GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

February 6, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, "DC Housing Modernization and Accessibility Act of 2026"

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 January 20, 2026, 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 "DC Housing Modernization and Accessibility Act of 2026" ("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).

The Proposed Initiative is the third iteration of a measure that we previously opined was not a proper subject.[1] This third version is nearly identical to the second, except it cures the deficiency that we opined in our attached December 23, 2025, advisory opinion rendered the measure not a proper subject. Accordingly, the Proposed Initiative is a proper subject of initiative.

We opined that the previous version of the measure was not a proper subject because section 4 would have appropriated funds by infringing on "the Council's discretion to allocate revenues."[2] Specifically, it would have amended the Housing Production Trust Fund Act of 1988[3] ("Act") to reallocate revenue in the Housing Production Trust Fund ("HPTF") to provide affordable housing for households at different income levels from what the Council has specified.

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[1] *See* Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, "DC Housing Modernization and Accessibility Act of 2026" (Dec. 23, 2025) [hereinafter December 23, 2025, OAG Advisory Opinion]; Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, "DC Housing Modernization and Accountability Act of 2026" (Nov. 25, 2025).
[2] December 23, 2025, OAG Advisory Opinion at 7–8.
[3] Effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801 *et seq.*).

As revised, section 4 of the Proposed Initiative now provides that "[t]he electors of the District of Columbia call upon the Council" to amend the Act to reallocate revenue in the HPTF, without amending the Act directly. The Proposed Initiative thus cures the prior deficiency in section 4 by recrafting it as a non-binding proposal for the Council to reallocate the HPTF.

While an initiative may not "intrude upon the discretion of the Council to allocate District government revenues," "[t]he initiative right to propose authorizing legislation that the Council could enact is essentially unfettered."[4] An initiative also may "contain[] a 'non-binding policy statement' that revenues should be allocated for specified purposes."[5] Section 4 of the Proposed Initiative simply "call[s] upon the Council" to amend the Act to change income levels for households served by the HPTF. Unlike the prior version of section 4, the revised version would not disturb the Council's existing allocation of HPTF funds. Accordingly, it would not change the purposes for which revenues in the HPTF are allocated, and so would not appropriate funds. Instead, the proposer's desired reallocation of HPTF funds must be accomplished by Council legislation, and whether the Council introduces and enacts such legislation is entirely within the Council's discretion.

Finally, because the rest of the Proposed Initiative is nearly identical to the prior version,[6] the rest of the analysis in our December 23, 2025, advisory opinion applies in the same way here.

The Proposed Initiative is a proper subject. Therefore, as you requested, we have attached recommended technical changes to ensure that it is in the proper legislative form.[7]

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

[4] *Hessey v. D.C. Board of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991) (en banc).
[5] *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) (quoting *Hessey*, 601 A.2d at 19).
[6] The Proposed Initiative includes two other changes from the second version that do not bear on whether the measure is a proper subject. The temporary rent freeze under section 2 would be triggered if the percentage increase in CPI over the previous 12 months is greater than 5%, rather than 6%. Additionally, section 3 would cap the maximum total rent adjustment for an occupied rental unit subject to the Rent Stabilization Program at 6%, rather than 8%.
[7] If 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.

SHORT TITLE

DC Housing Modernization and Accessibility Act of 2026

SUMMARY STATEMENT

If enacted, this Initiative would freeze rents for two years and in future periods of high inflation; reduce the maximum permitted total rent increase for rent controlled units to 5%; call upon the Council to reduce the income levels of households served by the Housing Production Trust Fund; realign certain of D.C.'s affordable housing programs with an upper eligibility threshold of 60% of the Area Median Income; and revise affordable housing requirements for land sold or leased by the D.C. government.

This Initiative will not be implemented unless the D.C. Council separately chooses to appropriate funds for any costs.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "DC Housing Modernization and Accessibility Act of 2026".

Sec. 2. Title II of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.01 *et seq.*), is amended as follows:

(a) Section 208(h) (D.C. Official Code § 42-3502.08(h) is amended to read as follows:

"(h) Unless the adjustment in the amount of rent charged is implemented pursuant to sections 210, 211, 212, 214, or 215, an adjustment in the amount of rent charged:

"(1) If the unit is vacant, shall not exceed the amount permitted under section 213(a); or

"(2) If the unit is occupied:

"(A) Shall not exceed the current allowable amount of rent charged for the unit, plus the adjustment of general applicability plus 2%, taken as a percentage of the current allowable amount of rent charged; provided, that the total adjustment shall not exceed 6%;

"(B) Shall be pursuant to section 224, if occupied by an elderly tenant or tenant with a disability; and

"(C) Shall not exceed the lesser of 5% or the adjustment of general applicability if the unit is leased or co-leased by a home and community-based services waiver provider.".

(b) A new section 225 is added to read as follows:

"Section 225. Temporary rent freeze during certain periods.

"(a) Notwithstanding any other provision of this act, the rent for any rental unit shall not be increased during the period from and including the effective date of this section through and including the second anniversary thereof.

"(b) Notwithstanding any other provision of this act, if during any 12-month period subsequent to the period described in subsection (a), the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria DC-VA- MD-WV Metropolitan Statistical Area, as published by the Bureau of Labor Statistics, is

greater than 5%, then the rent for any rental unit shall not be increased at any time during the subsequent 12-month period.

"(c) Any rent increase that would become effective during any period described in subsection (a) or subsection (b) shall not become effective regardless of when notice of such rent increase is sent to the tenant of any rental unit.

"(d) This section shall not apply to:

"(1) Any rental unit owned by, or leased to any person by, the District of Columbia Housing Authority or any other agency, department, or instrumentality of the District; or

"(2) Any rental unit owned by, or leased to any person by, any agency, department or instrumentality of the United States.".

Sec. 3. The electors of the District of Columbia call upon the Council of the District of Columbia to amend section 2 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801), as follows:

(a) Amend paragraph (2A) to read as follows:

"(2A) "Eligible household" means a household that, at the time of lease-up or rental of a qualified rental housing unit, had total annual income at or below 45% of the area median income, or at the time of purchase of a qualified for-sale housing unit, had total annual income at or below 60% of the area median income; provided, that the annual incomes of eligible households assisted through an allocation of proceeds from the Housing Production Trust fund shall not exceed 60% of the area median income."

(b) Amend paragraph (3) to read as follows

"(3) "Extremely low-income" means a household income that is less than or equal to 15% of the area median income.".

(c) Amend paragraph (6) to read as follows:

"(6) "Low-income" means a household income that is more than 30% and less than or equal to 45% of the area median income.".

(d) Amend paragraph (7) to read as follows:

"(7) "Moderate income" means a household income that is more than 45% and less than or equal to 60% of the area median income.".

(e) Amend paragraph (9A) to read as follows:

"(9A) "Very low-income" means a household income that is more than 15% and less than or equal to 30% of the area median income.".

Sec. 4. Section 2(4) of the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code § 42-2131(4)), is amended to read as follows:

"(4) "Affordable housing unit" means a dwelling unit that is offered for residential occupancy and is made available to, and affordable to, a household whose total household income is equal, to or less than, 45% of the area median income for rental units and 60% of the area median income for sale and ownership units, as a result of a federal or District subsidy.".

Sec. 5. Section 2 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, effective August 5, 1939 (53 Stat. 211; D.C. Official Code § 10-801), is amended as follows:

(a) Subsection (b-3) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

"(b-3)(1) If a proposed disposition of real property will result in the development of multifamily residential property consisting of 5 or more units ("multifamily units"), the following requirements shall apply:

"(A) At least 2/3 of the multifamily units shall be dedicated as affordable housing;

"(B) At least 1/4 of the multifamily units shall consist of units with 2 or more bedrooms, and 1/4 shall consist of units with 3 or more bedrooms; and

"(C) The multifamily units dedicated as affordable housing pursuant to this subsection shall continue to be dedicated as affordable housing for the life of the ground lease if the land disposition is by ground lease, or shall remain affordable housing units in perpetuity, secured by a covenant running with the land.

"(D) Repealed.".

(2) Paragraph (2) is amended to read as follows;

"(2) The units dedicated as affordable housing pursuant to subparagraphs (A) and (B) of this paragraph shall be made available at the following affordability levels:

"(A) In the case of affordable rental units, at least 1/4 of the units shall be housing for which an extremely low-income household will pay no more than 30% of its income toward housing costs, 1/4 of the units shall be housing for which a very low-income household will pay no more than 30% of its income toward housing costs, 1/4 of the units shall be housing for which a low-income household will pay no more than 30% of its income toward housing costs, and the remainder shall be housing for which a moderate-income household will pay no more than 30% of its income toward housing costs.

"(B) In the case of affordable ownership units, 1/2 of the units shall be housing for which a low-income household will pay no more than 30% of its income toward housing costs and the remainder of any such ownership units shall be housing for which a moderate income household will pay no more than 30% of its income toward housing costs.".

(3) Paragraphs (4), (6), and (7) are repealed.

(b) Subsection (n) is amended as follows:

(1) Paragraph (3) is amended to read as follows:

"(3) "Low-income household" means a household consisting of one or more persons with a total household income that is more than 30% and less than or equal to 45% of the area median income.".

(2) Paragraph (4) is amended to read as follows:

"(4) "Moderate-income household" means a household consisting of one or more persons with total household income more than 45% and less than or equal to 60% of the area median income.".

(3) Paragraph 5 is amended to read as follows:

"(5) "Very low-income household" means a household consisting of one or more persons with total household income more than 15% and less than or equal to 30% of the area median income.".

(4) A new paragraph 6 is added to read as follows:

"'(6) "Extremely low-income household" means a household consisting of one or more persons with total household income less than or equal to 15% of the area median income.".

Sec. 6. Section 2092 of the Department of Housing and Community Development

Comprehensive Tracking Plan for Affordable Housing Inventory Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 42-2141), is amended as follows:

(a) Paragraph (1) is amended to read as follows:

"(1) "Affordable housing unit" means a unit of housing that is offered for rent or for sale for residential occupancy and as a result of a federal or District subsidy is made available and affordable to households whose income levels are less than or equal to 60% of the area median income.".

(b) Paragraph (3) is amended to read as follows:

"(3) "Extremely low-income household" means a household with total household income equal to or less than 15% of the area median income.".

(c) Paragraph (5) is amended to read as follows:

"(5) "Low -income household" means a household with a total household income that is more than 30% and less than or equal to 45% of the area median income.".

(d) Subsection (6) is amended to read as follows:

"(6) "Very low-income household" means a household with total household income more than 15% and less than or equal to 30% of the area median income.".

Sec. 7. Section 102(d) of the Workforce Housing Production Program Approval Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code § 6-1061.02(d)), is amended to read as follows:

"(d)(1) The land trust shall develop units affordable to households not to exceed 60% of AMI.

"(2) The land trust's portfolio shall have an average not to exceed 50% of AMI.

"(3) The portfolio average requirement shall be evaluated for compliance on an annual basis, beginning 12 months after March 14, 2007.".

Sec. 8. Section 202(8) of the New Town at Capital City Market Revitalization Development and Public/Private Partnership Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code § 6-1062.02(8)), is amended to read as follows:

"(8) "Workforce housing" means housing units set aside for eligible renters or purchasers as defined the appropriate agency of the District of Columbia and who are at 45% to 60% of the Area Median Income.".

Sec. 9. Section 2092 of the Reentry Housing and Services Program Act of 2021, effective November 13, 2012 (D.C. Law 24-45; D.C. Official Code § 42-2231), is amended as follows:

(a) Paragraph (3) is amended to read as follows:

"(3) "Extremely low-income" means having a household income equal to 15% or less of the area median income.".

(b) Paragraph (5) is amended to read as follows:

"(5) "Low-income" means having a household income that is more than 30% and less than or equal to 45% of the area median income.".

(c) Paragraph (11) is amended to read as follows:

"(11) "Very low-income" means having a household income that is more than 15% and less than or equal to 30% of the area median income.".

Sec. 10. Applicability.

(a) The provisions of this act with any fiscal effect shall apply upon the date of inclusion of the fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to the published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec 11. Effective date.

This act shall take effect after a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code§ l-206.02(c)(1)), and publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

December 23, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, "DC Housing Modernization and Accessibility Act of 2026"

Ms. Terri Stroud
General Counsel
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ogc@dcboe.org

Dear Ms. Stroud:

This memorandum responds to your December 2, 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 "DC Housing Modernization and Accessibility Act of 2026" ("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 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 adopted section 16 of the Election Code of 1955[4] as an implementing statute detailing the initiative process.[5] Under this statute, any registered qualified elector may begin the initiative process by filing the full text of the proposed measure, a summary statement

[1] If the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide 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] Effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16).
[5] D.C. Official Code § 1-204.107.

of not more than 100 words, and a short title with the Board.[6] 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.[7]

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.[8]

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.[9] The Board must then adopt the summary statement, short title, and legislative form at a public meeting.[10] Within 24 hours after adoption, the Board must publish its formulation and the fiscal impact statement.[11] 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.[12] 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.[13]

FACTUAL BACKGROUND

The Proposed Initiative would make changes to District laws regarding rents that may be charged for housing, as well as changes to income levels for households served and other requirements under certain affordable housing statutes.

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[6] *Id.* § 1-1001.16(a)(1).
[7] *Id.* § 1-1001.16(b)(1).
[8] *Id.* §§ 1-204.101(a); 1-1001.16(b)(1); 3 DCMR § 1000.5.
[9] D.C. Official Code § 1-1001.16(c).
[10] *Id.* § 1-1001.16(d)(1).
[11] *Id.* § 1-1001.16(d)(2).
[12] *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).
[13] *Id.* §§ 1-204.103, 1-1001.16(p)(1).

Sections 2 and 3 of the Proposed Initiative would make amendments to Title II of the Rental Housing Act of 1985.[14] Section 2 of the Proposed Initiative would add a section to the Act limiting rent increases for rental units in the District, except for those owned or leased by the District of Columbia Housing Authority or any other instrumentality of the District and those owned or leased by the United States. Specifically, it would prohibit any rent increase for two years after its effective date, and for 12 months whenever the consumer price index for the region increases by more than 6%. Section 3 of the Proposed Initiative would amend section 208(h) of the Rental Housing Act, which establishes limits on annual rent increases permitted in rental units subject to the Rent Stabilization Program, commonly known as rent control.[15] It would decrease the total maximum rent increase for an occupied unit subject to rent control from 10% to 8%. It would also provide that a rent adjustment implemented pursuant to a voluntary agreement between a housing provider and a renter under the Act is not subject to this limit.[16]

Section 4 of the Proposed Initiative would amend the Housing Production Trust Fund Act of 1988, which establishes the Housing Production Trust Fund ("HPTF") as a permanent revolving special revenue fund administered by the Department of Housing and Community Development ("DHCD") to provide assistance in housing production for certain populations.[17] Among the specific permissible uses of the HPTF under the Act are: (1) DHCD's obligation of funds to provide housing opportunities for "extremely low-" and "very low-income" households,[18] and (2) DHCD's purchase of dwelling units for sale or rental for "eligible households," which are defined at specific income levels.[19] And to ensure that an HPTF-assisted unit is affordable to a household of a given income level, as required by the Act, DHCD regulations implementing the Act require the maximum rent for an HPTF-assisted unit, including utilities, to be 30% of the income threshold.[20] Thus, the practical effect of the specific household income thresholds in the Act is to limit the amount of rent or the sales price that may be charged for HPTF-assisted units and, correspondingly, determine which households the HPTF may serve.

Section 4 of the Proposed Initiative would lower the household income thresholds under the Act, meaning that HPTF-assisted units would be restricted to households with incomes even lower than the households that currently may avail themselves of such units under the Act. It would accomplish this by changing the definitions of households by income level under the Act. Specifically, Section 4 would reduce the income thresholds for HPTF-assisted units from 30% of the area median income ("AMI") to 15% of AMI for "extremely low-income" households, from 30%–50% of AMI to 15%–30% of AMI for "very-low income" households, from 50%–80% of AMI to 30%–45% of AMI for "low-income" households, and from 50%–80% of AMI to 45%–

[14] Effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.01 *et seq.*).
[15] D.C. Official Code § 42-3502.08(h).
[16] *See id.* § 42-3502.15 (authorizing voluntary agreements for rental units subject to rent control).
[17] § 3(a), effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802(a)). In addition to establishing the HPTF, the Act separately requires DHCD to conduct needs assessments and provide technical assistance and outreach for "targeted populations," which it defines to include "low and moderate income families and individuals." D.C. Official Code § 42-2802(d)(3), (5); *id.* § 42-3803; *id.* § 42-2801(9) (defining "targeted population"); *id.* § 2801(6), (7) (defining "low income" and "moderate income").
[18] *Id.* § 42-2802(b-1)(1)–(2); *id.* § 42-2801(3), (9A) (defining "extremely low income" and "very low income").
[19] *Id.* § 42-2802(c)(17).
[20] 10-B DCMR § 4107.3(b).

60% of AMI for "moderate income" households.[21] In addition, Section 4 would amend the definition of "eligible household" to reduce the maximum income level for beneficiaries of DHCD-purchased dwelling units from 120% of AMI to 45% of AMI for rental units and 60% of AMI for for-sale housing units.[22]

Section 5 of the Proposed Initiative would amend the Affordable Housing Clearinghouse Directory Act of 2008, which requires the Mayor to develop an Affordable Housing Inventory and Affordable Housing Locator to assist residents in locating "affordable housing units."[23] Specifically, Section 5 would amend the definition of "affordable housing unit" to be a unit that is affordable to a household with income of 45% of AMI for rental units and 60% of AMI for ownership units, rather than 120% of the area median income for all units.[24]

Section 6 of the Proposed Initiative would increase the affordable housing requirements when the District disposes of real property for the development of multifamily residential units.[25] The requirements would apply when a development will result in at least five units, rather than 10. At least two-thirds of all units must be affordable, rather than 20% to 30%, and at least one-quarter of all units must have two or more bedrooms and at least one-quarter must have three or more bedrooms.[26] For purposes of this statute, a unit is affordable to a household at a given income level if it would pay no more than 30% of its income toward housing costs.[27] The Proposed Initiative would also revise the ranges of income levels used to determine affordability requirements: a very low-income household would be 15%–30% of AMI, rather than equal to or less than 30% of AMI; a low-income household would be 30%–45% of AMI, rather than 30%–50% of AMI; and a moderate-income household would be 45%–60% of AMI, rather than 50%–80% of AMI.[28] The Proposed Initiative also would create a new income band for extremely low-income households, at less than or equal to 15% of AMI. Further, the affordable rental units must be allocated among extremely low-income households (at least one-quarter), very low-income households (at least one-quarter), low-income households (at least one-quarter), and moderate-income households (remainder). Currently, at least one-quarter of affordable rental units must be affordable to very low-income households, and the remainder must be affordable to low-income households.[29]

Section 7 would amend the Department of Housing and Community Development Comprehensive Tracking Plan for Affordable Housing Inventory Act of 2012, which required the Mayor to transmit to the Council an implementation plan to track DHCD's affordable housing inventory, including for extremely low- to low-income households, by December 1, 2012.[30] The Proposed Initiative would reduce the income thresholds for the housing inventory that must be tracked from 30% of AMI to 15% of AMI for extremely low-income households, from 30%–50% of AMI to

[21] *See* D.C. Official Code § 42-2801(3), (6), (7), (9A).
[22] *Id.* § 42-2801(2A).
[23] § 3(a), effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code § 42-2132(a).
[24] D.C. Official Code § 42-2131(4)).
[25] An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, §§ 2(b-3) and (n), effective August 5, 1939 (53 Stat. 211; D.C. Official Code § 10-801(b-3) and (n)).
[26] *See* D.C. Official Code § 10-801(b-3)(1).
[27] *See id.* § 10-801(b-3)(2).
[28] *See id.* § 10-801(n).
[29] *See id.* § 10-801(b-3)(2)(A).
[30] Effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 42-2141 *et seq.*).

15%–30% of AMI for very low-income households, and from 50%–80% of AMI to 30%–45% of AMI for low-income households.[31]

Section 8 would amend Workforce Housing Production Program Approval Act of 2006, which requires the establishment of a nonprofit community land trust to develop affordable housing for ownership.[32] The Proposed Initiative would require the affordable units to be affordable to households not exceeding 60% of AMI, rather than 120% AMI, and for the portfolio average to not exceed 50% of AMI, rather than 80% of AMI.[33] Under the Act's regulations, a housing unit is affordable if the purchase price is such that the household's mortgage payments does not exceed 35% of income.[34]

Section 9 would amend the New Town at Capital City Market Revitalization Development and Public/Private Partnership Act of 2006, which created a public/private partnership between the District and a specific private developer to redevelop the Capital City Market with various goals, including "to create a substantial amount of workforce housing."[35] The specific redevelopment contemplated by this statute did not occur, and the area has since been redeveloped under different legislation.[36] The Proposed Initiative would redefine "workforce housing" as units set aside for renters or purchasers at 45%–60% of AMI, as opposed to 50%–120% of AMI.[37]

Section 10 would amend the Reentry Housing and Services Program Act of 2021, which requires DHCD to establish a Reentry Housing and Services Program, subject to available funding, to provide project-based assistance for qualifying housing projects for target populations, including extremely low- to low-income individuals and families.[38] The Proposed Initiative would reduce the income thresholds of the populations served by the Reentry Housing and Services Program from 30% of AMI to 15% of AMI for extremely low-income households, from 50% of AMI to 15%–30% of AMI for very low-income households, and from 60% to 30%–45% of AMI for low-income households.[39]

The Proposed Initiative would be subject to appropriations: it provides for its applicability to be subject to the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer.

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[31] *See* D.C. Official Code § 42-2141(3), (5), (6).
[32] Effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code § 6-1061.01 *et seq.*),
[33] *See* D.C. Official Code § 6-1061.02(d).
[34] 14 DCMR § 3599.1.
[35] § 202(5), effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code § 6-1062.02(5)).
[36] *See* Union Market Tax Increment Financing Act of 2017, effective February 15, 2018 (D.C. Law 22-58; 64 DCR 13442); *see also* Comm. on Finance and Revenue, Committee Report on Bill 22-382, the "Union Market Tax Increment Financing Act of 2017" (Oct. 11, 2017) (discussing history).
[37] *See* D.C. Official Code § 6-1062.02(8).
[38] Effective November 13, 2012 (D.C. Law 24-45; D.C. Official Code § 42-2231 *et seq.*).
[39] *See* D.C. Official Code § 42-2231(3), (5), (11).

ANALYSIS

The Proposed Initiative corrects several deficiencies that we opined made an earlier version of this measure an improper subject.[40] However, it includes an additional provision that appropriates funds. Accordingly, we conclude that it is not a proper subject of initiative.

The right of initiative "is a power of direct legislation by the electorate."[41] 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.[42] 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."[43] The District's legislative power is limited by the Constitution and the Home Rule Act, including the Charter.[44]

One of the Charter's express limitations on initiatives is that they may not appropriate funds.[45] 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.'"[46] Although the right of initiative must be construed broadly, the court has construed this limitation to prohibit an initiative that would require the allocation of revenues to new or existing purposes,[47] establish a special fund,[48] or compel the allocation of funds to carry out mandatory provisions.[49]

Sections 2, 4, and 10 of the Proposed Initiative merit analysis in light of this limitation. We ultimately conclude that section 4 would appropriate funds, rendering the Proposed Initiative not a proper subject.

1. Section 2 would not limit District revenues or regulate property of the United States because it would exempt the District and the United States from the prohibition against rent increases.

Section 2 of the Proposed Initiative corrects a deficiency of the prior version of the measure by exempting the District of Columbia Housing Authority ("DCHA") and any other District agency or instrumentality from the prohibition against rent increases. Thus, the Proposed Initiative does not eliminate a District revenue source—rent revenues collected by DCHA or any other District

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[40] *See* Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, "DC Housing Modernization and Accountability Act of 2026" 5–6 (Nov. 25, 2026).
[41] *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).
[42] *Id.* at 913 (internal citations and quotations omitted).
[43] *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).
[44] D.C. Official Code § 1-203.02.
[45] *Id.* § 1-204.101(a).
[46] *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) ("*Campaign for Treatment*") (quoting *Dorsey v. D.C. Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (internal citations and quotations omitted)).
[47] *Id.* at 794 (D.C. 2005) (citing *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19–20 (D.C. 1991) (en banc) ("*Hessey*")).
[48] *Id.* (citing *Hessey*, 601 A.2d at 19–20)
[49] *Id.* at 795–796.

instrumentality.[50] Additionally, section 2 no longer regulates "property of the United States," which is beyond the District's legislative authority under the Home Rule Act, because it also exempts rental units owned or leased by the United States from the prohibition on rent increases.[51] Accordingly, section 2 does not appropriate funds or violate any other limitation on the initiative right.

2. Although Section 10 would impose mandatory obligations on the District that could compel the allocation of funds, it does not constitute a law appropriating funds because its applicability is subject to the Council's provision of funding.

Section 10 of the Proposed Initiative would reduce the household income levels for target populations under the Reentry Housing and Services Program Act, which requires DHCD to establish a program, subject to funding, to provide assistance with developing affordable housing for these populations.[52] Since section 10 would change requirements for DHCD's mandate under the statute, it imposes "mandatorily-phrased obligations" on the District.[53] If the Proposed Initiative were to take effect, these obligations would "compel the allocation of funding" to assist with affordable housing development.[54] However, section 11 provides for the entire Proposed Initiative to be subject to appropriations. Since the Proposed Initiative "conditions [DHCD's] compliance with its dictates upon funding by the Council," section 10 does not constitute a law appropriating funds and is permissible.[55]

3. Section 4 would constitute a law appropriating funds because it would interfere with the Council's control of special funds under the Charter.

The Council expressly established the HPTF as a "special revenue fund" to be used for specified purposes,[56] including providing housing for households at certain income levels.[57] Thus, by reducing these income levels, Section 4 of the Proposed Initiative would change which households the HPTF serves and, correspondingly, how the District revenues directed to the HPTF are allocated.

The Council's authority to create special funds arises from section 450 of the Charter, which provides that "[t]he Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District."[58]

The D.C. Court of Appeals has determined that the Charter prohibition against initiatives appropriating funds limits the electorate's use of the initiative power with respect to special funds. In *Hessey v. D.C. Board of Elections & Ethics*, the court rejected two measures: one that would have required new revenue to be deposited into a new fund that could only be used for certain

[50] *See Dorsey*, 648 A.2d at 677.
[51] *See* D.C. Official Code § 1-206.02(a)(3).
[52] *See Id.* § 42-2232(a)(1).
[53] *Campaign for Treatment*, 866 A.2d at 796.
[54] *See id.* at 798.
[55] *See id.* at 797.
[56] D.C. Official Code § 42-2802(a).
[57] *See generally id.* § 42-2802.
[58] *Id.* § 1-204.50.

purposes, and one that would have required new revenue to be deposited in the existing HPTF, which could only be used for certain purposes specified by the Council.[59] The court recognized that "since the Council's financial responsibilities under the Charter extend to the determination of when special funds are necessary, the [Charter] limitation on the initiative right would prevent the electorate, through the initiative, from interfering with the Council's power to allocate by placing revenues in special funds."[60] In other words, "the right of initiative cannot extend to the Council's discretion to allocate revenues or to the Council's decision about when it would be necessary for 'the efficient operation of the government of the District' to establish a special fund."[61]

Under *Hessey*'s reasoning, section 4 is a law appropriating funds because it affects "the Council's discretion to allocate revenues."[62] The Council established the HPTF as a special fund pursuant to its Charter authority. In doing so, it allocated amounts in the HPTF for specified purposes, including for providing affordable housing for households at specified income levels.[63] Section 4 would change these income levels. As a result, it would reallocate HPTF funds to provide affordable housing for households at different income levels from what the Council has allocated. Changing the uses of a special fund, and therefore how District revenues in such a fund are allocated, is tantamount to creating a different special fund. In either case, "[t]he effect of the initiative would be to delay or condition the Council's authority, forcing the Council to use those funds in accordance with the initiative rather than in the discretion of the Council to meet District government needs."[64]

Because this section of the Proposed Initiative is precluded by *Hessey*'s reasoning, the subject-to-appropriations provision cannot save it. Section 4 is deficient because it would change how a special fund is used, and therefore how District revenues are allocated, which is the Council's authority alone under section 450 of the Charter. Without Council funding, section 4 could not take effect. But if the Council chose to provide funding, then section 4 would take effect and would interfere with the Council's authority to establish and allocate revenue directed to a special fund.

CONCLUSION

For the reasons above, it is the opinion of this Office that the *DC Housing Modernization and Accessibility Act of 2026* is not a proper subject of initiative.

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

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[59] 601 A.2d at 20–21.
[60] *Id.* at 19 (citation omitted).
[61] *Id.* at 20 (quoting D.C. Official Code § 1-204.50).
[62] *See id.*
[63] *See generally* D.C. Official Code § 42-2802.
[64] *See* 601 A.2d at 20.