DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

In Re:	Administrative Hearing No. 26-005
"The DC Equal Homeownership Act"	Rejection of Proposed Initiative Measure

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections ("the Board") at a meeting convened on Wednesday, February 4, 2026 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. Board Chairman Gary Thompson and Board member Karyn Greenfield presided over the hearing. The Board's General Counsel, Terri Stroud, and the initiative proposer, Addison Sarter ("the Proposer"), were also present.

Statement of Facts

On December 22, 2025, the Proposer, a D.C. registered voter, filed the Measure and supporting documents at the Board's offices. According to its summary statement and legislative text, the Measure would, if enacted, authorize D.C. government agencies to develop residential housing units on District-owned land. Those units could then be sold without any required down payment and could be offered based on an affordability formula. This authorization would, however, be subject to funding by the Council. The Measure also includes a policy that favors publicly developed affordable homes on district land over the private development of rental housing. It sets parameters for "eligible purchasers" of the housing proposed and for "priority consideration" for housing for certain persons. The Measure also empowers agencies to issue rules as necessary to implement its authorizations.

On December 23, 2025, the Board's Office of General Counsel requested advisory opinions regarding the propriety of the Measure from the Office of the Attorney General for the District of Columbia ("the OAG") and General Counsel for the Council of the District of Columbia ("the CGC").[1]

On January 15, 2026, both the OAG and the CGC provided advisory opinions to the Board. Those opinions reached different conclusions as to whether the Measure should be accepted by the Board. Both the OAG and the CGC focused on the right of initiative as granting power to voters "to propose laws,"[2] which the advisory opinions explain means that a voter's proposal must be legislative in character. The CGC characterized the Measure as a policy statement that does not arise to legislation. In so doing, she relied on language in Section 3 of the Measure that provides that "[n]o provision has independent legal effect without separate Council action." The OAG, however, found that the Measure's proposed program of housing development in Section 4 was sufficiently legislative in character to allow it to be accepted by the Board.

During a duly noticed public meeting held on the matter on February 4, 2026, the Board's General Counsel described the conclusions reached in the advisory opinions. She noted that the Board had been provided with those opinions and that no written comments regarding the Measure had been submitted.

The Board Chair then invited opponents of the Measure to speak. As no opponents were

---

[1] D.C. Official Code § 1-1001.16(b)(1A)(b)(i) requires the OAG and CGC to provide advisory opinions regarding the propriety of proposed initiative measures.

[2] *Hessey v. Burden*, 615 A.2d 552 (D.C. 1992).

present, the Board then heard from the Proposer. Mr. Sarter asked that the Board follow the conclusion of the OAG.

After hearing from the commenters and the Proposer's counsel, Board Chair Thompson requested that the General Counsel provide her recommendation as to whether the Measure met proper subject requirements. The General Counsel stated that she believed that, based on language throughout the text of the Measure that it would neither have independent legal effect nor enact operative legal standards upon voter approval, and thus would not "set in motion the effectuation" of policy as law. Therefore, she concluded that the Measure was not legislative in character and she recommended that the Board reject the Measure. The Chair concurred that the Measure had contingencies within contingencies and lacked direction such that voters would not be able to understand what adoption of the Measure might mean. He noted that the Measure could be re-done in a way that could provide sufficient direction, but as written, he made a motion that the Measure be rejected. The motion was duly seconded and passed unanimously.

Analysis

The District's statutory framework establishes this Board as the gatekeeper of the initiative process. The term "initiative" refers to the process by which the voters of the District of Columbia may propose certain laws. D.C. Official Code 1-204.101(a) (defining "initiative" as "the process by which electors of the District of Columbia may propose *laws*[.]") (emphasis added). Characteristics of a law include that it be "fixed and rigid."[3] One court in another jurisdiction

[3] *Ruip v. United States*, 555 F.2d 1331, 1335 (6th Cir. 1977) (finding guidelines lacked the characteristics of a "law" because they were flexible).

where voters have a similar right of initiative has explained that the measure must have a binding effect.[4] "The word 'law' imports a general rule of conduct with appropriate means for its enforcement declared by some authority possessing sovereign power over the subject; it implies command and not entreaty; it is something different in kind from an ineffectual expression of opinion possessing no sanction to compel observance of the views announced[.]"[5]

Thus, on the one hand, the Board fundamentally cannot allow through the gate a proposal that does not constitute a law, such as a statement of policy. For example, *In re: The Vermelle Paid Maternity Leave Act*, BOE Case No. 24-012 (issued June 17, 2024), we rejected a proposal by Mr. Sarter that concerned maternity leave benefits as a policy statement and not a law.[6] There, we noted that the proposal would merely "allow" expanded benefits and lacked any details for implementation in the complex environment of employee compensation.

---

[4] *Dunn v. Attorney General*, 54 N.E.3d 1, 8 (Mass. Sup. Ct. 2016).

[5] *Yute Air Alaska, Inc., v. McAlpine*, 698 P.2d 1173, 1187-88 (Sup. Ct. Ala. 1985) (quoting *Opinion of Justices Relative to the Eighteenth Amendment*,160 N.E. 439, 440 (1928)).

[6] *See also University Incubator Initiative*, BOE Case No. 18-012 (issued Aug. 1, 2018) (rejecting as not proposing a law a measure where its legislative text was a question); *In re: Humane Environment, "BACK UP PLAN" S.W.A.P. O.U.T. for M.O.V.E.M.E.N.T & M.I.N.D.S. for 'The Bad for the Good' Amendment Act of 2024*, BOE Case No. 24-002 (issued Jan. 11, 2024) (proposal failed to meet proper subject requirements where it was primarily a commentary on policy problems, theory and the need for solutions and was not legislative in nature and did not propose to make new law); *In re: An Initiative to Overturn District Columbia Council Same Sex Marriage Law Restore Traditional Marriage Law*, BOE Case No. 13-06 (issued April 5, 2013) (initiative rejected where it was a religious proclamation that did not propose a law); *In re: Americans Vote 2002 God Father Son Jesus Holy Spirit back Representing America Christianity Legal Religion*, BOE Case No. 07-006 (issued Dec. 12, 2007) (initiative rejected where it did not accomplish any concrete measures or action-oriented activities and merely recited tenets of proponent's faith).

On the other hand, proposals that do constitute laws and are not mere statements of policy because they require action may be rejected for other reasons. As we explained with respect to another initiative proposal by Mr. Sarter, one of the restrictions on the right of initiative is that that right cannot interfere with the Council's appropriations authority or conflict with a Council budget act. [7]

In determining whether the above requirements are met, we must construe the right of initiative liberally and impose only those limitations expressed in law or clearly or compellingly implied.[8] Finally, the Board must consider whether these requirements are met based on the language of a voter's proposal and it is precluded by law from reworking a proposer's measure so that it meets these and other requirements.[9]

---

[7] *In re: DC Cash Payments Reparations Act*, BOE Case No. 24-031 (issued July 11, 2024) (rejecting Mr. Sarter's proposal for the reason that it would require funding and the measure did not include subject-to-appropriations type language).

[8] *Convention Center Referendum Committee v. D.C. Board of Elections and Ethics*, 441 A,2d 889, 913 (D.C. 1981). Along these lines, we have accepted proposals that technically have no effect because they include "subject-to-appropriation" type language. But as the OAG has elsewhere pointed out, a "subject-to-appropriation" condition could be read into any legislation as it is understood as a matter of legislative enactment that legislative proposals generally must be funded. The position that a measure is not a "law" because it is conditioned on being funded would effectively write the right of initiative out of existence. Therefore, we do not believe that the limitation that a measure constitute a "law" compels us to reject measures that include a standard subject-to-appropriations type clause.

[9] D.C. Official Code § 1-1001.16(c)(3) allows the Board to alter the legislative text of a measure to insure only that it is in proper legislative form and conforms to the legislative drafting style of acts of the Council. As a result of the existing statutory process, and as we have seen of late, voters have filed, withdrawn, and refiled with the Board multiple iterations of measures in an effort to

With this background, we turn to the specific legislative text of the instant Measure:

Section 1 is merely a short title for the Measure.

Section 2 sets forth definitions. Notably, Section 2 defines "Public Homeownership Unit" as a housing unit constructed and sold under the Act "only if separately authorized by the Council." Section 2 also defines "Affordability Formula" as a pricing methodology established by regulations and "approved by the Council."

Section 3 is a "Policy Regarding Public Housing Resources." It requires "[s]ubject to … Council authorization" resources to be prioritized for affordable homes. It includes the language that the CGC relied upon that states that "[n]o provision has independent legal effect without separate Council action."

Section 4 states:

> **Public Homeownership Program Authorization**
>
> (a) Conditional Authority. District agencies may develop Public Homeownership Units only if the Council separately appropriates funds or authorizes land use.
>
> (b) Pricing/Down Payment: Units may be sold with no required down payment, priced according to the Affordability Formula.
>
> (c) No Fiscal Mandate: This Act does not require construction, subsidies, financing gaps, or impose financial obligations absent Council approval.
>
> (d) Uniform Application: The Affordability Formula must be applied consistently to similarly situated purchasers.

---

conform their proposals to the requirements (as identified in the OAG and CGC advisory opinions or Board orders) for acceptable measures.

Section 5 sets forth eligibility criteria and provides that eligible purchasers are first-time home buyers who have completed a counseling program. It also identifies other factors that may be used to give priority to purchasers.

Section 6 provides that agencies can promulgate regulations necessary to implement the Act "after Council authorization."

Section 7 states that, until it is included in a Council budget, the Act constitutes a statement of policy.[10]

In finding that this Measure was not legislative in nature, the CGC noted that a measure is legislative if it "clearly includes an action which adopts a policy affecting the public generally and sets in motion the effectuation of that policy."[11] The CGC then focused on the language in Section 3 which states that "[n]o provision has independent legal effect without separate Council action." The CGC concluded that the Measure does not constitute a law because it would not have any effect even if it were adopted by the voters and funded by the Council.[12]

While we agree with the CGC's ultimate conclusion, we think that the "[n]o provision" language in Section 3 could arguably be read as referring back only to the provisions in Section 3. Such a reading is supported by our obligation to construe the right of initiative liberally. That said, we find that the essential actions described in Section 4, even if funded, do not require the development and sale of any units whatsoever. Rather, the plain language of Section 4 is a

[10] Sections 8 and 9 are severability and effective date clauses respectively.

[11] CGC January 15, 2026 Advisory Opinion at p. 3 (quoting *Hessey v. Burden,* 615 A,2d 562, 578 (D.C. 1992).

[12] *Id.*

discretionary authorization granted to agencies to provide "Public Homeownership Units" which, under Section 2, may be constructed and sold "only if separately authorized by the Council." This requirement of separate Council authorization is not specifically contingent on any Council funding. Indeed, the Act specifically refers to Council funding authorization in some cases (*i.e.*, Section 3 (to the extent that it refers to Council authorized "resources") and Sections 4(a) and 7, but not in others (importantly, non-funding specific Council authorization is required for regulations). In interpreting statutory language, the use of different language should be read as intending a different meaning.[13] Therefore, the references to Council authorization that are silent as to resources or funding should be read as intending authorization beyond appropriating funds to support the Measure's activities.[14] We think that the Measure's legislative text is fairly read as requiring more than Council funding of the housing program and requires Council approval of specific units. For example, Section 4(b) requires that units be made available in accordance with the Affordability Formula that is, under Section 2, established by regulations that must be approved by the Council. Accordingly, it appears that no unit can be offered unless the Council approves the respective regulations. Thus, as the CGC found, but for different reasons, the Measure does

[13] *Iran Air v. Kugelman*, 996 F.2d 1253, 1258 (D.C. Cir. 1993) ("As a matter of fundamental rules of statutory interpretation, it is assumed that where provisions contain different language, that different treatment is intentional.") (citation omitted)); *Sosa v. Alvarez–Machain,* 542 U.S. 692, 711 n. 9 (2004) (use of different words in a single statute presumably means that Congress intended that the different words had different meanings and effects); *Vonage Holdings Corp. v. FCC,* 489 F.3d 1232, 1240 (D.C. Cir.2007) ("[W]e have repeatedly held that where different terms are used in a single piece of legislation, the court must presume that Congress intended the terms to have different meanings." (internal quotation marks and citations omitted)); and *Pulsifer v. United States,* 601 U.S. 124, 149 (2024) (citing A. Scalia & B. Garner, Reading Law 170–171 (2012)).

not constitute a law because, even if adopted by the voters and funded by the Council, it would still have no effect unless the Council exercised its discretion and provided the other authorizations that are contemplated. In other words, the Measure does not constitute a law because it does not "compel observance of the views announced."[15] For these reasons, we do not believe the Measure can be accepted.[16]

Conclusion

For the foregoing reasons, the Board finds that "The DC Equal Homeownership Act" does not present a proper subject for an initiative. Accordingly, it is hereby:

ORDERED that "The DC Equal Homeownership Act" is **REJECTED** pursuant to D.C. Official Code § 1-1001.16(b)(2). The Board issues this written order today, which is consistent with its oral ruling rendered on February 4, 2026.

Dated: February 4, 2026

Gary Thompson
Chair
Board of Elections

[15] As the Board Chair noted during the hearing, the initiative's implementation depends on multiple contingencies, which depend on the City Council taking action beyond providing funding.

[16] With respect to other restrictions on measures, we find that the measure does not violate the Home Rule Act or the constitution and that it does not authorize unlawful discrimination. *See* 3 DCMR 1000.6 (setting forth the various "proper subject" requirements for measures). In addition, the Proposer complied with Office of Campaign Finance reporting requirements and met word count and other filing requirements.