

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:	Administrative Hearing No. 26-068
“The DC Equal Homeownership Act”	Re: Acceptance of Proposed Initiative Measure

MEMORANDUM OPINION AND ORDER

At its regular meeting on Wednesday, September 2, 2026, the Board of Elections (“the Board”) held a hearing to determine whether a proposed initiative measure, “The DC Equal Homeownership Act” (“the Measure”), presents a proper subject for initiative under applicable District of Columbia law. Chairman Gregory McCarthy and Board Members Karyn Greenfield and Mike Wakefield presided over the hearing. The Board’s General Counsel, Terri Stroud, and the initiative proposer, Addison Sarter (“the Proposer”), were also present. After deliberating and consulting with its General Counsel in closed session regarding the matter pursuant to D.C. Official Code § 2-575(b)(4)(A) and (13), the Board resumed the hearing on Wednesday, October 7, 2026 and ruled unanimously that the Measure presented a proper subject for initiative.¹

Statement of Facts

On June 29, 2026, the Proposer, a registered voter, filed the Measure and supporting documents at the Board’s offices. According to its summary statement and legislative text, the Measure would require the District to give preference to developing permanently affordable homeownership units when disposing of or developing District-owned land suitable for residential development. The Measure would allow the sale of such units without requiring a down payment,

¹ While Board Member Wakefield was present at the hearing on September 7, 2026 and participated in the deliberations, he did not vote in the matter due to being called away for work.

priced according to an affordability formula intended to target monthly payments of approximately \$700 in 2026 dollars, to be established by agency rule approved by the Council. The Measure provides that implementation is subject to appropriations approved by the Council.

The Measure is the second version of this initiative. An earlier version was filed on December 22, 2025. On January 15, 2026, the Office of the Attorney General (“OAG”) and the General Counsel for the Council of the District of Columbia (“CGC”) each issued advisory opinions with respect to the earlier version, reaching different conclusions. The OAG determined that the earlier version presented a proper subject for initiative, finding that the housing development program in section 4 was sufficiently legislative in character and otherwise met proper subject requirements.² However, the CGC concluded that the earlier version was merely a statement of policy that did not rise to the level of legislation. In so finding, the CGC relied on language in section 3 providing that “[n]o provision has independent legal effect without separate Council action,” and concluded that the measure would have no effect even if adopted by the voters and funded by the Council.³

On February 4, 2026, the Board rejected the earlier version on the ground that it did not constitute a “law.” The Board found that the earlier version conditioned its essential actions on Council action beyond the appropriation of funds. Section 2 defined a “Public Homeownership Unit” as a unit constructed and sold “*only if separately authorized by the Council*,” and defined the “Affordability Formula” as a pricing methodology established by regulation and “approved by the Council.” Section 3 provided that District resources would be prioritized for affordable

² Advisory Opinion of the Attorney General (Jan. 15, 2026).

³ Advisory Opinion of the General Counsel, Council of the District of Columbia at 3 (Jan. 15, 2026).

homeownership “[s]ubject to ... Council authorization” and that “[n]o provision has independent legal effect without separate Council action.” Section 4(a) provided that District agencies “may develop Public Homeownership Units *only if the Council separately appropriates funds or authorizes land use.*” Section 6 permitted agencies to promulgate implementing regulations only “*after Council authorization.*” Additionally, Section 7 provided that, until included in a Council budget, the act would constitute a statement of policy.⁴

For its part, the Board concluded that section 4, even if funded, was “a discretionary authorization granted to agencies” that did not require the development or sale of any unit. The Board further concluded that the references to Council authorization that were silent as to funding required Council action beyond appropriations. As one example, the Board noted that because units had to be priced under an Affordability Formula requiring Council approval, “no unit can be offered unless the Council approves the respective regulations.” The Board therefore found that the earlier version would have no effect, even if adopted and funded, unless the Council exercised its discretion to provide the other authorizations it contemplated.⁵

The Proposer subsequently revised and re-filed the Measure. The revised Measure eliminates the separate Council authorization requirements in sections 2(1), 3, 4(a), and 6, but retains the requirement that the Council approve the Affordability Formula. Section 2(1) now defines a “Public Homeownership Unit” as “a for-sale residential housing unit constructed on District-owned land and sold pursuant to this Act.” Section 2(2) retains the requirement that the

⁴ *In re: “The DC Equal Homeownership Act,”* BOE Order No. 26-005 (issued February 4, 2026) (rejection of proposed initiative measure) (emphasis added).

⁵ *Id.* at 7-9.

Affordability Formula be “established by rule and approved by the Council.” Section 3(a) is now “[s]ubject to federal law, and the Home Rule Act,” rather than to Council authorization, and the “[n]o provision has independent legal effect” language has been deleted. New section 3(b) provides that “[w]hen District-owned land suitable for residential development is disposed of or developed, the District *shall* give preference to the development of Public Homeownership Units under this Act, subject to appropriations approved by the Council and consistent with existing law.” Section 4(a) now provides that “District-owned land may be used for the development of Public Homeownership Units consistent with this Act,” with no requirement of separate Council authorization of land use. Sections 4(b) and 4(d) make expenditures subject to appropriations approved by the Council. Section 6 now permits District agencies to “promulgate rules necessary to implement this Act consistent with this Act and applicable law,” without prior Council authorization. Section 7 replaces the statement-of-policy provision with a standard applicability clause providing that the act “shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.”

On June 29, 2026, in accordance with D.C. Official Code § 1-1001.16(b)(1A)(A) and 3 DCMR § 1000.4, the Board’s Office of General Counsel requested advisory opinions regarding the propriety of the revised Measure from the OAG and the CGC.

On July 15, 2026, the CGC provided an advisory opinion concluding that the Measure is a proper subject of initiative. The CGC found that the Measure does not block the expenditure of funds requested or appropriated, directly appropriate funds, require the allocation of revenues to new or existing purposes, establish a special fund, create an entitlement enforceable by private right of action, or directly address and eliminate a source of revenue. The CGC further found that

the Measure conforms with both the District Charter and the U.S. Constitution, and does not authorize or have the effect of authorizing any form of discrimination.⁶

On July 21, 2026, the OAG provided an advisory opinion likewise concluding that the Measure is a proper subject of initiative. The OAG identified the same revisions to sections 2-4 and 6 described above and concluded that they “largely address[] the Board’s concerns” from the prior rejection.⁷ The OAG acknowledged that the requirement in section 2(2) that the Council approve the rules establishing the Affordability Formula remains, but concluded that it does not render the Measure non-legislative, because the Council’s approval of agency rules implementing a statute does not leave the adoption of the underlying policy to the Council’s discretion.⁸ The OAG further noted that section 3(b) now provides that “the District shall give preference to the development of Public Homeownership Units,” using mandatory language without requiring further Council authorization, and that the remaining provisions provide detail to guide the District in carrying out this mandate. The OAG concluded that the Measure “even more directly sets in motion public policy than did the original measure” and that it “is legislative and remains subject to appropriations.”⁹

Notice of the public hearing was duly published in the D.C. Register on July 31, 2026.¹⁰

⁶ Advisory Opinion of the General Counsel, Council of the District of Columbia (July 15, 2026).

⁷ Advisory Opinion of the Attorney General at 1 (July 21, 2026).

⁸ *Id.* at 2-3.

⁹ *Id.* at 2.

¹⁰ 73 DCR 010812-16 (July 31, 2026).

During the hearing, the Board's General Counsel described the conclusions reached in the advisory opinions and noted that the Board had received no written comments from the public on the Measure. The Chair then offered any opponent of the Measure an opportunity to speak; no person opposing the Measure came forward. The Board then heard briefly from the Proposer, who agreed with the conclusions of the OAG and CGC that the Measure was a proper subject of initiative.

The Board Members raised questions concerning the Measure's use of mandatory and discretionary language and whether its provisions were sufficiently self-effectuating. The Board determined that further deliberation and consultation with the General Counsel were appropriate. Accordingly, at the conclusion of the public portion of the meeting, the Board voted unanimously to enter into closed session to obtain legal advice from the General Counsel and to deliberate on the matter pursuant to D.C. Official Code § 2-575(b)(4)(A) and (13).

At its regular meeting on October 7, 2026, the Board reconvened in public session. The General Counsel recommended that the Board accept the Measure. The Chair made a motion that the Measure be accepted as a proper subject for initiative. The motion was duly seconded and passed unanimously.

Analysis

The right of initiative is to be construed liberally, and “only those limitations expressed in the law or clearly and compellingly implied” are to be imposed upon that right. *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 896 (D.C. 1981) (*en banc*). “Absent expressed or implied limitation, the power of the electorate to act by initiative is coextensive with the power of the [Council] to adopt legislative measures.” *Id.*

D.C. Official Code § 1-1001.16(b)(1) provides that the Board must refuse to accept a measure if it finds that it 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: (A) the verified statement of contributions has not been filed; (B) the petition is not in the proper form; (C) the measure authorizes or would have the effect of authorizing discrimination prohibited under Chapter 14 of Title 2; or (D) the measure would negate or limit an act of the Council pursuant to § 1-204.46.¹¹

An initiative presents a proper subject under the terms of Title IV of the Home Rule Act if it proposes a law, does not appropriate funds, and does not violate or seek to amend the Home Rule Act.¹²

The Measure Proposes a Law

As a threshold matter, an initiative must “propose a law.” The D.C. Court of Appeals has explained that legislative power “includes an action which adopts a policy affecting the public generally and sets in motion the effectuation of that policy.” *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Woods v. Babcock*, 185 F.2d 508, 510 (D.C. Cir. 1950)).

The Board previously found that the earlier version of this Measure did not constitute a law because it conditioned all essential actions on separate Council authorization and would have had

¹¹ D.C. Official Code § 1-1001.16(b)(1).

¹² D.C. Official Code § 1-204.101(a); see also 3 DCMR § 1000.5.

no independent legal effect. The Board found that the earlier measure constituted “a discretionary authorization granted to agencies to provide ‘Public Homeownership Units’ which may be constructed ‘only if separately authorized by the Council.’”¹³

The revised Measure addresses these deficiencies. Section 3(b) now provides that “the District *shall* give preference to the development of Public Homeownership Units under this Act” whenever “District-owned land suitable for residential development is disposed of or developed,” subject to appropriations. (Emphasis added.) The use of the word “shall” creates a mandatory obligation on the District. *See D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 796 (D.C. 2005) (observing that an “initiative’s repeated use of the word ‘shall’ creates mandatory provisions”). As described above, the revised Measure removes the requirement for separate Council authorization from sections 2(1), 3, 4, and 6. As the OAG observed, the only role remaining for the Council, aside from appropriating funds, would be to approve rules proposed by agencies to establish the affordability formula. This does not render the Measure non-legislative, because the Council routinely enacts legislation that authorizes agencies to promulgate implementing rules subject to Council approval, and such legislation undoubtedly constitute laws.¹⁴

The Board also considered whether the Measure is sufficiently self-effectuating. The Board concludes that it is. Section 3(b) imposes a present, mandatory obligation on the District that is triggered by an objective event: the disposition or development of District-owned land suitable for residential development. The existence of that obligation does not depend on any further legislative

¹³ *In re: “The DC Equal Homeownership Act,”* BOE Order No. 26-005, at 7-8.

¹⁴ Advisory Opinion of the Attorney General at 3 (July 21, 2026) (citing D.C. Official Code § 1-204.12(a); *see also*, e.g., D.C. Official Code § 2-218.72(a)).

act. The Council's approval of the affordability formula rules and its control over appropriations govern the manner and funding of implementation, not whether the obligation arises. A measure that establishes a program while leaving its funding to the Council's discretion remains a proper exercise of the initiative right. *See Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 12, 19 (D.C. 1991). Likewise, the provision in section 7(a) that the Measure shall apply upon inclusion of its fiscal effect in an approved budget and financial plan is a standard applicability clause that does not deprive the Measure of independent legal effect.

Accordingly, the Board finds that the revised Measure proposes a law within the meaning of D.C. Official Code § 1-204.101(a).

The Measure Does Not Appropriate Funds

The D.C. Court of Appeals has interpreted the prohibition on “laws appropriating funds” broadly, extending it “to the full measure of the Council’s role in the District’s budget process.” *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d at 795 (D.C. 2005) (*quoting Hessey*, 601 A.2d at 20). A measure impermissibly appropriates funds if it (1) blocks the expenditure of funds requested or appropriated, (2) directly appropriates funds, (3) requires the allocation of revenues to new or existing purposes, (4) establishes a special fund, (5) creates an entitlement enforceable by private right of action, or (6) directly addresses and eliminates a source of revenue. *Id.* at 794.

The Measure does not run afoul of any of these factors. The Measure expressly makes all steps to implement the program contingent on appropriations approved by the Council. Section 4(b) provides that “[i]mplementation of activities requiring expenditure shall be subject to appropriations approved by the Council of the District of Columbia.” Section 4(d) provides that

“[n]othing in this act shall be construed to require the District to construct units, provide subsidies, close financing gaps, or incur financial obligations absent appropriations approved by DC Council.” Section 7(a) further provides that the act “shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.”

The Measure does not establish a special fund or create an entitlement. Section 5(d) expressly provides that “[p]riority does not create a right to housing or private action.” The D.C. Court of Appeals has long recognized the distinction “between the right by initiative to authorize the establishment of a new [program] and the authorization of appropriations for the program.” *Hessey*, 601 A.2d at 12. “[T]he initiative right to propose authorizing legislation that the Council could enact is essentially unfettered.” *Id.* at 19. The Measure authorizes a new program but leaves its funding entirely to the Council’s discretion.

The Measure Satisfies All Other Proper Subject Requirements

The Measure does not violate or seek to amend the Home Rule Act. It does not conflict with the U.S. Constitution. It does not authorize, nor would it have the effect of authorizing, discrimination prohibited under District law. The priority categories in section 5(b) are race-neutral, place-based criteria, and section 5(c) expressly provides that priority “cannot be conditioned on political activity, petition participation, or First Amendment exercise.” The Measure does not negate or limit an act of the Council enacted pursuant to § 1-204.46. The Measure was filed in proper form and the verified statement of contributions was timely filed. The Board finds no express or implied limitation that would preclude the Measure from being submitted to the voters.

Conclusion

For the foregoing reasons, the Board finds that “The DC Equal Homeownership Act” presents a proper subject for an initiative. Accordingly, it is hereby:

ORDERED that the Initiative, “The DC Equal Homeownership Act,” is ACCEPTED pursuant to D.C. Official Code § 1-1001.16(b)(1) and is designated as Initiative Measure No. 89. The Board’s staff is directed to proceed with preparation of the short title, summary statement, and proper legislative form of the Measure, and to request a fiscal impact statement from the Office of the Chief Financial Officer, in accordance with D.C. Official Code § 1-1001.16(c).

We issue this written order today, which is consistent with the Board’s oral ruling rendered on October 7, 2026.

Dated: October 19, 2026



Gregory McCarthy
Chair