

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Brian Schwalb
Attorney General

January 2, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, “District of Columbia Living Wage for All Amendment Act of 2025”

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 December 10, 2025 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 2025” (“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, the Proposed Initiative is not a proper subject of initiative.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 1955⁴ as an implementing

¹ If the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide 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.

⁴ Effective June 7, 1979 (D.C. Law 3-1; D.C. Official Code § 1-1001.16).

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

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 make changes to District laws regarding the minimum hourly wage and the tipped minimum wage—that is, the “minimum hourly wage required to be paid by an employer to an employee who receives tips.”¹⁵

Minimum Hourly Wage

In 2016, the Council enacted the Fair Shot Minimum Wage Amendment Act of 2016 (“Fair Shot Act”).¹⁶ The Fair Shot Act amended the Minimum Wage Revision Act of 1992 (“Minimum Wage Act”)¹⁷ 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. 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. Accounting for increases in inflation, the minimum wage as of July 1, 2025, is \$17.95 per hour.¹⁸

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. Specifically, the minimum hourly wage¹⁹ 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, also known as Initiative 82.²⁰ It completed congressional review and became law in February 2023. Initiative 82 amended section 4(f) of the Minimum 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 District government contracts. Under Initiative 82, the tipped minimum wage is a specific dollar amount, with tips on top, which together must equal the standard minimum wage for all employees.²¹ Otherwise, the employer is required to make up the difference between the tipped minimum wage and the standard minimum wage for non-tipped employees.²² Under Initiative 82, the tipped minimum wage would have increased to

¹⁵ *Id.* § 32-1003(f)(1).

¹⁶ Effective August 19, 2016 (D.C. Law 21-144; 63 DCR 9275).

¹⁷ Effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*).

¹⁸ See *Office of Wage-Hour Compliance*, Department of Employment Services, <https://does.dc.gov/service/office-wage-hour-compliance-0> (last visited December 29, 2025).

¹⁹ See D.C. Official Code § 32-1003(a)(5)(A).

²⁰ Effective February 23, 2023 (D.C. Law 24-281; 69 DCR 15142).

²¹ D.C. Official Code § 32-1003(f).

²² *Id.* § 32-1003(b-1) & (f).

\$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, 2027.²³

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 2025.²⁴ 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. These changes applied retroactively to July 25, 2025.

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 82.²⁵ Section 3 of the Proposed Initiative would add a definition for the term “service charge.” Section 4 would increase the tipped minimum wage²⁶ 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. Finally, the Proposed Initiative would amend the exemption to the tipped minimum wage provisions for employees who receives gratuities²⁷ to provide additional requirements for the distribution of gratuities, tips, and service charges.

ANALYSIS

The Proposed Initiative, although similar to prior initiatives that this Office opined were proper subjects, is not a proper subject for initiative. That is because the Proposed Initiative does not clearly exempt District employees and contractors from its amendments to the Minimum Wage Act’s requirements for the minimum hourly wage (as opposed to the tipped minimum wage). Accordingly, the Proposed Initiative violates the prohibition on initiatives appropriating funds by requiring the District to pay its employees and contractors a higher hourly wage.

²³ Section 2(a) of the District of Columbia Tip Credit Elimination Act of 2022, effective February 23, 2023 (D.C. Law 24-281; 69 DCR 15142).

²⁴ 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).

²⁵ 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.

²⁶ See D.C. Official Code § 32-1003(f).

²⁷ See *id.* § 32-1003(g).

The right of initiative “is a power of direct legislation by the electorate.”²⁸ 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.²⁹ 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.”³⁰ The District’s legislative power is limited by the Constitution and the Home Rule Act.³¹

One of the Home Rule Act’s express limitations on initiatives is that they may not appropriate funds.³² 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.””³³ 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.”³⁴ For example, an initiative cannot “directly appropriate[] funds” or “require[] the allocation of revenues to new or existing purposes.”³⁵

The Proposed Initiative is a law appropriating funds because it would require the District to pay its employees and contractors a higher hourly wage than current District law requires the District to pay. Although the Proposed Initiative incorporates a provision of the Minimum Wage Act that exempts District employees and contractors from the Act’s requirements for the tipped minimum wage, that provision does not clearly exempt District employees and contractors from the Act’s requirements for the minimum hourly wage.

Section 32-1003(i) of the Minimum Wage Act, which the Proposed Initiative leaves intact, provides first that the subsections of the Act governing the tipped minimum wage “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.”³⁶ This first sentence of subsection (i) clearly exempts District employees and contractors from the Minimum Wage Act’s requirements for the tipped minimum wage. Because the Proposed Initiative’s amendments to the Act’s tipped minimum wage provisions do not disturb this provision, they would not apply to District employees and contractors and, accordingly, would be a proper subject on their own.

The second sentence of subsection (i) of the Minimum Wage Act, however, is far less clear, and so the Proposed Initiative’s amendments to the Act’s minimum hourly wage provisions do not clearly exempt District employees and contractors. The second sentence of subsection (i) provides that “[t]hose employees shall continue to be subject to the minimum wage requirements” of the

²⁸ *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).

²⁹ *Id.* at 913 (internal citations and quotations omitted).

³⁰ *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) (quoting *Convention Ctr.*, 441 A.2d at 907).

³¹ D.C. Official Code § 1-203.02.

³² *Id.* § 1-204.101(a).

³³ *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) (quoting *Dorsey v. D.C. Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (internal citations and quotations omitted)).

³⁴ *Id.* at 794 (quoting *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991)).

³⁵ *Id.* (internal citations omitted).

³⁶ D.C. Official Code § 32-1003(i) (referencing the “provisions of subsection (f)(2), (3), (4), (5), (6)(6A), [sic] (7), (8), (9), and (10)”).

Minimum Wage Act “as they existed before February 23, 2023 [the effective date of Initiative 82], and to the requirements of all other applicable laws, regulations, or policies relating to wages or benefits, including subchapter X-A of Chapter 2 of Title 2.”³⁷ The first clause of this sentence could be read to mean that District employees and contractors *are* subject to all of the Act’s minimum wage requirements (not just its tipped minimum wage requirements) as they existed before February 2023. If read as such—and the text could support this reading—the Proposed Initiative’s amendments to those requirements would not apply to District employees and contractors and thus would be a proper subject. However, subsection (i) was added to the Minimum Wage Act by Initiative 82, and it is not obvious why the drafters of Initiative 82, which dealt only with the tipped minimum wage, would have included any provision relating to the minimum hourly wage.

In any event, we need not decide what this first clause means, because the sentence does not stop there. The second clause provides that District employees shall continue to be subject to all other applicable laws, including subchapter X-A of Chapter 2 of Title 2 (the Living Wage Act of 2006³⁸). The Living Wage Act requires the District to pay its employees and contractors a “living wage”³⁹ and provides that “at no time shall the living wage be less than the minimum wage established pursuant to § 32-1003.”⁴⁰ Because District employees and contractors are still subject to the requirements of the Living Wage Act, which incorporates the minimum wage as established in the Minimum Wage Act, the Proposed Initiative’s amendments to the minimum hourly wage in the Minimum Wage Act would trigger an increase in the wages required for District employees and contractors. Thus, the Proposed Initiative would compel the Council to allocate revenues to pay a higher wage to District employees and contractors and so would violate the prohibition on initiatives appropriating funds.

CONCLUSION

For the reasons above, it is the opinion of this Office that the *District of Columbia Living Wage for All Amendment Act of 2025* is not a proper subject of initiative.

Sincerely,



Brian L. Schwalb
Attorney General for the District of Columbia

³⁷ *Id.*

³⁸ Effective June 8, 2006 (D.C. Law 16-118; D.C. Code § 2-201.01 *et seq.*).

³⁹ D.C. Code §§ 2-201.03(a)-(c).

⁴⁰ *Id.* § 2-201.03(f).

INITIATIVE MEASURE

No.

SHORT TITLE

District of Columbia Living Wage for All Amendment Act of 2025

SUMMARY STATEMENT

If enacted, this Initiative would gradually increase the minimum wage to \$25.00 per hour by July 1, 2029, and gradually eliminate the credit for tips received by tipped workers. The mandatory “tipped minimum wage” for tipped workers (currently \$10.00 per hour, indexed to inflation) would gradually increase until July 1, 2031, when the mandatory 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 2025”.

Sec. 2. Resolution R26-0134, Effective June 3, 2025 is repealed.

Sec. 3. Sec. 3 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1002), as amended, is further amended by adding a new subsection (7B-1) to read as follows:

“(7B-1) 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.”

Sec. 4. Sec. 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003), as amended, is further amended as follows:

(a) Subparagraph (A) of paragraph (a)(5) is amended to read as follows:

“(A) Except as provided in subsection (h) of this section, the minimum hourly wage for anyone who works in 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) Subparagraph (A) of paragraph (a)(6) is amended to read as follows:

“Except as provided in subsection (h) of this section, beginning on July 1, 2030, and no later than July 1 of each successive year, the minimum wage provided in 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.”

(c) Paragraph (f)(6) is amended to read as follows:

“(f)(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.”

(d) Paragraph (f)(7) is amended to read as follows:

“(f)(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.”

(e) Paragraph (f)(8) is amended to read as follows:

“(f)(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.”

(f) Subsection (f) is amended by adding at the end thereof the following new paragraphs (9), (10), (11) and (12) to read as follows:

“(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.

“(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.”

(g) Paragraph 3 of subsection (g) is amended to read as follows:

“(g) 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:

“(1) 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;

“(2) 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;

“(3) No portion of any gratuity, tip or service fee 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).”

Sec. 5. 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 § 1-206.02(c)(1)), and publication in the District of Columbia Register.