GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

November 25, 2025

ADVISORY OPINION OF THE ATTORNEY GENERAL

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

Ms. Terri Stroud
General Counsel
Board of Elections
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Dear Ms. Stroud:

This memorandum responds to your November 3, 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 Accountability 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 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 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

[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.

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.[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 ("OCFO").[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, and affordability, eligibility, and other requirements for certain affordable housing programs.

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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).

The Proposed Initiative would make two 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 all rental units in the District. Specifically, it would prohibit any rent increase for two years after the Proposed Initiative's 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 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]

The Proposed Initiative would amend the Housing Production Trust Fund Act of 1988, which establishes a permanent revolving special revenue fund administered by the Department of Housing and Community Development to provide assistance in housing production for targeted populations, as specified in the Act. [17] Specifically, Section 4 would amend the definition of "eligible household," to reduce the maximum income level from under 120% of the area median income to under 60% of the area median income.[18] The effect of this amendment would be to change the fines collected for violations of the Inclusionary Zoning Implementation Act of 2006 ("IZ Act"),[19] which must be deposited into the Housing Production Trust Fund and be used exclusively to fund the Mayor's purchase of dwelling units for sale or rental to "eligible households" as authorized by the IZ Act.[20]

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."[21] Specifically, Section 5 would amend the definition of "affordable housing unit" to be a unit that is affordable to a household with income of 60% of the area median income, rather than 120% of the area median income.[22]

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.[23] The requirements would apply when the 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

[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] D.C. Official Code § 42-2802.
[18] § 2(2A), effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(2A).
[19] Effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*).
[20] D.C. Official Code § 42-2802(c)(17). The effect of changing the definition of "eligible household" under the Proposed Initiative is not clear because its one use in the Act is in reference to household eligibility for an inclusionary zoning unit under the IZ Act, which has different eligibility requirements.
[21] *Id.* § 42-2132(a).
[22] § 2(4), effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code § 42-2131(4)).
[23] 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)).

bedrooms.[24] The Proposed Initiative would also revise the ranges of income levels used to determine affordability requirements: a very low-income household would be 15% to 30% of the area median income ("AMI"), rather than equal to or less than 30% AMI; a low-income household would be 30% to 45% AMI, rather than 30% to 50% AMI; and a moderate-income household would be 45% to 60% AMI, rather than 50% to 80% AMI.[25] The Proposed Initiative also would create a new income band for extremely low-income households, at less than or equal to 15% 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.[26]

Sections 7 and 8 of the Proposed Initiative would amend the IZ Act to reduce the income limits for households to be eligible for affordable inclusionary zoning units to 45% of the median family income from 50% to 80% of the median family income. Additionally, section 8 would establish minimum requirements for eligibility and require a portion of inclusionary zoning units to have multiple bedrooms. Finally, section 8(d) would provide that the IZ Act, the Zoning Commission's Inclusionary Zoning Regulations at 11-C DCMR § 1000 *et seq.*, and any other relevant Inclusionary Zoning considerations "shall not be subject to exemption or waiver."

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

ANALYSIS

Although the bulk of the Proposed Initiative is legally unobjectionable, it is not a proper subject for initiative because section 2 would violate the limit on appropriating funds by directly limiting a source of District revenue and impermissibly regulating federal property in violation of the Home Rule Act. The Board's statutory obligation is to "refuse to accept *the measure* if the Board finds that it is not a proper subject of initiative."[27] Thus, if any single provision of the Proposed Initiative is not a proper subject, the Board must reject the measure in its entirety.

The right of initiative "is a power of direct legislation by the electorate."[28] 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.[29] As the District of Columbia Court of Appeals has explained, with certain exceptions, "the power of the electorate to act by initiative is

[24] *See* D.C. Official Code § 10-801(b-3)(1).
[25] *See id.* § 10-801(n).
[26] *Id.* § 10-801(b-3)(2)(A).
[27] *Id.* § 1-1001.16(b)(1) (emphasis added).
[28] *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).
[29] *Id.* at 913 (internal citations and quotations omitted).

coextensive with the legislative power."[30] The District's legislative power is limited by the Constitution and the Home Rule Act.[31]

1. Section 2 of the Proposed Initiative would violate the prohibition on appropriating funds by limiting the D.C. Housing Authority's rent revenue, and it would violate the Home Rule Act by limiting rent increases in federally owned rental units.

One of the Home Rule Act's express limitations on initiatives is that they may not appropriate funds.[32] 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.'"[33] A proposed initiative impermissibly appropriates funds if it "directly addresses and eliminates a source of revenue."[34]

Section 2 of the Proposed Initiative would directly address and eliminate a source of District revenue because it would limit rent increases for "any rental unit" in the District, which includes rental units for which the District collects rent revenue through the D.C. Housing Authority ("DCHA").[35]

The Council established DCHA "as an independent authority of the District government" charged with governing public housing in the District.[36] Among its functions is leasing housing.[37] Under the Rental Housing Act of 1985, a "rental unit" is "any part of a housing accommodation . . . which is rented or offered for residential occupancy."[38] A "housing accommodation" is "any structure or building in the District containing 1 or more rental units."[39] Thus, any housing that DCHA leases is a "rental unit" for purposes of the Rental Housing Act of 1985 and would be subject to the rent increase prohibitions in section 2 of the Proposed Initiative. Although Title II of the Rental Housing Act exempts any "District-owned housing accommodation" from specific provisions regarding rent control,[40] section 2 of the Proposed Initiative is not one of those provisions and does not provide for any exemptions.

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[30] *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).
[31] D.C. Official Code § 1-203.02.
[32] *Id.* § 1-204.101(a).
[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 794 (citing *Dorsey*, 648 A.2d at 677).
[35] This advisory opinion focuses on DCHA because it is the only District government entity of which we are aware that currently receives rent revenue for operating rental units in housing accommodations. However, the Proposed Initiative may not limit rent increases for *any* District-owned rental unit regardless of the agency responsible for collecting rent.
[36] District of Columbia Housing Authority Act of 1999, § 3(a), (b), effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-202(a), (b)).
[37] D.C. Official Code § 6-203(5), (7).
[38] *Id.* § 42-3501.03(33).
[39] *Id.* § 42-3501.03(14).
[40] *Id.* § 42-3502.05(a)(1).

DCHA's operations are funded in part through the DCHA Fund established by the Council[41] and in part through a large appropriation that the Council allocates each year "to provide additional funding to [DCHA] to subsidize its operations and to fund ongoing rental assistance for low-income households."[42] DCHA administers the DCHA Fund, which comprises any rent and other revenue that DCHA receives.[43] When the DCHA Board of Governors formulates the authority's fiscal year operating budget, it includes rental income in its revenue projections.[44] The Proposed Initiative would limit DCHA from imposing rent increases that would produce revenue that it would deposit into the DCHA Fund. Consequently, the Proposed Initiative would limit a source of revenue that directly funds a District agency and that the Council has determined DCHA must collect for its operations. Thus, "[h]owever modestly," section 2 of the Proposed Initiative "would intrude upon the discretion of the Council to allocate District government revenues in the budget process."[45] Since section 2 would appropriate funds, as the D.C. Court of Appeals has interpreted that prohibition, the Proposed Initiative is not a proper subject.

Section 2 would also violate the Home Rule Act by purporting to limit rent increases in any federally owned rental units. Under section 602(a)(3) of the Home Rule Act, Congress has prohibited the District from using legislative authority to "[e]nact any act[] . . . which concerns the functions or property of the United States."[46] As noted above, the Rental Housing Act defines "rental unit" and "housing accommodation" broadly without any exemptions.[47] Although federally owned housing accommodations, like District-owned housing accommodations, are exempt from the Rental Housing Act's rent control provisions, they are not expressly exempt from the act's other provisions.[48] As a result, the limitation on rent increases under section 2 of the Proposed Initiative on its face would apply to federally owned rental units. Thus, section 2 would purport to regulate federal property in excess of the District's legislative authority under the Home Rule Act, rendering the Proposed Initiative not a proper subject for this additional reason.

2. The Office will issue a supplemental opinion addressing whether sections 7 and 8 of the Proposed Initiative intrude on the Zoning Commission's exclusive authority to make zoning regulations under the Home Rule Act.

While the Proposed Initiative is not a proper subject for the reasons discussed above, we note that section 7 and provisions of section 8 may implicate the Zoning Commission's exclusive authority to make zoning regulations under the Home Rule Act. Section 492 of the Home Rule Act 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

[41] *Id.* § 6-202(c).
[42] Gov't of the District of Columbia, 2 FY 2026 Approved Budget and Financial Plan B-29 (Oct. 3, 2025); *see also* Fiscal Year 2026 Local Budget Act of 2025, § 2, effective October 23, 2025 (D.C. Law 26-51; 72 DCR 9797.
[43] D.C. Official Code § 6-202(c).
[44] *See, e.g.*, D.C. Housing Auth., Resolution 25-27 to Approve the District of Columbia Housing Authority Budget for Fiscal Year 2026 (Sept. 10, 2025), https://www.dchousing.org/api/files/board/603.pdf.
[45] *See Dorsey*, 648 A.2d at 677 (quoting *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991) (en banc)).
[46] D.C. Official Code § 1-206.02(a)(3).
[47] *Id.* § 42-3501.03(14), (33).
[48] *Id.* § 42-3502.04(a)(1).

District as provided by law."[49] It also provides that the Zoning Commission's maps and regulations "shall not be inconsistent with the comprehensive plan for the national capital."[50] 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."[51]

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 for the District of Columbia."[52] So, even though making zoning regulations is "legislative in nature,"[53] the Home Rule Act excluded that power from the Council's, and thus the electorate's, legislative authority and placed it with the Zoning Commission.

The District's inclusionary zoning program consists of (1) the Inclusionary Zoning Regulations promulgated by the Zoning Commission pursuant to its exclusive power to make zoning regulations,[54] and (2) the IZ Act enacted by the Council[55] and its implementing regulations promulgated by the Department of Housing and Community Development ("DHCD").[56] Through the Zoning Regulations, the Zoning Commission has "promulgate[d] only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under the IZ Program."[57] Thus, the Inclusionary Zoning Regulations, as an exercise of the zoning power, require that certain developments set aside inclusionary units for households earning equal to or less than specified percentages of the median family income.[58] Through the IZ Act, however, the Council and the Mayor govern the non-zoning aspects of the IZ Program, "including the setting of maximum purchase prices and rents, the minimum size of the units, the selection and obligations of eligible households, administrative flexibility to ensure occupancy, and the establishment of enforcement mechanisms such as covenants and certifications."[59]

Sections 7 and 8 of the Proposed Initiative relate to the IZ program. Sections 7 and 8(a) concern the percentage of the median family income that a household may earn to be eligible for an

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[49] Home Rule Act § 492(a) (codified at D.C. Official Code § 6-621.01(e)) (emphases added).
[50] *Id.* § 492(b)(1) (codified at D.C. Official Code § 6-641.02).
[51] 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).
[52] *Tenley & Cleveland Park Emergency Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 335 (D.C. 1988); *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[] . . . .").
[53] *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))).
[54] 11-C DCMR § 1000 *et seq.*
[55] D.C. Official Code § 6-1041.01 *et seq.*
[56] 14 DCMR § 2200 *et seq.*
[57] 11-C DCMR § 1000.2.
[58] *id.*; *id.* § 1003.7–.8.
[59] *Id.* § 1000.2

inclusionary zoning unit. Section 8(b) would require the Mayor to evaluate the eligibility of households applying for inclusionary zoning units based on criteria under the IZ Act, in addition to those in the Inclusionary Zoning Regulations "and all other relevant considerations."[60] Section 8(c) concerns the mix of two- and three-bedroom units required for inclusionary zoning. Section 8(d) would prohibit the Zoning Commission from providing an exemption or waiver from its Inclusionary Zoning Regulations.

This Office is still assessing the difficult question whether these provisions, which straddle eligibility for affordable housing and zoning, impermissibly intrude on the Zoning Commission's exclusive authority to make zoning regulations under the Home Rule Act. Because we believe the Proposed Initiative is clearly not a proper subject for the reasons discussed above, we need not reach the zoning issue in this advisory opinion. However, to assist the Board with efficient resolution of all legal matters presented by this Proposed Initiative, we will address the zoning question in a forthcoming supplement to this advisory opinion.

CONCLUSION

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

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

[60] *See* D.C. Official Code § 6-1041.07(6).