

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



**Brian Schwalb
Attorney General**

May 7, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, “Use of RFK Site for 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 April 17, 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 “Use of RFK Site for 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 direct the Zoning Commission to promulgate a specific zoning regulation and zoning map amendment. Generally, it “would mandate the creation of a Special Purpose Zone for the RFK Memorial Stadium for which the Zoning Commission could permit residential, commercial, recreation, educational and cultural uses, but could not permit use for a stadium for professional athletic teams.”¹³ The Proposed Initiative would do this by amending the 1938 congressional statute authorizing the Zoning Commission to make zoning regulations and determine the zoning map.¹⁴ This amendment would direct the Zoning Commission to “create a special purpose zone encompassing the Robert F. Kennedy Memorial Stadium Campus,” as set forth 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.¹⁵ Further, the Proposed Initiative would require the Zoning Commission to “provide by regulation”

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 72 DCR 4969, 4970 (Apr. 25, 2025).

¹⁴ 72 DCR at 4970–4971; *see* An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, § 1, approved June 29, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01).

¹⁵ 72 DCR at 4971; *see* D.C. Robert F. Kennedy Memorial Stadium Campus Revitalization Act, approved January 6, 2025 (Pub. L. No. 118-274; 138 Stat. 3234).

for campus uses provided by the recent congressional act and required Declaration of Covenants.¹⁶ However, the Proposed Initiative would prohibit “such regulation” from permitting the campus to be used “for purposes of construction or operation of any stadium or arena (including accessory buildings or structures) that has as its primary purpose the hosting of professional athletic team events.”¹⁷

ANALYSIS

The Proposed Initiative is not a proper subject for initiative because it would provide for the electorate to direct the Zoning Commission to make a zoning regulation and zoning map amendment, which is contrary to the Home Rule Act’s vesting of the power to promulgate zoning regulations and determine the zoning map exclusively with the Zoning Commission.

1. The power of the voters under the right of initiative is generally coextensive with the Council’s legislative power.

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, with certain exceptions, “the power of the electorate to act by initiative is coextensive with the legislative power.”²⁰ The District’s legislative power is limited by the Constitution and the Home Rule Act.²¹

Title IV of the Home Rule Act,²² the District Charter, is akin to a state constitution and cannot be altered by ordinary legislation.²³ Section 404 places with the Council the “legislative power,” which is shared with the electorate through the District Charter’s initiative process.²⁴ However, that legislative power is not unlimited, and it must be exercised in accordance with the Home Rule Act.²⁵

2. The Home Rule Act gives to the Zoning Commission all powers and duties with respect to making zoning regulations and determining the zoning map in the District, to the exclusion of the Council.

The District Charter and other provisions of the Home Rule Act allocate specific powers related to land use and zoning among federal and District government entities.

In relevant part, the District Charter provides the Council with the authority to adopt the local District elements (as opposed to the federal elements) of the Comprehensive Plan.²⁶ The Comprehensive Plan, however, is “a broad framework to guide the future land use planning decisions for the District”; it does not

¹⁶ *Id.*

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 § 1-203.02.

²² Approved December 24, 1973 (Pub. L. No. 93-198; D.C. Official Code § 1-204.01 *et seq.*).

²³ *Zukerberg v. D.C. Bd. of Elections & Ethics*, 97 A.3d 1064, 1072 (D.C. 2014).

²⁴ D.C. Official Code § 1-204.04(a).

²⁵ *Id.*

²⁶ *Id.* § 1-204.23(b).

“directly regulate” zoning.²⁷ Under the District Charter, the authority to make zoning regulations and determine the zoning map is vested solely in the Zoning Commission—to the exclusion of the Council.

Section 492 of the District Charter makes the Zoning Commission an independent agency. Among other things, it provides that “[t]he Zoning Commission shall exercise *all* the powers and perform *all* the duties with respect to zoning in the District as provided by law.”²⁸ It also provides that the Zoning Commission’s maps and regulations “shall not be inconsistent with the comprehensive plan for the national capital.”²⁹ Additionally, among the powers Congress granted to the Zoning Commission, and left unchanged in the Home Rule Act, is the power “to regulate . . . the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, and other purposes.”³⁰ Congress further authorized the Zoning Commission to “establish districts or zones . . . as [it] may determine,” within which it “may regulate . . . uses of buildings and structures and the uses of land.”³¹

These provisions give the Zoning Commission exclusive authority to promulgate zoning regulations and determine the zoning map in the District, to the exclusion of the Council. Section 492’s requirement that the Zoning Commission act “as required by law” is not a grant of legislative authority to the Council to promulgate zoning regulations or determine the zoning map, or to direct the Zoning Commission to make a particular zoning regulation or zoning map amendment. It simply affirms that the Zoning Commission, in exercising its powers and performing its duties “with respect to zoning in the District,” must comply with the Constitution, the Home Rule Act, requirements related to the Comprehensive Plan, and applicable law.³² For example, the Zoning Commission must conduct hearings in accordance with the District of Columbia Administrative Procedure Act and ensure that zoning regulations and maps are “not . . . inconsistent with the comprehensive plan,” adopted in part by the Council.³³ However, reading this language to permit the Council to direct the Zoning Commission to promulgate certain zoning regulations and zoning map amendments would defeat the purpose of the District Charter expressly granting that authority solely to the Zoning Commission.

The legislative history also strongly cuts against this reading. Congress considered and rejected an earlier version of section 492 that would have expressly authorized the Council to assign duties to the Zoning Commission.³⁴

The Home Rule Act’s framework thus restricts the Council’s, and therefore the electorate’s, use of “legislative power” to promulgate zoning regulations and determine the zoning map, or to direct the Zoning Commission to do so.

²⁷ See *Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 334, 337 (D.C. 1988).

²⁸ Home Rule Act § 492(a) (codified at D.C. Official Code § 6-621.01(e)) (emphases added).

²⁹ *Id.* § 492(b)(1) (codified at D.C. Official Code § 6-641.02).

³⁰ An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, § 1, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01).

³¹ *Id.*

³² Cf. *Harney v. Russo*, 255 A.2d 560, 562 (Pa. 1969) (determining that state constitutional provision requiring arbitration to be “‘in accordance with law’ merely means that the arbitrators, in conducting their hearings and making an award, may not violate the requirements of due process and must adhere to the mandates of the enabling legislation”).

³³ D.C. Official Code §§ 6-641.02, 6-641.03.

³⁴ H. Comm. on District of Columbia, Background and Legislative History of H.R. 9056, H.R. 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act, at 1739 (1976) (stating that the subsequent House bill “delet[ed] City Council authority to assign duties to the Zoning Commission” in an earlier bill).

In light of this framework, the D.C. Court of Appeals has consistently recognized that “the Home Rule Act explicitly provides that the Zoning Commission is the exclusive agency vested with power to enact zoning regulations and determine the zoning map for the District of Columbia.”³⁵ So, even though making zoning regulations and determining the zoning map is “legislative in nature,”³⁶ the District Charter excluded that power from the Council’s legislative authority and placed it with the Zoning Commission.

3. Because the Proposed Initiative would direct the Zoning Commission to make a specific zoning regulation and zoning map amendment and thus exercise a power the Council does not have, the Proposed Initiative is not a proper subject.

The Proposed Initiative violates the Home Rule Act’s exclusive reservation of the power to promulgate zoning regulations and determine the zoning map to the Zoning Commission. It would direct the Zoning Commission to make a specific regulation to create a new zone in a certain geographic area (*i.e.*, a map amendment) and to proscribe a use of the land and buildings within that zone. This is the very power that Congress granted to the Zoning Commission alone, to the exclusion of the Council, under section 492 of the District Charter. Because the Council cannot direct the Zoning Commission to promulgate specific zoning regulations and zoning map amendments, the electorate cannot do so either.

CONCLUSION

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

Sincerely,



Brian L. Schwalb
Attorney General for the District of Columbia

³⁵ *Tenley & Cleveland Park Emergency Comm.*, 550 A.2d at 335; *see also Barry Farm Tenants & Allies Ass’n v. D.C. Zoning Comm’n*, 182 A.3d 1214, 1218 (D.C. 2018) (“The Zoning Commission is vested with exclusive authority to enact zoning regulations in the District of Columbia[]”); *Durant v. D.C. Zoning Comm’n*, 65 A.3d 1161, 1166 (D.C. 2013) (“In the District of Columbia, the Zoning Commission has the exclusive authority to enact zoning regulations[]”).

³⁶ *See PAL DC Storage, LLC v. D.C. Zoning Comm’n*, 229 A.3d 148, 156 (D.C. 2020); *see also Dupont Circle Citizen’s Ass’n v. D.C. Zoning Comm’n*, 343 A.2d 296, 300 (D.C. 1975) (“Zoning is an exercise of legislative power[] The Commission, acting by delegation from Congress, performs a legislative function.” (quoting *Am. Univ. v. Prentiss*, 113 F. Supp. 389, 393 (D.D.C. 1953))).