

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



**Brian Schwalb
Attorney General**

October 9, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Referendum, “Referendum on Tipped Minimum Wage Timeline Amendment Act of 2025”

Ms. Terri Stroud
General Counsel
Board of Elections
1015 Half Street, S.E.
Washington, D.C. 20003
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Dear Ms. Stroud:

This memorandum responds to your October 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 referendum, the “Referendum on Tipped Minimum Wage Timeline Amendment Act of 2025” (“Proposed Referendum”), is a proper subject of referendum in the District of Columbia, pursuant to D.C. Official Code § 1-1001.16(b)(1A)(B)(ii). For the reasons set forth in this letter, the Proposed Referendum is a proper subject of referendum.

STATUTORY BACKGROUND

The District Charter (“Charter”), as Congress initially enacted it, vested the District’s legislative authority in the Council.¹ Shortly afterward, District voters ratified a Charter amendment: the Initiative, Referendum, and Recall Charter Amendments Act of 1977.² This Charter amendment authorized the voters to propose their own laws to the electorate by initiative, and to refer Council acts that have not yet become law to the electorate by referendum.³ So, although the Charter “originally contained no right of initiative, referendum,

¹ D.C. Official Code § 1-204.04.

² Initiative, Referendum, and Recall Charter Amendments Act of 1977, effective March 10, 1978 (D.C. Law 2-46; 24 DCR 199) (codified at D.C. Official Code § 1-204.101 *et seq.*). The District of Columbia Home Rule Act authorizes the Charter to be amended by Council act ratified by the voters. D.C. Official Code § 1-203.03. When Congress subsequently modified the Charter amendment procedure, it affirmatively ratified the Initiative, Referendum, and Recall Charter Amendments of 1977 by act. Joint Resolution Making continuing appropriations for the fiscal year 1985, and for other purposes, § 131(k), approved October 12, 1984 (Pub. L. No. 98-473; 98 Stat. 1974) (providing that the amendment to D.C. Official Code § 1-203.03 “shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed valid, in accordance with the provisions thereof notwithstanding such amendment[.]”).

³ D.C. Official Code § 1-204.101; *see also id.* § 1-206.02(c) (requiring a Council act to complete passive congressional review period before becoming law).

or recall,” the Charter amendment “granted the electorate these long-recognized instruments of direct control of legislative decisions and decisionmakers.”⁴

Specifically, in a referendum, District voters may “suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.”⁵ Pursuant to the Charter amendment, the Council adopted section 16 of the Election Code of 1955⁶ as an implementing statute detailing the referendum process.⁷ Under this statute, any registered qualified elector may begin the referendum process by filing the full text of “the act or part thereof on which a referendum is desired,” a summary statement of not more than 100 words, and a short title with the Board.⁸ After receiving a proposed referendum, the Board must refuse to accept it if the Board determines that it is not a “proper subject” of referendum.⁹

A proposed referendum is not a proper subject for referendum if it 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.¹⁰

If the Board determines that a proposed referendum is a proper subject of referendum, it must accept the measure and, within 20 calendar days, prepare and adopt a true and impartial summary statement, prepare a short title, and prepare the proposed referendum in the proper legislative form.¹¹ The Board must then adopt the summary statement, short title, and legislative form at a public meeting.¹² Within 24 hours after adoption, the Board must publish its formulation.¹³ If no registered qualified elector objects to the Board’s formulation by seeking review in Superior Court within 10 days after publication in a newspaper of general circulation, 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 referendum on the ballot at an election.¹⁴

Upon the presentation of a signed referendum petition, the Board must notify the President of the Senate and the Speaker of the House of Representatives, and they shall “return such act or portion of such act to the Chairman,” and “[n]o further action may be taken upon such act or portion of such act until after a referendum election is held.”¹⁵ If the requisite number of valid signatures from registered electors is obtained,¹⁶ the Board must hold an election on the referendum within 114 days, and may present the

⁴ *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 896 (D.C. 1981) (en banc).

⁵ D.C. Official Code § 1-204.101(b).

⁶ Effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16).

⁷ D.C. Official Code § 1-204.107.

⁸ *Id.* § 1-1001.16(a)(1).

⁹ *Id.* § 1-1001.16(b)(1).

¹⁰ *Id.* §§ 1-204.101(a); 1-1001.16(b)(1); 3 DCMR § 1000.5.

¹¹ D.C. Official Code § 1-1001.16(c).

¹² *Id.* § 1-1001.16(d)(1).

¹³ *Id.* § 1-1001.16(d)(2).

¹⁴ *Id.* § 1-1001.16(e)–(i); *see also id.* § 1-204.102(a) (requiring, under the District Charter, a referendum 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).

¹⁵ *Id.* § 1-204.102(b)(1); *id.* § 1-1001.16(m).

¹⁶ If the Board, after counting and validating signatures, determines that the referendum petition failed to meet the signature requirements, the act must be retransmitted to Congress to become law after completing review. *Id.* § 1-1001.16(m).

referendum at a previously scheduled general, primary, or special election within 54 and 114 days.¹⁷ If the voters reject the act in the referendum, it will not become law, and the Council may not act on the matter for 365 days.¹⁸ If the voters approve the act, it must be retransmitted to Congress and will become law after completing review.¹⁹

FACTUAL BACKGROUND

In the November 2022 general election, the people of the District approved a voter-proposed law, the District of Columbia Tip Credit Elimination Act of 2022, also known as Initiative 82.²⁰ It completed congressional review and became law in February 2023. Initiative 82 amended section 4(f) of the Minimum Wage Revision Act of 1992 (“Wage Act”)²¹ to establish a tipped minimum wage for employees in the District who receive tips, excluding employees of the District government and those performing District government contracts. Under Initiative 82, the tipped minimum wage is a specific dollar amount, with tips on top, which together must equal the standard minimum wage for all employees.²² Otherwise, the employer is required to make up the difference between the tipped minimum wage and the standard minimum wage for non-tipped employees.²³ The tipped minimum wage increased to \$12 per hour on July 1, 2025, and would increase to \$14 per hour on July 1, 2026, and to the standard minimum wage on July 1, 2027.²⁴ The standard minimum wage would increase each July 1 in proportion to any annual average increase in the Consumer Price Index.²⁵ As of July 1, 2025, the standard minimum wage is \$17.95 per hour.²⁶

In July 2025, the Council adopted legislation to change Initiative 82, the Tipped Minimum Wage Timeline Amendment Act of 2025 (“Amendment Act”), as Title II-W of the Fiscal Year 2026 Budget Support Act of 2025.²⁷ The Amendment Act would extend the timeline and reduce the increases in the tipped minimum wage that District voters previously enacted by Initiative 82. Specifically, it would amend section 4(f) of the Wage Act so that the tipped minimum wage is \$10 per hour and increases as a percentage of the standard minimum wage over a longer timeline and without matching the standard minimum wage: 56% of the standard minimum wage as of July 1, 2026; 60% as of July 1, 2028; 65% as of July 1, 2030; 70% as of July 1, 2032; and 75% as of July 1, 2034. These changes would apply retroactively to July 25, 2025.

The Amendment Act would also amend section 8a of the Wage Act²⁸ to require the Office of the Chief Financial Officer (“OCFO”) to publish a biannual report on economic trends affecting the restaurant industry and tipped restaurant workers in the District, beginning June 1, 2027. It further would require the OCFO to issue a report by January 1, 2036, on the effect on the restaurant industry and tipped workers if the tipped minimum wage reached 100% of the standard minimum wage. Finally, the Amendment Act

¹⁷ *Id.* §§ 1-204.103, 1-1001.16(p)(1).

¹⁸ *Id.* § 1-204.104.

¹⁹ *Id.* § 1-204.105; *see Bliley v. Kelly*, 23 F.3d 507, 512 (D.C. Cir. 1994) (observing that “if the challenged legislation is approved by the District’s voters [in a referendum], the Chairman of the Council must resubmit it to Congress, and the legislation ‘shall take effect upon the expiration of the [statutory thirty-day period] beginning on the day such [legislation] is transmitted by the Chairman to the [Congress]’” (quoting D.C. Official Code § 1-206.02(c)(1))).

²⁰ Effective February 23, 2023 (D.C. Law 24-281; 69 DCR 15142).

²¹ Effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003).

²² D.C. Official Code § 32-1003(f).

²³ *Id.* § 32-1003(b-1) & (f).

²⁴ *Id.* § 32-1003(f)(6)–(8).

²⁵ *Id.* § 32-1003(a)(6)(A).

²⁶ Notice of Minimum Wage & Living Wage Increase Fiscal Year 2025, 72 DCR 4481 (Dep’t of Emp’t Servs. Apr. 11, 2025).

²⁷ Enacted on September 4, 2025 (D.C. Act 26-148; 72 DCR 9867). The Council also adopted the act on an emergency basis, and it will remain in effect for 90 days until expiring on December 2, 2025. Fiscal Year 2026 Budget Support Emergency Act of 2025, effective September 3, 2025 (D.C. Act 26-146; 72 DCR 9263).

²⁸ D.C. Official Code § 32-1007.01.

would amend section 9 of the Wage Act²⁹ to require an employer's itemized wage statement for each employee to include sources of compensation in addition to base wages and gratuities, beginning January 1, 2026.

The Amendment Act was signed by the Mayor on September 4, 2025, and transmitted to Congress on September 10, 2025. It is currently pending the 30-day congressional review period required by the Home Rule Act, after which it will become law unless disapproved by Congress or rejected by the voters in a referendum.³⁰

On October 2, 2025, the Board received the Proposed Referendum. If placed on the ballot, the Proposed Referendum would ask the voters to approve the Amendment Act, which would allow the Council's changes to Initiative 82 to become law, or reject it, which would maintain Initiative 82 as the voters previously enacted it.

ANALYSIS

The legal question presented here is the same as it was when this Office opined on whether Initiative 82 was a proper subject of initiative. For the same reasons that we concluded that Initiative 82 was a proper subject of initiative, we conclude that the Proposed Referendum is a proper subject of referendum.³¹

Neither a referendum nor an initiative may appropriate funds.³² This limitation "is 'very broad[] . . . extend[ing] . . . to the full measure of the Council's role in the District's budget process.'"³³ A ballot measure appropriates funds if it compels the allocation of funds to carry out mandatory provisions.³⁴

Like Initiative 82, the Proposed Referendum establishes the minimum wage that employers must pay to tipped employees in the District. However, it excludes those employed by the District government or who perform services under contracts with the District government. Thus, even though the Proposed Referendum includes a requirement to pay increased wages, it does not compel the District to allocate any funds because this requirement does not apply to the District government or its contractors. Further, the provision requiring the OCFO to issue a report under the Amendment Act cannot be said to compel the allocation of funds because the Council's Office of the Budget Director determined that the provision will have no fiscal impact.³⁵ Accordingly, the Proposed Referendum does not appropriate funds. It also does not exceed any of the Home Rule Act's other limitations on proposed referendums.

Because we think the Proposed Referendum is a proper subject for referendum, we have recommendations for the proposed ballot language. We suggest that the Board clarify the Summary Statement language to prevent confusing voters as to the consequence of their vote. The referendum ballot must ask the voters to vote "YES, to approve" or "NO, to reject" the sections of the act that are subject to the referendum.³⁶ Accordingly, we recommend that the Summary Statement expressly state that a "YES" vote is for approving

²⁹ *Id.* § 32-1008(b).

³⁰ *See id.* § 1-206.02(c)(1); *id.* § 1-204.104.

³¹ *See* Letter from Karl A. Racine, Att'y Gen., to Terri D. Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, the "District of Columbia Full Minimum Wage for Tipped Workers Amendment Act of 2022" (July 6, 2021).

³² D.C. Official Code § 1-204.101.

³³ *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) (quoting *Dorsey v. D.C. Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (internal citations and quotations omitted)).

³⁴ *Id.* at 795–796.

³⁵ Fiscal Impact Statement, Councilmember Christina Henderson Amendment to B26-265, Fiscal Year 2026 Budget Support Act of 2025, Office of the Budget Director, Council of the Dist. of Columbia (July 28, 2025), <https://lms.dccouncil.gov/downloads/LIMS/57846/Meeting3/Amendment/B26-0265-Amendment8.pdf?Id=218148>.

³⁶ D.C. Official Code § 1-1001.16(q)(2)(B).

the Amendment Act and permitting its changes to Initiative 82 to go into effect, and that a “NO” vote is for rejecting the Amendment Act and keeping Initiative 82 as initially enacted:

SUMMARY STATEMENT

In 2022, District voters approved Initiative 82, which gradually raises the minimum wage for tipped workers to 100% of the minimum wage by 2027. In July 2025, the Council adopted an act that changes Initiative 82 to freeze the tipped minimum wage at \$10/hour until July 1, 2026 then gradually increases those wages to 75% of the regular minimum wage by 2034. Vote YES to permit the Council’s changes to Initiative 82 to become law. Vote NO to reject the Council’s changes and keep Initiative 82.

Finally, we suggest that the “Text of Measure” language includes the subtitle heading and section 2221 stating the short title so that it encompasses the entire Amendment Act as intended:

SUBTITLE W. TIPPED MINIMUM WAGE

Sec. 2221. Short title.

This subtitle may be cited as the “Tipped Minimum Wage Timeline Amendment Act of 2025”.

CONCLUSION

The decision whether to undo, by referendum, the Council’s recent legislation making changes to Initiative 82 is by law entrusted to the voters. This Opinion simply answers the legal question whether the *Referendum on Tipped Minimum Wage Timeline Amendment Act of 2025* is a proper subject of referendum. For the reasons above, the Office concludes that it is.

Sincerely,



Brian L. Schwalb
Attorney General for the District of Columbia