DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

In Re:	Administrative Hearing No. 26-003
"DC Housing Modernization and Accessibility Act of 2026"	Rejection of Proposed Initiative Measure

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections ("the Board") at a hearing convened on Wednesday, January 14, 2026 to determine whether a proposed initiative measure, the "DC Housing Modernization and Accessibility Act of 2026" ("the Measure")," presents a proper subject for initiative under applicable District of Columbia law. Board Chairman Gary Thompson and Board member Karyn Greenfield presided over the hearing. The Board's General Counsel, Terri Stroud, and the initiative proposer, Salim Adofo ("the Proposer"), and his counsel, Joseph Sandler, were also present.

Statement of Facts

On December 1, 2025, the Proposer, a D.C. registered voter, filed the Measure and supporting documents at the Board's offices. According to its summary statement and legislative text, the Measure would, if enacted, immediately freeze rents for two years and in periods of high inflation.[1] The Measure also lowers the income qualification thresholds for housing under various

[1] Specifically, the Measure changes the amount of rent that can be charged for certain units that are covered by the Rental Housing Act of 1985 (D.C. Official Code § 42–3502.08).

statutes.[2] The Measure further changes the number of different sized multi-family units constructed under D.C. government housing programs.[3] In addition, it requires essentially that legislation mandating a plan for tracking affordable housing cover housing for the lower income households defined elsewhere in the Measure.[4] Notably, the Measure provides that its provisions will not take effect until they are funded in a Council budget.[5]

On December 2, 2025, the Board's Office of General Counsel requested advisory opinions regarding the propriety of the Measure from the Office of the Attorney General for the District of Columbia ("the OAG") and General Counsel for the Council of the District of Columbia ("the CGC").[6]

On December 23, 2025, both the OAG and the CGC provided advisory opinions to the Board. Those opinions concluded that the Measure should not be accepted by the Board. The

[2] *See* Measure, Section 4 (concerning the Housing Production Trust Fund (D.C. Official Code §42-2801)), Section 5 (concerning the Affordable Housing Clearinghouse Directory Act (D.C. Official Code § 42-2131)), Section 6 (concerning the Disposition of District Land for Affordable Housing Amendment Act of 2014, as amended (D.C. Law 20-193)), Section 8 (concerning language in the Workforce Housing Production Program Approval Act of 2006 (D.C. Official Code § 6-1061.2) with respect to a nonprofit land trust to develop affordable housing) and Section 10 (concerning the Reentry Housing and Services Program Act of 2021). Section 9 of the Measure similarly amends other language in the Workforce Housing Production Program Approval Act concerning workforce housing availability at the Capital City Market development site. While the Union Market Tax Increment Financing Act of 2017 appears to cover the same site, the statutory provisions with respect to workforce housing at the Capital City Market were never repealed. *See* D.C. Official Code §§ 6-1062.01 – 6-1062.07.

[3] *See* Measure Section 6 (concerning the Disposition of District Land for Affordable Housing Amendment Act of 2014, as amended (D.C. Law 20-193)).

[4] *See* Section 7 of the Measure.

[5] *See* Section 11 of the Measure.

[6] D.C. Official Code § 1-1001.16(b)(1A)(b)(i) requires the OAG and CGC to provide advisory opinions regarding the propriety of proposed initiative measures.

advisory opinions reasoned that the Measure did not satisfy certain statutory "proper subject" requirements. Specifically, the OAG and the CGC concluded that the Measure did not conform to proper subject limitations on the voter's right of initiative that have to do with the Council's power of the purse. One of those limitations provides that measures cannot "negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46." That section is entitled "Enactment of Local Budget by Council" and requires the Council to enact budgets. In other words, an initiative cannot negate or limit a budget act of the Council. The other similar proper subject requirement derives from the definition of the right of initiative as set forth in the District's Charter. According to the Charter (as codified at D.C. Official Code § 1-204.101(a)):

> The 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.

Both the OAG and the CGC focused on Section 4 of the Measure in finding that it was not a proper subject of initiative. That section lowers the percent of area median income ("AMI") in the definitions of "eligible household", "extremely low-income", "low-income", "moderate income", and "very low-income" that apply under the Housing Production Trust Fund Act of 1988 ("the HPTF") (D.C. Official Code § 42-2801). The HPTF Act of 1988 requires that, each fiscal year, expenditures from the HPTF be allocated at 50 percent to households meeting the lowest income threshold definition that is based on the current law's AMI levels, 40 percent to households meeting the next lowest income threshold, and the balance of funds going to the remaining lower income

households.[7]

The OAG found that "section 4 is a law appropriating funds because it affects 'the Council's discretion to allocate revenues.'"[8] The OAG opined that, because the Council allocated amounts in the HPTF "for providing affordable housing for households at specified income levels [and] Section 4 would change these income levels[,] it would reallocate HPTF funds to provide affordable housing for households at different income levels from what the Council has allocated."[9]

The CGC noted that the D.C. Court of Appeals has signaled that the appropriation-related proper subject limitation on initiatives requires rejection of an initiative that delays or conditions the Council's authority to allocate funds thereby forcing the Council to use those funds as required by the initiative rather than at the Council's discretion.[10] The CGC concluded that Section 4 of the Measure would do just that and therefore that the Measure should be rejected.

During a duly noticed public meeting held on the matter on January 14, 2026, the Board's General Counsel described the conclusions reached in the advisory opinions. She noted that the Board had been provided with those opinions and all written comments regarding whether the Measure meets proper subject requirements.

The Board heard first from opponents of the Measure. The opponents also contended that the Measure was not a proper subject for initiative because that Section's changes to the income criteria for housing offered through the HPTF would force revenues to be allocated in accordance

[7] *See* https://dhcd.dc.gov/page/housing-production-trust-fund.

[8] *See* 12/23/2025 OAG advisory opinion at p. 8 (quoting *Hessey v. D.C. Board of Elections & Ethics*, 601 A.2d 3, 20 (D.C. 1991).

[9] The OAG also considered other proper subject requirements and concluded that the Measure did not violate those.

[10] *See* 12/23/2025 CGC advisory opinion at p. 3 (also citing *Hessey, supra*).

with voter-mandated criteria as opposed to the allocation of revenues that the Council had directed.[11] They also argued that the Measure's restriction on rental income, prohibitive housing affordability requirements, and requirements for disposal of D.C. land would reduce the revenues from recordation taxes and that the Measure's rent increase restrictions would diminish property valuations which, in turn, would reduce revenues that fund the District.[12] One opponent alleged constitutional concerns with the Measure's rent restrictions and rental agreement implications.[13]

Proponents of the Measure spoke next.[14] Proponents characterized the Measure as correcting a "policy drift" with respect to the HPTF. They argued that the original purpose of the HPTF legislation was to assist much lower wage earners than is currently the case and that the Measure would re-allocate HPTF funds to the individuals the original legislation was intended to help. Because Section 4 would not adjust the level of funds going into the HPTF or the level being disbursed from the HPTF, they argued, the Measure was not a law appropriating funds. As counsel for the Proposer characterized the issue, Section 4 does not change the Council's appropriation of

---

[11] Comments of VP of Public Policy and Strategic Affairs of the D.C. Building Industry Association Erika Wadlington; VP of Government Affairs for DC Residential Apartment and Office Building Association of Metropolitan Washington Katalin Peter; VP of Government Affairs for the D.C. Association of REALTORS Shawn Hilgendorf; and Patrick McAnaney a representative of Somerset Development Corp.

[12] *See e.g*. comments of Erika Wadlington and Shawn Hilgendorf. While opponents that the Measure new requirements would require funding to implement, the Measure provides on its face that it is subject to appropriation. That subject-to-appropriation language remedies any concern that the Measure's new activities render it an improper subject for initiative. *See* discussion *infra*.

[13] Comments of Katalin Peter.

[14] Commenters in support of the Measure were submitted by the Treasurer of More Affordable DC (the Office of Campaign Finance committee formed in support of the Measure) Adam Eidinger, the Chair of More Affordable DC Kris Furnish, Nikolas Schiller, and a representative of DC for Reasonable Development, Chris Otten.

funds between competing programs and therefore is not a law appropriating funds.

After hearing from the commenters and the Proposer's counsel, Board Chair Thompson requested that the General Counsel provide her recommendation as to whether the Measure met proper subject requirements. The General Counsel stated that she believed that the Measure did alter the Council's allocation of HPTF funds between income categories and she recommended that the Board refuse to accept the Measure. The Board then tabled the matter until the end of its meeting, at which point, the Board entered into closed session pursuant to a roll call vote in accordance with D.C. Official Code §§ 2-575(b)(4A) and (13). When the Board went back on the record, the Chair made a motion that the Measure be rejected for the reason that it did not constitute a proper subject for an initiative. The motion was duly seconded and passed unanimously.

Analysis

The term "initiative" refers to the process by which the voters of the District of Columbia may propose certain laws. The District's statutory framework establishes this Board as the gatekeeper of the initiative process. The Board's regulations concisely state the statutory and legal proper subject requirements for proposed initiatives:

> A measure does not present a proper subject for initiative . . . and must be refused by the Board, if:
>
> (a) The measure presented would violate the Home Rule Act;
> (b) The measure presented seeks to amend the Home Rule Act;
> (c) The measure presented would appropriate funds;
> (d) The measure presented would violate the U.S. Constitution;
> (e) The statement of organization and the report(s) of receipts and expenditures have not been filed with the Office of Campaign Finance;
> (f) The form of the measure does not include legislative text, a short title, or a summary statement containing no more than one hundred (100) words;
> (g) The measure authorizes or would have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977 or any subsequent amendments; or

> (h) The measure would negate or limit an act of the Council enacted pursuant to § 446 of the Home Rule Act ["Enactment of Local Budget by Council"].

3 DCMR 1000.6.

The Limitation on Initiatives that Interfere with the Council's Power of the Purse

With respect to the prohibition on measures that appropriate funds and/or that negate or limit a Council budgetary act (*i.e.,* the power of the purse that is reserved to the Council and therefore cannot be legislated by voters through an initiative), the Court of Appeals has made clear that the Board must reject an initiative proposal that "requires the allocation of revenues to new or existing purposes[.]" *D.C. Board of Elections, et al. v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005) (citing *Hessey*). "Viewed together, these limitations on the right of initiative reflect a decision, implicit if not explicit, by the Congress and the Council that the power of the purse which Congress had delegated to the District government in the Self–Government Act would remain with the elected officials of the District government and not be subject to control by the electorate through an initiative." *Hessey, supra,* 601 A.2d at p. 15 (footnote omitted).

The Measure includes language that makes any funding needed to carry it out subject to inclusion in a Council budget. We have previously concluded that such subject-to-appropriation type language will mean that an initiative will not be invalid for the reason that it interferes with the Council's power of the purse.[15] Both the OAG and the CGC opined, however, that the Measure was not a proper subject for initiative for the reason that the changes to HPFT legislation called for by Section 4 of the Measure would interfere with the Council's funding discretion. The reason that

[15] *In re: Make All Votes Count Act of 2024*, BOE Case No. 23-007 at p. 7 and cases cited at fn. 11 (issued 7/25/2023).

the Measure's inclusion of subject-to-appropriation type language is insufficient in this case to support its acceptance requires a deeper look at the prohibition against initiatives that interfere with Council spending authority.

In advising that the Measure was not a proper subject for initiative, both the OAG and CGC relied on *Hessey v. D.C. Board of Elections & Ethics*, 601 A.2d 3 (D.C. 1991), a case that addressed a proposed initiative that would have imposed fees on tax surcharges that would be deposited in the HPTF. In *Hessey*, the court addressed the prohibition on initiatives that interfere with the Council's power of the purse and underscored that that meant that an initiative that constituted an act allocating funds would be an improper subject for initiative. The court noted that the prior proposal's changes to the special trust fund would "delay or condition the Council's allocation authority, forcing the Council to use those funds in accordance with the initiative rather than in the discretion of the Council to meet District needs."[16] With respect to one aspect of the prior initiative proposal, the court stated:

> …[T]he initiative would interfere with the Council's allocation power since the Council would have no discretion about the allocation of the new revenues raised by the initiative. Although the Council has authorized such funds to be deposited in the [HPTF], it has not, thereby, relinquished its authority, much less its Charter responsibility, to determine when, if, and how much revenue shall be allocated to the Fund.

Id. at p. 21. The court interpreted the laws appropriating funds broadly finding that it applied to the full measure of the Council's role in the District's budget process. *Id*. at 20.

Contrary to the court's broad interpretation of the power of the purse reserved to the Council, the Proposer's attorney claimed that another case, *Convention Ctr. Referendum Comm.*

[16] *Id*. at p. 20.

v. D.C. Bd. of Elections & Ethics, 441 A.2d 889,897 (D.C. 1981) (*en banc*), allows initiatives to alter funding as long as they do not change the allocation of funds between "competing programs and activities." The Proposer's attorney suggested that, once funds are allocated into pots via a budget, voters can propose initiatives that tinker with the distribution of resources as directed by statute within the budget pots. We think the Proposer's reading of *Convention Center* begs the question, however. It seems to us that changing the allocation of HPTF revenues between low income groups competing for affordable housing resources constitutes precisely an appropriation authority reserved to the Council. Moreover, while *Convention Center* did say that initiatives that altered the allocation of funds between competing programs and activities would be improper, it did not say that altering the allocation of funds *within* an activity would be a proper subject of initiative. Further, the Proposer's creative application of *Convention Center* cannot be reconciled with *D.C. Board of Elections, supra*, 866 A.2d at 794, where the court noted that, under *Hessey*, an impermissible law appropriating funds is one that "requires the allocation of revenues to new or existing purposes" (as opposed to programs). We believe that the case law supports the conclusion that the Council's power of the purse extends to control over the allocation of HPTF funds to the income groups as defined in the Council's HPTF legislation.

Unlike the proponents of the Measure, we find that, by changing the percent of AMI needed to qualify for various income categories that in turn trigger the level of HPTF expenditures that will fund housing for that category, the Measure alters the Council's allocation of housing revenues amongst income level categories. A subject-to-appropriation clause that simply allows for additional Council funding to support implementation of the Measure does not solve the proper

subject defect that, once funded, the Measure restricts the Council's ability to allocate the expenditure of those funds. Accordingly, we find that the Measure is not a proper subject for initiative.[17]

Other "Proper Subject" Requirements

As noted above, in addition to the limitation on initiatives that interfere with the Council's power of the purse, initiatives cannot be unconstitutional, violate the Home Rule Act, or authorize unlawful discrimination. Moreover, the voter filing the measure must comply with certain campaign finance requirements. These other proper subject concerns do not require much discussion except perhaps with respect to constitutional-related claims.[18] Along that line, the opponents claimed that the Measure's rent freeze "may cause" an unconstitutional taking; that its retroactive application to existing contracts "potentially" raises contract clause issues; and that its enactment could present due process issues. Opponents, however, did not provides us with legal authority showing, for example, that a rent freeze similar to that proposed here has been found an unconstitutional taking or how a due process claim would play out under the Measure. Indeed, opponents essentially acknowledge that there are only potential or possible constitutional concerns. As we have advised in other proper subject cases, however, we cannot speculate that a measure

[17] As to opponents' claims that the Measure's changes would reduce revenues through, *inter alia*, resulting reductions in the value and level of property transfers that would in turn reduce transfer tax payments to the D.C. government, such collateral revenue changes do not per se negate or limit a budget act and arguably do not constitute an appropriation. No court has extended the limitation on the right of initiative so far as to treat indirect revenue consequences from a measure as providing a basis for rejecting it. Accordingly, we decline to find that erosion to the revenue streams that might result from the instant Measure would be sufficient to justify rejecting it as improper.

[18] Here, the Measure is neutral on its face and no one has suggested it causes any unlawful discrimination. Also, except insofar as the Home Rule Act establishes the Council's power of the purse, there is nothing inconsistent between that act and the Measure. The Proposer filed the necessary campaign finance documentation.

violates proper subject requirements.[19] It is not enough for an opponent to assert that there are potential or possible unconstitutional consequences from a measure. That is particularly true here, where proponents claimed that rent and other contracts that might be impacted by the Measure have provisions that would allow leases or contracts to be voided were the Measure to be enacted. For such reasons, we cannot reject the Measure based on its supposed constitutional short-comings.

Conclusion

For the foregoing reasons, the Board finds that the "DC Housing Modernization and Accessibility Act of 2026" does not present a proper subject for an initiative.[20] Accordingly, it is hereby:

ORDERED that the "DC Housing Modernization and Accessibility Act of 2026" is **REJECTED** pursuant to D.C. Code § 1-1001.16(b)(2). The Board issues this written order today, which is consistent with its oral ruling rendered on January 14, 2026.

Dated: January 20, 2026

Gary Thompson
Chair
Board of Elections

[19] *In re: "Make All Votes Count Act of 2024,"* BOE Case No. 23-007 at p. 9 (issued 7/25/2023).

[20] We note that one opponent expressed concern that the Measure as written was inaccurate or misleading. That concern would have been more appropriately addressed in the subsequent formulation stage had we accepted the Measure.