

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**Brian Schwalb
Attorney General**

July 3, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, “Homes Not Stadiums Act of 2025”

Ms. Terri Stroud
General Counsel
Board of Elections
1015 Half Street, S.E.
Washington, D.C. 20003
ogc@dcboe.org

Dear Ms. Stroud:

This memorandum responds to your June 11, 2025 request, on behalf of the Board of Elections (“Board”), that the Office of the Attorney General (the “Office”) provide an advisory opinion on whether the proposed initiative, the “Homes Not Stadiums Act of 2025” (“Proposed Initiative”), is a proper subject of initiative in the District of Columbia, pursuant to D.C. Official Code § 1-1001.16(b)(1A)(B)(i). For the reasons set forth in this letter, the Proposed Initiative is not a proper subject of initiative.¹

STATUTORY BACKGROUND

The District Charter (“Charter”) establishes the right of initiative, which allows District electors to “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.”² The Charter requires that the Board submit an initiative to the voters “without alteration.”³ Pursuant to the Charter, the Council has adopted an implementing statute detailing the initiative process.⁴ Under this statute, any registered qualified elector may begin the initiative process by filing the full text of the proposed measure, a summary statement of not more than 100 words, and a short title with the Board.⁵ After receiving a proposed initiative, the Board must refuse to accept it if the Board determines that it is not a “proper subject” of initiative.⁶

¹ If, notwithstanding this opinion, the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide further recommendations for ensuring that it is prepared in the proper legislative form.

² D.C. Official Code § 1-204.101(a).

³ *Id.* § 1-204.103.

⁴ *Id.* § 1-204.107.

⁵ *Id.* § 1-1001.16(a)(1).

⁶ *Id.* § 1-1001.16(b)(1).

A proposed initiative is not a proper subject for initiative if it does not propose a law, is not in the proper form, or if it would:

- Appropriate funds;
- Violate or seek to amend the District of Columbia Home Rule Act (“Home Rule Act”);
- Violate the U.S. Constitution;
- Authorize or have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977; or
- Negate or limit an act of the Council enacted pursuant to section 446 of the Home Rule Act.⁷

If the Board determines that a proposed initiative is a proper subject of initiative, it must accept the measure and, within 20 calendar days, prepare and adopt a true and impartial summary statement, prepare a short title, prepare the proposed initiative in the proper legislative form, and request a fiscal impact statement from the Office of the Chief Financial Officer.⁸ The Board must then adopt the summary statement, short title, and legislative form at a public meeting.⁹ Within 24 hours after adoption, the Board must publish its formulation and the fiscal impact statement.¹⁰ If no registered qualified elector objects to the Board’s formulation by seeking review in Superior Court within 10 days after publication in the *District of Columbia Register*, the Board must certify the measure and provide the proposer with a petition form for use in securing the required signatures to place the proposed initiative on the ballot at an election.¹¹ If the requisite number of valid signatures from registered electors is obtained, the Board must then submit the initiative “without alteration” at the next primary, general, or city-wide special election held at least 90 days after it certifies the measure.¹²

FACTUAL BACKGROUND

The Proposed Initiative would limit the Mayor’s authority to enter into leases of the Robert F. Kennedy Stadium Campus, as defined in the survey conducted pursuant to the recent congressional act requiring the federal government to transfer administrative jurisdiction of the stadium campus to the District (“RFK Campus”).¹³ According to the Summary Statement, the Proposed Initiative, if enacted, “would preclude the lease of any portion of any land or building within the Robert F. Kennedy Memorial Stadium Campus for use as a stadium for professional athletic teams.”¹⁴ Specifically, the Proposed Initiative would amend D.C. Official Code § 1-301.01(c), which authorizes the Mayor within her discretion to rent, under certain conditions, buildings or land or space therein belonging to the District or under the Mayor’s jurisdiction.¹⁵ The Proposed Initiative would amend this statute to provide that “the Mayor shall not lease or license any portion of any land or building located within or on the Robert F. Kennedy Memorial Stadium Campus[] . . . for use for operation of any stadium or arena (including accessory buildings or structures) that has as its

⁷ *Id.* §§ 1-204.101(a); 1-1001.16(b)(1); 3 DCMR § 1000.5.

⁸ D.C. Official Code § 1-1001.16(c).

⁹ *Id.* § 1-1001.16(d)(1).

¹⁰ *Id.* § 1-1001.16(d)(2).

¹¹ *Id.* § 1-1001.16(e)–(i); *see also id.* § 1-204.102(a) (requiring, under the District Charter, an initiative petition to be signed by 5 percent of the registered electors in the District, including 5 percent of registered electors in each of five or more wards).

¹² *Id.* §§ 1-204.103, 1-1001.16(p)(1).

¹³ *See* D.C. Robert F. Kennedy Memorial Stadium Campus Revitalization Act, approved January 6, 2025 (Pub. L. No. 118-274; 138 Stat. 3234).

¹⁴ 72 DCR 6798, 6799 (June 20, 2025).

¹⁵ An Act To grant additional powers to the Commissioners of the District of Columbia, and for other purposes, § 1(c), approved December 20, 1944 (58 Stat. 819; D.C. Official Code § 1-301.01(c)).

primary purpose the hosting of professional athletic team events.”¹⁶ This prohibition would apply “[n]otwithstanding any provision of this chapter to the contrary.”¹⁷

ANALYSIS

The Proposed Initiative is not a proper subject for initiative. It would negate or limit the Fiscal Year 2026 Local Budget Act of 2025 (“FY26 Local Budget Act”)—which the Council will adopt on July 28, 2025, prior to the Board’s August 8, 2025, proper subject hearing—to the extent that the FY26 Local Budget Act, as anticipated, includes funds in preparation for a professional sports stadium at the RFK Campus or assumes revenues connected with the decision to lease the RFK Campus for a professional sports stadium.

1. The power of the voters in the initiative process is generally coextensive with the Council’s legislative power, but it excludes any measure that would negate or limit a local budget act enacted by the Council or that would appropriate funds.

The right of initiative “is a power of direct legislation by the electorate.”¹⁸ This right must be construed “liberally,” and “only those limitations expressed in the law or clear[ly] and compelling[ly] implied” may be imposed on that right.¹⁹ As the District of Columbia Court of Appeals has explained, subject to these limitations, “the power of the electorate to act by initiative is coextensive with the legislative power.”²⁰

Among the express statutory limitations is that an initiative may not “negate or limit a budget act of the Council.”²¹ “The ‘act’ referred to is a [local budget act] passed by the Council” and submitted to Congress “pursuant to [section 446 of the Home Rule Act].”²²

Additionally, as defined in the District Charter, an initiative shall not “appropriat[e] funds.”²³ Although the right of initiative must be construed broadly, the D.C. Court of Appeals has stated that “the exclusion from initiatives of laws appropriating funds is ‘very broad[] . . . extend[ing] . . . to the full measure of the Council’s role in the District’s budget process.’”²⁴ As relevant here, the Court has construed this limitation to prohibit an initiative that “directly addresses and eliminates a source of revenue.”²⁵

The D.C. Court of Appeals discussed these two prohibitions—on initiatives that negate or limit a budget act and initiatives that address and eliminate a revenue source—in *Dorsey v. District of Columbia*.²⁶ There, the proposed initiative would have exempted District-registered vehicles from booting and required an

¹⁶ 72 DCR at 6800.

¹⁷ *Id.*

¹⁸ *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 897 (D.C. 1981) (en banc) (internal citations and quotations omitted).

¹⁹ *Id.* at 913 (internal citations and quotations omitted).

²⁰ *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).

²¹ D.C. Official Code § 1-1001.16(b)(1)(D).

²² *Dorsey v. District of Columbia*, 648 A.2d 675, 676 (D.C. 1994). The District has since amended section 446 to bifurcate the “act” so that a “budget request act” is used only for the federal portion of the annual budget and a “local budget act” is used for the local portion of the annual budget. Local Budget Autonomy Amendment Act of 2012, § 2(e), effective July 25, 2013 (D.C. Law 19-321; 60 DCR 1724).

²³ D.C. Official Code § 1-204.101(a).

²⁴ *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) (“*Campaign for Treatment*”) (quoting *Dorsey*, 648 A.2d at 677 (D.C. 1994) (internal citations and quotations omitted)).

²⁵ *Id.* at 794–795 (citing *Dorsey*, 648 A.2d at 677).

²⁶ 648 A.2d 675.

amnesty program for late payment penalties for parking and moving violations.²⁷ The Board determined that the measure was not a proper subject both because it would (1) negate or limit a local budget act and (2) violate the prohibition on appropriating funds, and the Court affirmed.²⁸

It was undisputed in *Dorsey* that the Council’s revenue projections incorporated into a local budget act included penalties for late payments of traffic fines and fees for booting and associated towing fees.²⁹ The Court agreed that the measure would negate or limit the local budget act that the Council had already enacted “to the extent the act was based on those projected revenues.”³⁰ It noted that the measure would have the same effect in future years because these revenue projections are included every year.³¹

Although “[o]n this ground alone [the measure] was defective,” the Court went on to discuss, “[m]ore fundamentally,” the prohibition against initiatives appropriating funds.³² The Court explained that “‘appropriations’ . . . refers to the discretionary process by which revenues *are identified* and allocated among competing programs and activities.”³³ It operates to “ensure[] that these ‘matters relating to the local budget process would remain within the control of the Mayor and Council, and that initiatives [would] not create deficits or interfere with locally elected officials’ decisions about how District government revenues should be spent.”³⁴

Applying this rule, the Court concluded that “[h]owever modestly,” the proposed initiative “would intrude upon the discretion of the Council to allocate District government revenues in the budget process.”³⁵ This was because it “would make it virtually impossible for the Council to identify and allocate revenues from penalties for late payment of traffic fines.”³⁶ It did not matter that the funds were “only a tiny part of” revenues.”³⁷ “[T]he electorate may no more eliminate them by initiative than it could abolish or lower the sales tax or local income tax—matters integral to the ‘power of the purse’ which Congress and the Council reserved exclusively to the elected government.”³⁸

2. The Proposed Initiative would negate or limit the Fiscal Year 2026 Local Budget Act of 2025, if enacted with funds for, or based on revenues in connection with a lease for, a professional sports stadium at the RFK Campus.

The Proposed Initiative would impermissibly negate or limit the FY26 Local Budget Act, to the extent that Act, as anticipated, includes funding in preparation for a professional sports stadium at the RFK Campus or assumes revenue in connection with the decision to lease the property for such a stadium when it is enacted in August.

²⁷ *Id.* at 676.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 677.

³¹ *Id.*

³² *Id.*

³³ *Id.* (quoting *Hessey II* at 19 (emphasis added)).

³⁴ *Id.* (quoting *Hessey II* at 15).

³⁵ *Id.* (quoting *Hessey II* at 19).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

The Mayor's proposed Fiscal Year 2026 budget, submitted to the Council on May 27, includes "funding for a new Washington Commanders stadium."³⁹ The Council is scheduled to hold the second and final vote on the FY26 Local Budget Act on July 28, as required by the District Charter.⁴⁰ The Council's Committee of the Whole stated in its FY26 budget recommendations adopted on June 25 that "[f]unding for the proposed stadium project will remain in the budget, as proposed by the Mayor."⁴¹ Additionally, the Council Chairman has stated publicly that he does not intend to remove any funds related to the RFK Campus from the FY26 Local Budget Act as proposed.⁴²

If the Committee of the Whole's and the Chairman's public statements hold, and the FY26 Local Budget Act includes funds or revenues related to the lease of the RFK Campus for a professional sports stadium, then the Proposed Initiative would negate or limit a provision of the Act and be an improper subject. Because the Proposed Initiative would preclude the transaction that is the basis for any assumed stadium-related revenues, it would "'negate[]' the [Local Budget Act] for that year to the extent the act [is] based on those projected revenues."⁴³ Precluding the lease would similarly "interfere[] with the Council's discretionary allocation of revenues among competing programs and revenues" by effectively "amend[ing] the allocation" of revenue for stadium purposes adopted by the Council in the FY26 Local Budget Act.⁴⁴

Consequently, if the Council adopts, and the Mayor approves, the FY26 Local Budget Act as proposed, the Proposed Initiative would not be a proper subject, because it would negate or limit a provision of a local budget act. Whether the Council has adopted the FY26 Local Budget Act with this funding or revenue will be known on July 28, prior to the Board's August 8 hearing on the Proposed Initiative.

Because the Proposed Initiative clearly would negate or limit the FY26 Local Budget Act if enacted as anticipated, this advisory opinion does not address whether it otherwise violates the prohibition on appropriating funds under *Dorsey*.

³⁹ FY 2026 Proposed Budget and Financial Plan I-17 (May 27, 2025),

<https://app.box.com/s/pp9llu4h8tv0m8uvvdv0snsb94dors52>.

⁴⁰ D.C. Official Code § 1-204.46(a) (requiring the Council to adopt the local budget by act within 70 days after receipt of the Mayor's budget proposal).

⁴¹ Comm. of the Whole, Report and Recommendations of the Committee of the Whole on the Fiscal Year 2026 Budget and Corresponding Budget Support Act 102 (June 25, 2025), <https://tinyurl.com/3b7k456s>.

⁴² Chairman Phil Mendelson, Statement Upon Introduction of the Robert F. Kennedy Campus Redevelopment Act of 2025 (June 20, 2025), <https://tinyurl.com/4j87b3kz> ("No one should infer from the introduction of this bill that funding in the Mayor's proposed budget for the Washington Commanders Football Team is in jeopardy. Councilmembers have said they support leaving the funding, as proposed by the Mayor, in the budget. The attached bill would not alter that."); Chairman Phil Mendelson, Mendelson Statement on RFK Deal (June 11, 2025), <https://chairmanmendelson.com/2025/06/11/mendelson-statement-on-rfk-site-deal/> ("[T]here is no plan to take the monies out of the budget; there is no plan to delay the RFK resources in this year's budget. I have said repeatedly that the RFK-related budget items will be protected and fully available: the \$500 million capital contribution and the \$202 million infrastructure project.").

⁴³ *Dorsey*, 648 A.2d at 677

⁴⁴ *Hessey II*, 601 A.2d at 15.

CONCLUSION

For the reasons above, it is the opinion of this Office that the *Homes Not Stadiums Act of 2025* is not a proper subject of initiative.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian L. Schwalb".

Brian L. Schwalb
Attorney General for the District of Columbia