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Terri D. Stroud
General Counsel
District of Columbia Board of Elections
1015 Half Street, S.E., Suite 750
Washington, D.C. 20003

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

Dear Ms. Stroud:

D.C. Official Code § 1-1001.16(b)(1A) requires that the General Counsel of the Council of the District of Columbia provide an advisory opinion to the District of Columbia Board of Elections ("Board") as to whether a proposed initiative is a proper subject of initiative. I have reviewed the "DC Housing Modernization and Accessibility Act of 2026" ("Proposed Initiative") for compliance with the requirements of District law, and based on my review, the Proposed Initiative is not the proper subject of initiative.

I. Applicable Law

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."¹ The Board may not accept a proposed initiative if it finds that the measure is not a proper subject of initiative under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

- The verified statement of contributions has not been filed pursuant to D.C. Official Code §§ 1-1163.07 and 1-1163.09;
- The petition is not in the proper form established in D.C. Official Code § 1-1001.16(a);

¹ D.C. Official Code § 1-204.101(a).

- The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2 of the D.C. Official Code; or
- The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to D.C. Official Code § 1-204.46.²

The District of Columbia Court of Appeals (“Court”) has interpreted the prohibition on the use of the initiative process to propose “laws appropriating funds” very broadly, holding that it “extend[s] . . . to the full measure of the Council’s role in the District’s budget process . . .”³ Accordingly, the Court has deemed unlawful any initiative that (1) blocks the expenditure of funds requested or appropriated,⁴ (2) directly appropriates funds,⁵ (3) requires the allocation of revenues to new or existing purposes,⁶ (4) establishes a special fund,⁷ (5) creates an entitlement, enforceable by private right of action,⁸ or (6) directly addresses and eliminates a source of revenue.⁹

II. The Proposed Initiative

The Proposed Initiative would amend the Rental Housing Act of 1985 to establish a 2-year rent freeze, beginning the effective date of the initiative, and additional 1-year rent freezes whenever the percentage increase in the Consumer Price Index for All Urban Consumers for the Washington-Arlington-Alexandria DC-VA-MD-WV Metropolitan Statistical Area is greater than 6%.

The Proposed Initiative would also amend the Housing Production Trust Fund Act of 1988, the Affordable Housing Clearinghouse Directory Act of 2008, An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, the Fiscal Year 2013 Budget Support Act of 2012, the Workforce Housing Production Program Approval Act of 2006, and the

² D.C. Official Code § 1-1001.16(b)(1).

³ *Dorsey v. District of Columbia Bd. of Elections & Ethics* (“Dorsey”), 648 A.2d 675, 677 (D.C. 1994) (quoting *Hessey v. District of Columbia Bd. of Elections & Ethics* (“Hessey”), 601 A.2d 3, 20 (D.C. 1991)).

⁴ *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 913-14 (D.C. 1981).

⁵ *District of Columbia Bd. of Elections & Ethics v. Jones* (“Jones”), 481 A.2d 456, 460 (D.C. 1984).

⁶ *Hessey*, 601 A.2d at 19-20.

⁷ *Id.*

⁸ *Id.* at 20 n. 34.

⁹ *Dorsey*, 648 A.2d at 677.

Fiscal Year 2022 Budget Support Act of 2021 to redefine certain affordable housing requirements.

III. The Proposed Initiative is Not a Proper Subject of Initiative

In *Hessey*, the Court held that proposed initiatives that would have imposed fees or tax surcharges to be deposited in the Housing Production Trust Fund were not the proper subject of initiatives because such initiatives would intrude upon the discretion of the Council to allocate District government revenues in the budget process.¹⁰ The Court explained that a proposed initiative that made changes to a special fund would impermissibly “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 government needs.”¹¹ Similar to the proposed initiatives discussed in *Hessey*, section 4 of the Proposed Initiative would amend the Housing Production Trust Fund Act of 1988 to change the permissible uses of the Housing Production Trust Fund. For example, the Proposed Initiative would amend the definition of “eligible household” to provide that the annual incomes of households assisted through an allocation of proceeds from the Housing Production Trust Fund shall not exceed 60% of the area median income. By making changes to the permissible uses of the Housing Production Trust Fund, the Proposed Initiative would run afoul of the provisions of Title IV of the Home Rule Act by interfering with the Council’s discretion to allocate revenues and 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.¹² Accordingly, the Proposed Initiative is not a proper subject of initiative.

I am available if you have any questions.

Sincerely,

Nicole L. Streeter

Nicole L. Streeter
General Counsel, Council of the District of Columbia

¹⁰ *Hessey*, 601 A.2d at 19.

¹¹ *Hessey*, 601 A.2d at 20.

¹² D.C. Official Code § 1-204.50.