



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

October 27, 2025

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 "Prohibiting Force-Feeding of Birds Act"

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 "Prohibiting Force-Feeding of Birds Act" ("Proposed Initiative") for compliance with the requirements of District law, and based on my review, I cannot yet determine whether the Proposed Initiative is the proper subject of initiative because it is not clear whether the Proposed Initiative would have a cost to implement.

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 prohibit a person from:

- Force-feeding a bird, or hiring or directing another person to force-feed a bird, for the purpose of enlarging the bird’s liver beyond its normal size;
- Selling, offering for sale, distributing, or otherwise providing any fattened bird liver product within the District, whether as a standalone item or as an ingredient in any product or dish;
- Importing, transporting, or receiving a fattened bird liver product into the District for sale, distribution, or any other commercial purpose, regardless of where the product was produced or originated.

The Proposed Initiative would authorize the Director of the Department of Energy and Environment (“Director”) to administer and

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

³ *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 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 v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d at 677.

enforce the provisions of the Proposed Initiative and require the Director to ensure compliance with the Proposed Initiative during routine inspections of food service establishments and retail establishments. A person violating a provision of the Proposed Initiative would be subject to civil penalties and repeated violations may result in suspension or revocation of the violator's business license.

III. Whether the Proposed Initiative is a Proper Subject of Initiative Depends on Whether the Proposed Initiative Has a Cost

The Proposed Initiative may have costs associated with its implementation that cannot be absorbed by the District government. If the Chief Financial Officer determines that the Proposed Initiative would have a fiscal impact, the Proposed Initiative would be an improper subject of initiative.

However, the Proposed Initiative otherwise conforms with both the District Charter and the U.S. Constitution.¹⁰ The Proposed Initiative does not authorize or have the effect of authorizing any form of discrimination.

Accordingly, whether the Proposed Initiative is a proper subject of initiative will turn on the Chief Financial Officer's fiscal impact statement.

I am available if you have any questions.

Sincerely,

Nicole L. Streeter

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

¹⁰ California's ban on the sale of foie gras was challenged as violating federal law and the dormant Commerce Clause, but was ultimately upheld by the United States Court of Appeals for the Ninth Circuit after extensive litigation. See *Association des Éleveurs de Canards et D'oies du Québec v. Rob Bonta*, 33 F.4th 1107 (9th Cir. 2022).