general public to use such space if a determination be made by the Commissioner that some or all of such space is not required for the use of the general public and may be made available for use, for business purposes, by or with the consent of the owners of the private property abutting such public space, subject to the payment of adequate compensation for the use of such public space, and subject to the discontinuance of such use to the extent that the Commissioner may later determine such space to be required for the use of the general public, including use by a public utility company. The Congress therefore declares that public space in the District which the Commissioner finds is not required for the use of the general public may be made available by him for use, for business purposes, by or with the consent of the owners of private property abutting such space, upon payment to the District of compensation for the use of such space, and on the condition that such use will be discontinued in whole or in part whenever the Commissioner determines that all or part of the public space is required for the use of the general public.

Definitions.

SEC. 103. As used in this Act, unless the context requires otherwise—

"Commissioner" means the Commissioner of the District or his designated agent.

"District" means the District of Columbia.

"Owner" means (1) any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of property; (2) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or (3) a trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

"Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

"Property" means real property.

"Property line" means the line of demarcation between privately owned property fronting or abutting a street and the publicly owned property in the line of such street.

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"Public space" means all the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

"Street" means a public highway as shown on the records of the District, whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

"Vault" means a structure or an enclosure of space beneath the surface of the public space, including but not limited to tanks for petroleum products, except that the term "vault" shall not include public utility structures, pipelines, or tunnels constructed under the authority of subsection (d) of the Act approved December 20, 1944, as amended (D.C. Code, sec. 1-244(d)), or structures or facilities of the United States or the District of Columbia, or of any governmental entity or foreign government, or any structure or facility included in any lease agreement entered into by the Commissioner. If such structure or enclosure of space be divided approximately horizontally into two or more levels, the term "vault" as used in this Act shall be considered as applying to one such level only, and each such level shall be considered a separate vault within the meaning of this Act.

58 Stat. 821.

SEC. 104. Nothing contained in this Act shall be construed as requiring the Commissioner to assess and collect rent from the Government of the United States, the government of the District of Columbia, or any foreign government, for the use, in accordance with the provisions of titles II and III, of public space abutting property owned by any such government or governmental entity, nor shall any such government or governmental entity be subject to the payment of any rent required by this Act.

SEC. 105. Notwithstanding any other provisions of this Act, the Commissioner is authorized, in his judgment and pursuant to regulations adopted and promulgated by the District of Columbia Council, to permit the occupancy of public space for minor uses without requiring rental payments when the fixing and collection of rental charges would not be feasible.

TITLE II—RENTAL OF PUBLIC SPACE ON OR ABOVE THE SURFACE

SEC. 201. The District of Columbia Council is authorized to provide by regulation for the rental of portions of public space on or above the surface of the pavement or the ground, as the case may be, and not actually required for the use of the general public, for such period of time as the said space may not be so required or for any lesser period: *Provided*, That nothing herein contained shall be construed as requiring the Council to require the payment of rent as a condition to the use of public space (1) in accordance with the provisions of regulations promulgated under the authority of the first paragraph under the caption "District of Columbia" of the Act approved March 3, 1891 (26 Stat. 868), as amended (D.C. Code, sec. 5-204); (2) by a public utility company for the installation and maintenance of any of its equipment or facilities, under permit issued by the District; or (3) for the sale of newspapers of general circulation: *Provided further*, That the proposed rental of public space within the area of the District of Columbia subject to the provisions of the Act approved May 16, 1930 (46 Stat. 366), as amended (D.C. Code, secs. 5-410 and 5-411), shall be submitted to the Commission of Fine Arts in accordance with the provisions of such Act of May 16, 1930. The regulations adopted by the District of Columbia Council shall provide that public space rented under the authority of this

34 Stat. 385.

Commission of Fine Arts, approval.

title shall be rented only to the owner of property fronting and abutting such public space; that any person using such space shall not acquire any right, title, or interest therein; that both the United States and the District of Columbia, and the officers and employees of each of them, shall be held harmless for any loss or damage arising out of the use of such space, or the discontinuance of any such use; that the Commissioner may require such space to be vacated upon demand by him and its use discontinued, with or without notice, and with no recourse against either the United States or the District for any loss or damage occasioned by any such requirement; and that if any such use be not discontinued by the time specified by the Commissioner, the said Commissioner may remove from such space any property left thereon or therein by any person using such space under the authority of this title, at the risk and expense of the owner of the real property abutting such space.

Rental regulations.

SEC. 202. The District of Columbia Council shall by regulation provide for the payment of rent for the use of public space as authorized by this title. The annual rent for such space shall be a fair and equitable amount fixed by the Council from time to time in accordance with regulations adopted by it, generally establishing categories of use and providing that the rent for each category of use shall bear a reasonable relationship to the assessed value of the privately owned land abutting such space, depending on the nature of the category of use and the extent to which the public space may be utilized for such purpose, but in no event shall the annual rent for the public space so utilized be at a rate of less than 4 per centum per annum of the current assessed value of an equivalent area of the privately owned space immediately abutting the public space so utilized. Such rent shall be payable in advance for such periods as may be fixed by the Council. In the event the Commissioner requires any person using public space under the authority of this title to vacate all or part of any space for which rent has been paid, the Commissioner is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid.

Refunds.

SEC. 203. The Commissioner is authorized, with respect to property subject to the requirements of section 2 of the Act approved May 31, 1900 (31 Stat. 248; D.C. Code, sec. 7-117), to allow the same use to be made of such property as, under the authority of this title, he allows to be made of the public space abutting such property. Any such use of such property shall be subject to the same conditions as are applicable to the use of the abutting public space, with the exception of the payment of rent.

TITLE III—RENTAL OF SUBSURFACE PUBLIC SPACE

Repeal.
Prior permits.

SEC. 301. Section 7 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916 (39 Stat. 716), as amended (D.C. Code, sec. 7-901), is hereby repealed, and all permits for the use of public space issued under the authority of such Act are revoked as of the effective date of this title.

Issuance of permits.
Conditions.

SEC. 302. The Commissioner is authorized to issue a permit for the use of a vault constructed prior to the effective date of this Act, or for the construction of a vault after such effective date, only to the owner of the real property abutting the public space in which such vault is or will be located. The issuance of each such permit shall be conditioned on the prior execution by such owner of an agreement acknowledging,

for himself, his heirs and assigns, (1) that no right, title, or interest of the public is thereby acquired, waived, or abridged; (2) that the Commissioner may inspect such vault during regular business hours; (3) that the Commissioner may introduce or authorize the introduction into or through such vault with, right of entry for inspection, maintenance, and repair, of any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction, which the Commissioner deems necessary in the public interest to place in or through such vault; (4) that such vault will be changed by the owner, or by the District at the expense of such owner, to conform with any change made in the street, roadway, or sidewalk width or grade; and (5) that rental for such vault will be paid to the District as required by this Act. A copy of such agreement shall be recorded in the office of the Recorder of Deeds by and at the expense of such owner.

SEC. 303. The Commissioner is authorized and directed to assess and collect rent from the owners of abutting property for any vault located in the public space abutting such property, unless such vault shall have been removed, filled, sealed, or otherwise rendered unusable in a manner satisfactory to the Commissioner.

Annual fixed rent conditions.

SEC. 304. Each owner of property abutting public space in which a vault is located shall pay an annual rent fixed from time to time by the District of Columbia Council for such vault, but such annual rent shall not be less than $10, and such rent shall be subject to collection from said owner in the manner prescribed by this title, regardless of whether any use is made of such vault, and regardless of the extent of any use: *Provided*, That no rent for any rental year for a vault shall be charged to the owner of abutting property if said owner, prior to July 1 of such year, has notified the Commissioner in writing that he has abandoned such vault and has performed such work as may be required by the District in connection with the sealing off or filling of such vault, or both.

Newly-constructed vaults.

SEC. 305. (a) The owner of property abutting public space in which any vault is located, as such owner may be recorded in the real estate assessment records of the District, shall pay the rent established in accordance with this title for such vault. Such rent shall be payable annually for the year commencing July 1 and ending the following June 30, and shall be payable in full prior to the beginning of such year. In the case of vaults constructed between July 1 and January 1 of any year, one-half of the annual rent for any such vault, shall be payable in full prior to the first of January immediately following the completion of such vault. In the case of vaults constructed between January 1 and July 1 of the succeeding year, no rent shall be charged for any vault completed within such period, but the owner of the property abutting the public space in which such vault is located shall, prior to the first of July immediately following the completion of any such vault, pay in full the annual rent for such vault, for the rental year commencing on such July 1. Interest at the rate of 1 per centum for each month or part thereof shall be charged in every case in which rent is not paid on or before the date on which any payment required by this section shall become due.

Interest rate.

Vacating of space.

Prepaid rent, refund.

(b) In the event the Commissioner requires or allows any person using subsurface public space under the authority of this title to vacate, voluntarily or involuntarily, all or part of any space for which rent has been paid, the Commissioner is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid: *Provided*, That the Commissioner may deduct from such prepayment any amount due the District in compensation for

expenses to the District in connection with the use or abandonment of said space.

Vaults unsafe for use.
Order for removal.

SEC. 306. (a) Whenever the Commissioner determines that any vault is unsafe or is not in use, or the space occupied by such vault is required for street improvements, or the construction or extension of sewers, water mains, other public works, or public utility facilities, the Commissioner is authorized to serve upon the owner of property abutting public space occupied by such vault an order requiring such owner to remove in whole or in part, reconstruct, repair, or close such vault by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Commissioner. The failure or refusal of any such owner to comply with such order of the Commissioner within the time specified in such order shall constitute a violation of this Act.

(b) In the event that any owner of property abutting an unused or unsafe vault fails to remove in whole or in part, reconstruct, repair, or close the same by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Commissioner within the time specified by him, the Commissioner is authorized to apply to the District of Columbia Court of General Sessions for, and the said court is hereby authorized to issue, an order empowering the Commissioner to enter upon the property of such owner for the purpose of performing such work as may be necessary in connection with the removal, reconstruction, repair, or closure of such vault, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in connection with the application for such order shall be served on the owner in accordance with the rules of said court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publication for one day each week for three consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District.

Vault or vault opening dangerous to persons or property.

SEC. 307. Notwithstanding the provisions of the preceding section, whenever the Commissioner finds that any vault or vault opening is in such condition as to be imminently dangerous to persons or property, he shall immediately notify the owner, agent, or other person in charge of the private property abutting the public space in which such vault or vault opening is located, to cause such vault or vault opening to be made safe and secure. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence making such vault or vault opening safe and secure: *Provided*, That in a case where the public safety requires immediate action the Commissioner may enter upon the private property abutting the public space in which such vault or vault opening is located, with such workmen and assistants as may be necessary, and cause such vault or vault opening to be made safe and secure. In any case in which the Commissioner performs any work under the authority of this section, the cost to the District of performing such work shall be charged against the private property abutting the public space in which such vault or vault opening is located, and shall be collected in the manner provided by section 308.

Vault rentals, collection.

SEC. 308. (a) The Commissioner shall take such action as he in his discretion considers necessary or desirable to secure the payment to the District of rents due and payable on vaults; interest on late rental

payments; the cost of any advertising required by this title; the cost to the District of sealing off, removing in whole or in part, filling, reconstructing, repairing, or closing a vault or vault opening, or performing any other service in connection therewith; and interest at the rate of 1 per centum per month or part thereof in every case in which payment to the District for the cost of performing work authorized by this title is not made within thirty days after a bill for such cost shall have been rendered.

Tax levy against property.

(b) Charges authorized to be made by this title and not paid within ninety days after the close of the fiscal year in which such charges accrue shall be levied by the Commissioner as a tax against the property abutting the public space in which a vault is located, such tax to be collected as provided in this section. Such tax shall include, without limitation, rents due and payable on vaults, interest on late rental payments, costs for sealing off, removing in whole or in part, filling, repairing, reconstructing, or closing a vault or vault opening, interest on late payments of such costs, and any advertising required by this title. The tax authorized to be levied and collected under this section may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

Inspection and easement rights.

SEC. 309. (a) The Commissioner is authorized to require that the use of a vault occupied or used under the authority of this Act shall be subject to the condition that the District shall have the right at any time to install or construct under, over, or through said vault any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction that the Commissioner may consider it necessary in the public interest to place in the space occupied by such vault, without compensation to the owner of the private property abutting the space in which such vault is located or to the person occupying or using such vault. Each person using or occupying a vault, upon notice from the Commissioner that a water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction is to be introduced in the space occupied by such vault, shall commence to move, and forthwith remove, if necessary, any boiler, pipe, wall, beam, machinery, or construction in or pertaining to said vault, or any fixture or other thing therein, without cost to the District, so as to leave a space clear and sufficient in the judgment of the Commissioner for the introduction and maintenance of any such underground construction or installation. The Commissioner is further authorized to require each applicant for a permit to construct a vault in public space, as a condition precedent to the issuance of the permit, to agree for himself and his heirs and assigns that the Commissioner shall have the right to enter upon the premises at any time for the inspection and proper maintenance or repair of any public underground construction or installation in such vault, and that in case there is any change in the street, roadway, or sidewalk above such vault, the vault shall be subject to a corresponding change, as directed by the Commissioner, without expense to the District of Columbia.

(b) In the event a person occupying or using a vault under the authority of this Act shall fail or refuse to perform or to permit the performance of any work required by the Commissioner under the authority of subsection (a), the Commissioner is authorized to apply to the District of Columbia Court of General Sessions for, and said court is hereby authorized to issue, an order empowering the Commissioner to enter upon the private property abutting the public space in which such vault is located for the purpose of performing such work as may be necessary in connection with the construction or installation in such public space of any water pipe, gas pipe, sewer, conduit, other pipe, or other underground construction or installation that the Commissioner may consider it necessary or desirable to place in such space, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in connection with the application for such order shall be served on the owner in accordance with the rules of said court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publication for one day each week for three consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District. The cost to the District of performing such work, including, without limitation, the reasonable cost to the District of securing the court order authorized by this subsection and any advertising in connection therewith, shall be a charge which may be levied by the Commissioner as a tax against the property abutting the public space in which a vault is located, to be collected in the manner authorized by section 308.

Restriction.

SEC. 310. Nothing contained in this title shall be construed as authorizing the District of Columbia Council to impose a rental charge for the use of any vault abutting real property on which is located a single or two-family dwelling occupied solely for residential purposes, but any such vault shall otherwise be subject to the provisions of this title.

TITLE IV—REGULATIONS, INSURANCE, NOTICE, PENALTY, CREDITING OF RENTAL PAYMENTS, AUTHORIZATION OF APPROPRIATIONS, SEPARABILITY PROVISION, COORDINATION WITH SECTION 2 OF THE ACT OF MAY 31, 1900, AND EFFECTIVE DATES

Regulations. Effective date.

SEC. 401. The District of Columbia Council after public hearing is authorized to make and promulgate regulations to carry out the purposes of this Act. The regulations initially adopted by the Council under the authority of this section to carry out the purposes of title III shall become effective on the effective date of such title, if, not less than ten days prior to such date, the Council has adopted such regulations and printed a notice of such adoption in a newspaper of general circulation in the District. Otherwise, the regulations adopted by the Council under the authority of this section shall become effective ten days after notice of their adoption has been printed in a newspaper of general circulation in the District.

Public liability insurance requirement.

SEC. 402. The Commissioner shall, in connection with authorizing the use of any public space under the authority of this Act, require the person authorized to use such space, prior to any such use, to

secure a policy of public liability and property damage insurance or other acceptable security providing for such minimum limits of liability as may be required by the Commissioner. Any such insurance policy shall include the District and its officers and employees as additional parties insured and shall be cancellable only after thirty days' written notice of such cancellation has been received by the Commissioner. No such use of public space shall be authorized or continued for any period unless such insurance or other security is maintained in full force and effect during that period. Nothing herein contained shall be construed as requiring either the United States or the District to secure a policy of public liability and property damage insurance or other security covering any use of public space by either of the said governments under the authority of this Act.

Methods for serving order or notice.

SEC. 403. (a) Any order or notice required by this Act to be served shall be deemed to have been served when served by any of the following methods: (1) when forwarded by certified mail to the last known address of the owner as recorded in the real estate assessment records of the District, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided*, That valid service upon the owner shall be deemed effected (1) if such order or notice shall be refused by the owner and not delivered for that reason; or (2) when delivered to the person to be notified; or (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (4) if no such residence or place of business can be found in the District by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said order or notice relates; or (5) if any such order or notice forwarded by certified mail be returned for reasons other than refusal, or if personal service of any such order or notice, as hereinbefore provided, cannot be effected, then if published for one day each week for three consecutive weeks in a daily newspaper published in the District; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any order or notice to a corporation shall, for the purposes of this Act, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of orders or notices on natural persons holding property in their own right; and orders or notices to a foreign corporation shall, for the purposes of this Act, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District.

(b) In case such order or notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail.

Penalty.

SEC. 404. Any person who shall violate any provision of this Act shall be punished by a fine not exceeding $300 or by imprisonment for not more than ten days. In addition, such regulations as may be adopted by the District of Columbia Council under the authority of this Act may provide for the imposition of a fine of not more than $300 or imprisonment for not more than ten days for each and every day any public space is used or occupied in a manner or for a purpose specifically prohibited by the said regulations.

Deposit of rentals.

SEC. 405. Rent paid for the use of public space under the authority of this Act shall be deposited to the credit of such special funds or general fund of the District in such proportions as the Commissioner shall, in his discretion, determine.

Appropriation.

SEC. 406. Appropriations to carry out the purposes of this Act are hereby authorized.

Separability.

SEC. 407. If any provision of this Act or of the regulations promulgated under the authority of this Act is held invalid, such invalidity shall not affect other provisions either of this Act or of the said regulations which can be effected without the invalid provisions, and to this end the provisions of this Act and the said regulations are separable.

SEC. 408. Nothing contained in this Act shall be construed to affect in any manner the provisions of section 2 of the Act approved May 31, 1900 (31 Stat. 248; D.C. Code, sec. 7-117), with respect to streets heretofore or hereafter dedicated in accordance with the provisions of such Act, and to make use of the parking on any such street in accordance with the terms of the fourth proviso of such section 2, relating to the height of parking and the projection of buildings beyond the building line, the District's right-of-way through said parking for sewers and water mains free of cost, and the use of the parking by the District for the construction of sidewalks.

Effective dates.

SEC. 409. Titles I and IV of this Act shall take effect on the date of approval of this Act. Title II shall take effect the first day of the first month which occurs more than thirty days after the District of Columbia Council has first adopted and promulgated regulations to carry out the purposes of such title. Title III shall take effect on the 1st day of July which occurs three months or more after the date of approval of this Act.

Approved October 17, 1968.

Public Law 90-597

October 17, 1968
[H. R. 17273]

AN ACT

To amend the Act of September 21, 1959 (Public Law 86-339) relating to the Reservation of the Agua Caliente Band of Mission Indians.

Agua Caliente Reservation, Calif.
Guardians, appointments and review.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act of September 21, 1959 (73 Stat. 604; 25 U.S.C. 954), is amended to read as follows:

"(a) No guardian or other fiduciary shall be appointed under State law for the estate of any member of the band, or continued in office, except with approval of the Secretary: *Provided*, That no conservator for any member of the band shall be appointed under State law or continued in office after the effective date of this Act, unless the individual Indian concerned, with the approval of the Secretary, personally petitions for the appointment or continuation of such appointment. The Secretary shall be given notice of all proceedings in the State court with respect to the estate of any member of the band which is being administered, and he may at any time appear as a party in such proceedings, and may exercise all rights accorded to a party under State law.

"(b) No guardian, conservator or other fiduciary appointed under State law shall, in his official capacity, participate in the management or disposition of any property or interest therein which is held in trust by the United States for a member of the band or is subject to restric-