GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Brian Schwalb
Attorney General

February 25, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, "District of Columbia Living Wage for All Amendment 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 February 3, 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 "District of Columbia Living Wage for All Amendment 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, we conclude that the Proposed Initiative corrects a deficiency we identified in our opinion on the prior version of the proposal and therefore is a proper subject.[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

[1] Because the Proposed Initiative is a proper subject, we have attached drafting recommendations to ensure that it is prepared in the proper legislative form. 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.
[2] D.C. Official Code § 1-204.101(a).
[3] *Id.* § 1-204.103.

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 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] 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."[8] Thus, if any single provision of the Proposed Initiative is not a proper subject, the Board must reject the measure in its entirety.

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.[9]

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").[10] The Board must then adopt the summary statement, short title, and legislative form at a public meeting.[11] Within 24 hours after adoption, the Board must publish its formulation and the fiscal impact statement.[12] 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.[13] 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.[14]

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

FACTUAL BACKGROUND

The Proposed Initiative would amend the Minimum Wage Revision Act of 1992 ("Minimum Wage Act")[15] regarding the minimum hourly wage and the tipped minimum wage. The minimum hourly wage is the wage that "an employer shall pay . . . to an employee for all hours the employee works."[16] The tipped minimum wage is the "minimum hourly wage required to be paid by an employer to an employee who receives tips."[17] An "employer" includes the District government.[18]

Minimum Hourly Wage

In 2016, the Council enacted the Fair Shot Minimum Wage Amendment Act of 2016 ("Fair Shot Act").[19] The Fair Shot Act amended the Minimum Wage Revision Act of 1992 ("Minimum Wage Act")[20] to establish the minimum wage as follows: $11.50 per hour as of July 1, 2016; $12.50 per hour as of July 1, 2017; $13.25 per hour as of July 1, 2018; $14 per hour as of July 1, 2019; and $15 per hour as of July 1, 2020.[21] Under the Fair Shot Act, since July 1, 2021, the minimum wage increases annually by the annual average increase in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area.[22] Accounting for increases in inflation, the minimum wage as of July 1, 2025, is $17.95 per hour.[23]

Sections 4(b)–(c) of the Proposed Initiative would amend the Minimum Wage Act to increase the minimum hourly wage compared to what it is under the Fair Shot Act. Section 4(a) would maintain the current minimum hourly wage "for any employee of the District of Columbia or employee employed to perform services provided under contracts with the District of Columbia," and section 4(i) would provide that these employees shall continue to be subject to this minimum hourly wage. For employees other than those of the District government and its contractors, the minimum hourly wage would be increased annually to the following amounts: $20 per hour as of July 1, 2026; $21.75 per hour as of July 1, 2027; $23.50 per hour as of July 1, 2028; and $25 per hour as of July 1, 2029. Beginning July 1, 2030, and annually thereafter, the minimum hourly wage would be adjusted based on inflation.

Tipped Minimum Wage

In 2022, District residents voted to approve a voter-proposed law, the District of Columbia Tip Credit Elimination Act of 2022,[24] also known as Initiative 82. It completed congressional review and became law in February 2023. Initiative 82 amended section 4(f) of the Minimum

[15] Effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*).
[16] D.C. Official Code § 32-1003(b).
[17] *Id.* § 32-1003(f)(1).
[18] *Id.* § 32-1002(3).
[19] Effective August 19, 2016 (D.C. Law 21-144; 63 DCR 9275).
[20] Effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*).
[21] Fair Shot Act § 2(b)(1)(A) (codified at D.C. Official Code § 32-1003(a)(5)).
[22] *Id.*
[23] Notice of Minimum Wage & Living Wage Increase, 72 DCR 4481 (Apr. 11, 2025).
[24] Effective February 23, 2023 (D.C. Law 24-281; 69 DCR 15142).

Wage Act to establish a tipped minimum wage for employees in the District who receive tips, excluding employees of the District government and those performing services under District government contracts.[25] Under Initiative 82, the tipped minimum wage was a specific dollar amount, with tips on top, which together must equal the standard minimum wage for all employees.[26] Otherwise, the employer was required to make up the difference between the tipped minimum wage and the standard minimum wage for non-tipped employees.[27] Under Initiative 82, the tipped minimum wage would have increased to $12 per hour on July 1, 2025, and would have increased to $14 per hour on July 1, 2026, and to the standard minimum wage on July 1, 2027.[28]

In July 2025, the Council amended Initiative 82 by enacting 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.[29] The Amendment Act extended the timeline and reduced the increases in the tipped minimum wage under Initiative 82. Specifically, it amended section 4(f) of the Minimum 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.[30] These changes applied retroactively to July 25, 2025.[31]

The Proposed Initiative would amend the Minimum Wage Act to increase the tipped minimum wage compared to what it is under the Amendment Act but over a longer timeframe than Initiative 82.[32] Section 3 of the Proposed Initiative would add a definition for the term "service charge." Section 4(d)–(g) would increase the tipped minimum wage annually to the following amounts: $10 per hour as of July 1, 2025; $13 per hour as of July 1, 2026; $16 per hour as of July 1, 2027; $19 per hour as of July 1, 2028; $22 per hour as of July 1, 2029; and $25 per hour as of July 1, 2030. Beginning July 1, 2031, the tipped minimum wage would be no less than the minimum hourly wage. Further, section 4(h) of the Proposed Initiative would amend the exemption to the tipped minimum wage provisions for employees who receives gratuities[33] to provide additional requirements for the distribution of gratuities, tips, and service charges. Finally, section 4(i) of the Proposed Initiative would provide that none of the increases in the tipped minimum wage apply to employees of the District government or employees performing services under District government contracts.

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[25] *Id.* § 2.
[26] *Id.* § 2(a).
[27] *Id*.
[28] *Id.*
[29] Effective December 6, 2025 (D.C. Law 26-55; 72 DCR 9825). The Council also adopted the act on an emergency basis, and it remained 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 9623).
[30] *Id.* § 2222(a)(1)(C)–(E) (codified at D.C. Official Code § 32-1003(f)(6A)–(10)).
[31] *Id.* § 2223.
[32] The Proposed Initiative would also repeal the Tipped Minimum Wage Increase Clarification Emergency Declaration Resolution of 2025, effective June 3, 2025 (Res. 26-134; 72 DCR 6620), the emergency declaration resolution that accompanied the Tipped Minimum Wage Increase Clarification Emergency Amendment Act of 2025, effective June 30, 2025 (D.C. Act 26-94; 72 DCR 7561), and described the need to pause the July 1, 2025, tipped minimum wage increase.
[33] *See* D.C. Official Code § 32-1003(g).

ANALYSIS

The Proposed Initiative corrects a deficiency in the prior version[34] that would have required the District and its contractors to pay a higher minimum hourly wage to their employees. This led us to conclude that the earlier version was not a proper subject because it would have appropriated funds.[35] The Proposed Initiative, in contrast, expressly exempts employees of the District and its contractors from future increases in the minimum hourly wage. The Proposed Initiative also expressly exempts employees of the District and its contractors from future increases in the tipped minimum wage. Accordingly, the Proposed Initiative is a proper subject.

The right of initiative "is a power of direct legislation by the electorate."[36] 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.[37] 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."[38] The District's legislative power is limited by the Constitution and the Home Rule Act.[39]

One of the Home Rule Act's express limitations on initiatives is that they may not appropriate funds.[40] 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.'"[41] A measure is not a proper subject for initiative if it would "intrude upon the discretion of the Council to allocate District government revenues in the budget process."[42] For example, an initiative may not "directly appropriate[] funds"[43] or compel the allocation of funds to carry out mandatory provisions.[44]

Under current District law, the minimum wage for employees of the District government and its contractors is set by the Living Wage Act of 2006 ("Living Wage Act"),[45] with an absolute floor set by the Minimum Wage Act. Under the Living Wage Act, employees of the District and employees performing under District contracts of $100,000 or more must be paid a "living wage."[46] The living wage is based on a statutory formula,[47] except that "at no time shall the living wage be less than the minimum wage established pursuant to [section 4 of the Minimum

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[34] *See* District of Columbia Living Wage for All Amendment Act of 2025, 72 DCR 14216 (Dec. 26, 2025).
[35] Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, "District of Columbia Living Wage for All Amendment Act of 2025" (Jan. 2, 2026).
[36] *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).
[37] *Id.* at 913 (internal citations and quotations omitted).
[38] *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).
[39] D.C. Official Code § 1-203.02.
[40] *Id.* § 1-204.101(a).
[41] *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) [hereinafter *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)).
[42] *Id.* at 794 (quoting *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991) (en banc).
[43] *Id.* (citing *D.C. Bd. of Elections & Ethics v. Jones*, 481 A.2d 456, 460 (D.C. 1984)).
[44] *Id.* at 795–796.
[45] Effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*).
[46] D.C. Official Code § 2-220.03(a).
[47] *Id.* § 2-220.03(c).

Wage Act.]"[48] As noted above, the Minimum Wage Act, in turn, establishes the minimum wage that an "employer"—defined to include the District government—"shall pay . . . to an employee."[49] Thus, as we said in our opinion on the prior proposal, a proposed initiative that would increase the minimum wage under the Minimum Wage Act implicates the living wage that the District government and its contractors must pay their employees, raising the question of whether the measure would appropriate funds.

The Proposed Initiative is drafted to avoid this problem by restructuring the revisions to section 4 of the Minimum Wage Act so that they would not increase the minimum wage for District government employees or contractors and thus would not appropriate funds. First, in amending Section 4(a) of the Minimum Wage Act, the Proposed Initiative preserves the Minimum Wage Act's current minimum hourly wage requirements for District employees and contractors, while increasing the minimum wage requirements for other employees. Second, the Proposed Initiative's text now amends section 4(i) of the Minimum Wage Act to provide that District employees and contractors "shall continue to be subject to . . . the minimum hourly wage set by" the existing requirements preserved under section 4(a). Since the measure would not change the "minimum wage established pursuant to" the Minimum Wage Act for employees of the District government and its contractors, the Proposed Initiative would not disturb the floor for the living wage required by the Living Wage Act.[50] Third, the Proposed Initiative would amend section 4(i) of the Minimum Wage Act to expressly exempt District employees and contractors from the added provisions increasing the tipped minimum wage. With these amendments to section 4, no part of the Proposed Initiative would increase the minimum wage for District employees or contractors.

We note that, on its face, the text of the Proposed Initiative appears to enact an hourly minimum wage for employees of the District government and its contractors, because it provides what the "minimum hourly wage . . . shall be" for "any employee of the District of Columbia government or performing services for the District government."[51] Substantively, however, this requirement is identical to what District law currently requires for employees of the District government and its contractors. It therefore does not impose "increased funding requirements" on the District government.[52] For drafting purposes, it simply restates the status quo to accomplish its purpose of increasing the minimum wage for employees other than those of the District government and its contractors.

[48] *Id.* § 2-220.03(f).
[49] *Id.* § 32-1003(b).
[50] *See id.* § 2-220.03(f).
[51] *See Campaign for Treatment*, 866 A.2d at 796.
[52] *See Jones*, 481 A.2d at 460.

CONCLUSION

For the reasons above, it is the opinion of this Office that the *District of Columbia Living Wage for All Amendment Act of 2026* is a proper subject of initiative.

Sincerely,

Brian L. Schwalb
Attorney General for the District of Columbia

INITIATIVE MEASURE
No. ___

SHORT TITLE

District of Columbia Living Wage for All Amendment Act of 2026

SUMMARY STATEMENT

If enacted, this Initiative would gradually increase the minimum wage to $25.00 per hour for eligible employees by July 1, 2029 and gradually eliminate the credit for tips received by tipped workers. The "tipped minimum wage" for tipped workers (currently $10.00 per hour, indexed to inflation) would gradually increase until July 1, 2031, when the base wage for tipped workers would match the regular minimum wage (currently $17.95 per hour, proposed to increase to $25.00 hour by July 1, 2029 and thereafter indexed to inflation). Service charges collected from customers by employers of tipped workers will belong to employees.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Living Wage for All Amendment Act of 2026".

Sec. 2. The Tipped Minimum Wage Increase Clarification Emergency Declaration Resolution of 2025, effective June 3, 2025 (Res. 26-134; 72 DCR 6620), is repealed.

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25,1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*) is amended as follows:

(a) Section 3 (D.C. Official Code § 32-1002) is amended by adding a new paragraph (7C) to read as follows:

"(7C) The term "service charge" means any fee or charge added to a customer's bill and required to be paid by the customer (other than taxes), by an employer which employs employees who customarily receive tips or gratuities.".

(b) Section 4 (D.C. Official Code § 32-1003) is amended as follows:

(1) Subsection (a) is amended as follows:

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

"(A)(i) Except as provided in subsection (h) of this section and subparagraph (B) of this paragraph, the minimum hourly wage for any employee of the District of Columbia or employee employed to perform services provided under contracts with the District of Columbia shall be as of:

"(I) July 1, 2016: $11.50;
"(II) July 1, 2017: $12.50
"(III) July 1, 2018: $13.25
"(IV) July 1, 2019: $14.00; and
"(V) July 1, 2020: $15.00.

"(ii) Except as provided in subsection (h) of this section and subparagraph (B) of this paragraph, the minimum hourly wage for any employee who works in the District of Columbia and is not an employee of the District of Columbia or an employee employed to perform services provided under contracts with the District of Columbia shall be as of:

"(I) July 1, 2026: $20.00;

"(II) July 1, 2027: $21.75;

"(III) July 1, 2028: $23.50; and

"(IV) July 1, 2029: $25.00.".

(B) Paragraph (6)(A) is amended to read as follows:

"(A) Except as provided in subsection (h) of this section, beginning on July 1, 2021, and no later than July 1 of each successive year, the minimum wage provided in paragraph (6)(A)(1) of this subsection, and, beginning on July 1, 2030, and no later than July 1 of each successive year, the minimum wage provided in paragraph (6)(A)(2) of this subsection, shall be increased in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year. Any increase under this paragraph shall be adjusted to the nearest multiple of $.05.".

(2) Subsection (f) is amended as follows:

(A) Paragraphs (6), (7), (8), (9), and (10) are amended to read as follows:

"(6) Except as provided in subsections (h) and (i) of this section, as of July 1, 2025, the tipped minimum wage shall be not less than $10.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

"(7) Except as provided in subsections (h) and (i) of this section, as of July 1, 2026, the tipped minimum wage shall be not less than $13.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

"(8) Except as provided in subsections (h) and (i) of this section, as of July 1, 2027, the tipped minimum wage shall be not less than $16.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

"(9) Except as provided in subsections (h) and (i) of this section, as of July 1, 2028, the tipped minimum wage shall be not less than $19.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

"(10) Except as provided in subsections (h) and (i) of this section, as of July 1, 2029, the tipped minimum wage shall be not less than $22.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.".

(B) New paragraphs (11) and (12) are added to read as follows:

"(11) Except as provided in subsections (h) and (i) of this section, as of July 1, 2030, the tipped minimum wage shall be not less than $25.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

"(12) Except as provided in subsections (h) and (i) of this section, as of July 1, 2031, the tipped minimum wage shall be not less than the minimum wage as set by subsection (a) of this section, with tips on top.".

(3) Subsection (g)(3) is amended to read as follows:

"(3) All gratuities, tips, and service charges received by the employee or collected by the employer have been remitted to the employees who performed services directly for the customers from whom the fee was collected, in addition to such employees' wages, and the employer has prominently disclosed the amount or rate of any service charge to the customer in a manner visible to the customer before the customer places an order; and provided that, the distribution of such gratuities, tips, and service charges has occurred as follows:

"(A) If a gratuity, tip, or service charge has been collected by the employer from a customer who obtained table service, such gratuity, tip, or service charge has been remitted to those employees to those employees who directly provided service to that table;

"(B) If a gratuity, tip, or service charge has been collected by an employer from a customer who received catering services from such employer for a meeting or event, the gratuities, tips, and service charges have been distributed equally among all employees who rendered any services in connection with such meeting or event; and

"(C) No portion of any gratuity, tip, or service charge has been distributed to any supervisory or managerial employees; except that, the parties to a bona fide collective bargaining agreement may establish rules for the distribution of gratuities, tips and service charges different from those set out in paragraphs (1), (2) and (3).".

(4) Subsection (i) is amended to read as follows:

"(i) The provisions of subsections (f)(2), (3), (4), (5), (6), (6A), (7), (8), (9), (10), (11) and (12) of this section shall not apply to employees of the District of Columbia, or to employees employed to perform services provided under contracts with the District of Columbia. Those employees shall continue to be subject to the minimum wage requirements of this chapter as they existed before February 23, 2023, including the minimum hourly wage set by subsection (a)(5)(A)(i) of this section as increased by subsection (a)(6)(A) of this section, and to the requirements of all other applicable laws, regulations, or policies relating to wages or benefits, including the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01).".

Sec. 4. This act shall take effect following 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)(l)), and publication in the District of Columbia Register.