

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:
“The Fair Minimum Wage Act of 2017”

Administrative Hearing
No. 16-005

Re: Approval of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Wednesday, August 3, 2016, pursuant to D.C. Official Code § 1-1001.16(b)(1). It involves a finding by the Board that the proposed initiative, “The Fair Minimum Wage Act of 2016” (“the Initiative”), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1). Diana Ramirez, the treasurer of the initiative committee associated with the measure, appeared before the Board as a representative for the proposer of the initiative. Chairman Michael Bennett and Board Member Dionna Lewis presided over the hearing. Also present were Executive Director, Alice Miller, General Counsel, Kenneth McGhie, and Director of the Office of Campaign Finance, Cecily Collier-Montgomery.

Statement of the Facts

On June 14, 2016, Woong Chang filed the Initiative pursuant to D.C. Official Code § 1-1001.16(a). The proposed initiative, in brief, would raise D.C.’s minimum wage starting on July 1, 2017, and then raise it each year thereafter until it reaches \$15.00 per hour in 2020. The measure will adhere to cost of living adjustments after the year 2020 in the existing minimum wage requirements. Additionally, the measure proposes to gradually raise the minimum wage for tipped employees until matching the full minimum wage by 2025. These increased minimum

wage levels are expressly inapplicable to employees of the D.C. Government or their contractors.

On June 20, 2016, the Board's General Counsel requested that the Office of Documents and Administrative Issuances ("ODAI") publish in the D.C. Register a "Notice of a Public Hearing: Receipt and Intent to Review" ("the Notice") with respect to the Initiative. The Notice was published in the D.C. Register on July 1, 2016. *See* 63 D.C. Reg. 28 (2016). On June 20, 2016, the General Counsel's office sent the Notice to the Attorney General for the District of Columbia ("the Attorney General") and the General Counsel for the Council of the District of Columbia ("the Council") inviting them to comment on the issue of whether the Initiative presented a proper subject.

On July 26, 2016, the Attorney General submitted comments to the Board stating that the Initiative was a proper subject. "This Office has reviewed a proposed initiative, the "Fair Minimum Wage Act of 2017" ("Proposed Initiative"), to assess whether it addresses a proper subject of an initiative. We conclude that it does. . ." ¹ No opponents to the measure testified or submitted comments in opposition to the proposed measure.

Analysis

Pursuant to D.C. Official Code § 1-1001.02(10) (2012 Repl.), "[t]he term 'initiative' means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval." The Board may not accept an initiative measure if it finds that it is not a proper subject of initiative under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;²

¹ Opinion of District of Columbia Attorney General, Karl A. Racine, Esq. (Jun. 26, 2016) p. 1.

² The verified statement of contributions consists of the statement of organization required by D.C. Official

- (B) The petition is not in the proper form established in subsection (a) of this section;³
- (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2;⁴ or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.⁵

D.C. Official Code § 1-1001.16 (b)(1) (2012 Repl.).

The District of Columbia Court of Appeals has determined that “a measure which would intrude upon the discretion of the Council to allocate District government revenues in the budget process is not a proper subject for initiative. This is true whether or not the initiative would raise new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d 3 at 19 (D.C. 1991) (“*Hessey*”). In order for an initiative measure to pass muster with respect to the prohibition on laws appropriating funds, the measure must not: block the expenditure of funds requested or appropriated; directly appropriate funds; require the allocation of revenues to new or existing purposes; establish a special fund; create an entitlement enforceable by private right of action; or directly address and eliminate any revenue source. Finally, the mandatory provisions of the initiative may not be precluded by any lack of funding. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005) (“*Campaign Treatment*”).

Code § 1-1163.07 and the report of receipts and expenditures required by D.C. Official Code § 1-1102.06.

³ Subsection (a) of D.C. Official Code § 1-1001.16 provides that initiative measure proposers must file with the Board “5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative[.]”

⁴ Chapter 14 of Title 2 of the D.C. Official Code contains the District of Columbia Human Rights Act, the intent of which is to secure an end in the District of Columbia to discrimination for any reason other than individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.

D.C. Official Code § 2-1401.

⁵ D.C. Official Code § 1-204.46 deals with budgetary acts of the D.C. Council.

In the instant case, the proposed measure does not appropriate any funds. The Initiative leaves unchanged the current exemption from the local minimum wage law for the District government. It also does not lead to increased amounts for services provided to District government by contractors. The Proposed Initiative specifically provides that the new minimum wage requirements “shall not apply to employees of the District of Columbia, *or to employees employed to perform services provided under contracts with the District of Columbia*” (Proposed Initiative section 2(c), adding new D.C. Official Code section 32-1003(i)(emphasis added).

As aforementioned, the right of initiative is the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval. “Moreover, what [the Court] said [] was that “*absent express or implied limitation*, the power of the electorate to act by **initiative** is **coextensive** with the power of the legislature to adopt legislative measures,” *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89 at 99 (D.C. 2010) (emphasis in original) (citations omitted). No such express or implied limitation exists in the instant case; accordingly, the Board must accept the initiative as a proper subject.

Conclusion

The proposed measure avoids the appropriation of funds prohibition because the District government is excluded from its intended purview as an “employer”. The Board sees no reason to reject the measure as it does not conflict with any of the prohibitions codified in the Initiative Procedures Act nor applicable case law.

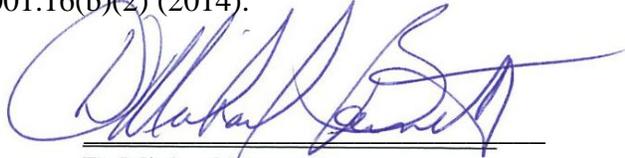
Accordingly, the Fair Minimum Wage Act of 2017 is a proper subject for initiative pursuant to the Initiative Procedures Act.

For the foregoing reasons, it is hereby:

ORDERED that the proposed initiative, the “Fair Minimum Wage Act of 2017,” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2) (2014).

8/22/2016

Date



D. Michael Bennett
Chairman,
Board of Elections