

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:	Administrative Hearing No. 26-039
“DC Housing Modernization and Accessibility Act of 2026”	Acceptance of Proposed Initiative Measure

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections (“the Board”) at a hearing convened on Wednesday, March 4, 2026, to determine whether a proposed initiative measure, the “DC Housing Modernization and Accessibility Act of 2026” (“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, Salim Adofu (“the Proposer”), and his counsel, Joseph Sandler, were also present.

Statement of Facts

On January 19, 2026, 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,

freeze rents for two years immediately upon enactment and in future periods of high inflation; realign DC’s affordable housing programs with an upper eligibility threshold of 60% of the Area Median Income to reflect actual median incomes of DC residents; revise affordable housing requirements for land sold or leased by DC government; and redefine certain affordable housing requirements to include a mix of units with different numbers of bedrooms.

The Measure further provides that any provisions with a fiscal impact would not take effect until they are funded in a Council-approved budget and financial plan as certified by the D.C. Chief Financial Officer (“CFO”).

The Measure is the third of similar versions submitted to the Board by the Proposer. The Board previously rejected the second version by an oral ruling rendered on January 14, 2026, and a written order that memorialized the oral ruling that issued on January 20, 2026 (BOE Case No. 26-003). The basis for the Board’s rejection of the second version of the measure was its determination that a provision of that measure, Section 4, would interfere with the Council’s funding discretion by lowering the Area Median Income (“AMI”) thresholds used to define income categories under the Housing Production Trust Fund (“HPTF”) Act. The Board found that, because the HPTF Act already mandates specific percentage allocations of fund expenditures across those income categories, changing the AMI definitions would effectively reallocate HPTF revenues among competing income groups — a function reserved exclusively to the Council of the District of Columbia (“the Council”) under the Home Rule Act and the District Charter. The Board rejected the Proposer’s argument that the measure’s subject-to-appropriations clause cured this defect, because that clause only addressed *additional* funding needed to implement the measure; it did not fix the core problem that, *once funded*, the Measure would restrict the Council’s ability to allocate the expenditure of those funds.

The Board’s order was consistent with advisory opinions submitted by the Office of the Attorney General (“OAG”) and the General Counsel for the Council (“CGC”) concerning the second version of the measure that also found that the second version of the measure would have impermissibly interfered with the Council’s power of the purse. In its opinion, the OAG noted that

“The right of initiative ‘is a power of direct legislation by the electorate. 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. 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.’ The

District’s legislative power is limited by the Constitution and the Home Rule Act, including the Charter.”¹

The OAG opinion concluded that, because Section 4 of the second version affected “the Council’s discretion to allocate revenues[.]”² by changing how District funds in the HPTF — a special fund — would be allocated, it amounted to a law appropriating funds under *Hessey II*. The OAG did not identify any other defects in the second version.

The CGC reached a similar conclusion; it found that “by making changes to the permissible uses of the [HPTF], the [second version] would run afoul of the provisions of Title IV of the Home Rule Act by interfering with the Council’s discretion to allocate revenues and the Council’s decision about when it would be necessary for ‘the efficient operation of the government of the District’ to establish a special fund[.]”³ and therefore did not present a proper subject of initiative. The CGC did not identify any other defects in the second version.

In its order rejecting the second version of the measure, the Board also noted that an opponent had claimed in testimony submitted in opposition thereto that the second version’s rent freeze “ ‘may cause’ an unconstitutional taking; that its retroactive application to existing contracts ‘potentially’ raises contract clause issues; and that its enactment could present due process issues.”⁴ In considering this claim, the Board observed that

¹ Letter from Brian Schwalb, Att’y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, “DC Housing Modernization and Accountability Act of 2026” 6 (Dec. 23, 2025).

² *Id.* at 8 (quoting *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3 at 20(D.C. 1991)(“*Hessey IP*”).

³ Letter from Nicole Streeter, Gen. Counsel for DC Council, to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, “DC Housing Modernization and Accountability Act of 2026” 3 (Dec. 23, 2025).

⁴ *In Re: DC Housing Modernization and Accessibility Act of 2026* (BOE Case No. 26-003 at pp. 10-11).

[o]pponents, however, did not provide us with legal authority showing, for example, that a rent freeze similar to that proposed here has been found an unconstitutional taking or how a due process claim would play out under the Measure. Indeed, opponents essentially acknowledge that there are only potential or possible constitutional concerns. As we have advised in other proper subject cases, however, we cannot speculate that a measure violates proper subject requirements. It is not enough for an opponent to assert that there are potential or possible unconstitutional consequences from a measure. That is particularly true here, where proponents claimed that rent and other contracts that might be impacted by the Measure have provisions that would allow leases or contracts to be voided were the Measure to be enacted. For such reasons, we cannot reject the Measure based on its supposed constitutional short-comings.

Following the latest submission by the Proposer, on January 20, 2026, the Board's Office of General Counsel ("OGC") requested advisory opinions from the OAG and the CGC in accordance with D.C. Official Code § 1-1001.16(b)(1A)(A)-(B)(i). Also on January 20, 2026, the OGC submitted notice of the Board's intent to consider whether the Measure presents a proper subject for initiative at its regular meeting on March 4, 2026. The notice, which was published in the DC Register on January 30, 2026, advised that written comments and testimony should be submitted to OGC by no later than Friday, February 27, 2026.

On February 6 and February 10, 2026, respectively, the OAG and the CGC each issued advisory opinions concluding that the Measure presents a proper subject. The OAG's opinion noted that the Measure was "nearly identical"⁵ in every respect to the second version, except that instead of "disturb[ing] the Council's existing allocation of HPTF funds," the Measure "'call[s] upon the Council' to amend the [HPTF] Act to change income levels for households served by the

⁵ Letter from Brian Schwalb, Att'y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, "DC Housing Modernization and Accountability Act of 2026" 1 (February 6, 2026). The OAG Opinion noted that the Measure differed from the second version in two other respects that did not have any bearing on proper subject analysis.

HPTF.”⁶ Because the invalidating language in the second version was removed and does not appear in the Measure, the OAG concluded that the Measure “is a proper subject.”⁷ The CGC reached the same conclusion, finding as follows:

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. In addition, the [Measure] conforms with both the District Charter and the U.S. Constitution. The Proposed Initiative does not authorize or have the effect of authorizing any form of discrimination.⁸

On February 27, 2026, several entities submitted written comments in opposition to the Measure.⁹ Through their submissions, the Opponents raised the following objections to the Measure: (1) the Measure’s rent freeze provisions, without any mechanism for hardship relief or administrative adjustment, constitute, or at a minimum raise serious concerns of, a regulatory taking of private property without just compensation in violation of the Fifth Amendment; (2) the Measure would substantially impair existing contracts in violation of the U.S. Constitution’s Contract Clause by retroactively nullifying bargained-for rent increases without legislative findings, tailoring, or consideration of less restrictive alternatives; (3) the Measure usurps power that is exclusively vested in the Mayor and the Council by effectively establishing a rent-freeze

⁶ *Id.* at 2.

⁷ *Id.*

⁸ Letter from Nicole Streeter, Gen. Counsel for DC Council, to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, “DC Housing Modernization and Accountability Act of 2026” 2-3 (February 10, 2026).

⁹ These entities included the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) through Eric Jones; the DC Association of Realtors (“DCAR”) through Shawn Hilgendorf; the District of Columbia Building Industry Association (“DCBIA”) through Erika Wadlington; and NAIOP DC” through David Lewis (collectively, “the Opponents.”).

regime outside of DC’s established statutory and emergency authority framework and, through its automatic self-executing Consumer Price Index (“CPI”) trigger, impermissibly constrains the Council’s delegated discretion over rent regulation; (4) Section 4 of the Measure fails to propose operative law and is therefore not a proper subject for initiative; and (5) Section 6 would impermissibly allocate or constrain D.C. revenues in violation of D.C. Official Code § 1-204.101(a) by increasing affordability mandates on developments arising from the disposition of DC real property.

At the Board’s regular meeting on March 4, 2026, the Board considered whether the Measure presents a proper subject for initiative. At that time, the Board heard from the Opponents, who presented oral testimony consistent with their written submissions. The Board also heard from Joseph Sandler, counsel for the Proposer, who addressed the objections raised by the Opponents. Mr. Sandler argued that the Measure satisfies proper subject requirements because the Opponents do not establish a clear or facial violation of the Constitution. With respect to the Contracts Clause, he argued that the applicable standard is deferential and permits reasonable regulation serving a legitimate public purpose, emphasizing that the Measure is temporary and does not permanently deprive landlords of economic value. With respect to the Takings argument, Mr. Sandler argued that the Measure constitutes ordinary economic regulation subject to the framework outlined in *Penn Central Transportation Co. v. New York City*,¹⁰ under which a temporary adjustment of economic burdens does not amount to a compensable taking. He cited case law addressing comparable rent regulations enacted during the COVID era to argue that such measures have been sustained against similar constitutional challenges. Finally, he asserted that the initiative power is

¹⁰ 438 U.S. 104 (1978)(“*Penn Central*”).

co-extensive with the Council’s legislative authority and that the absence of legislative findings does not render the measure invalid. For these reasons, he asked that the Board conclude that the Measure presents a proper subject for initiative.

After hearing all testimony, the Board indicated that it would provide Mr. Sandler the opportunity to submit a written response to the objections raised, and that the Opponents would be able to review that response and comment in writing further. The Board also requested that the Board’s General Counsel seek supplementary advisory opinions from the OAG and the CGC that would address the constitutional objections raised. The Board then voted unanimously to enter into closed session pursuant to a roll call vote in accordance with D.C. Official Code §§ 2-575(b)(4A) and (13) regarding the matter to take it under advisement pending the submission of any supplementary filings with respect to the question of constitutional objections raised to the Measure, including any supplemental advisory opinions submitted by the OAG and the CGC. The Board indicated that it would reconvene on the matter on another date.

On March 9, 2026, Mr. Sandler submitted a Proposer’s Memorandum of Law in support of the Measure, and on March 16, 2026, the Opponents submitted replies thereto. On March 23, 2026, the CGC indicated that her office decided to decline submitting further comments. On March 24, 2026, the OAG provided a supplementary advisory opinion on the Measure, finding that, because Section 2 of the Measure is not patently unconstitutional, it would be unwarranted for the Board to reject it on constitutional grounds.¹¹

¹¹ Letter from Brian Schwalb, Att’y Gen., to Terri Stroud, Gen. Counsel, Bd. of Elections, on Proposed Initiative, “DC Housing Modernization and Accountability Act of 2026” (March 24, 2026).

On March 30, 2026, the Board posted notice that its regular monthly meeting would be held on April 1, 2026 in accordance with its practice of meeting on the first Wednesday of each month. The notice included the agenda for the meeting, which indicated that the Board would continue its determination of whether the Measure presented a proper subject for initiative. At its regular meeting on April 1, 2026, the Board opened the meeting by voting to exit closed session. At the point in the agenda that the Board was to resume its consideration of the Measure, the Board Chair moved that the Board approve the Measure on the ground that it presents a proper subject matter, noting that the supplemental advisory opinion provided by the OAG indicated that the Board is warranted in rejecting a measure on constitutional grounds only if it is patently unconstitutional. The motion was duly seconded and passed unanimously pursuant to a roll call vote.

Analysis

The term “initiative” refers to the process by which the voters of the District of Columbia may propose certain laws. The District’s statutory framework establishes this Board as the gatekeeper of the initiative process. A threshold Board determination in that process is whether the proposed initiative meets “proper subject” requirements. D.C. Official Code § 1-1001.16(b). The Board’s regulations concisely state the statutory and legal proper subject requirements for proposed initiatives:

A measure does not present a proper subject for initiative . . . and must be refused by the Board, if:

- (a) The measure presented would violate the Home Rule Act;
- (b) The measure presented seeks to amend the Home Rule Act;
- (c) The measure presented would appropriate funds;
- (d) The measure presented would violate the U.S. Constitution;
- (e) The statement of organization and the report(s) of receipts and expenditures have not been filed with the Office of Campaign Finance;

- (f) The form of the measure does not include legislative text, a short title, or a summary statement containing no more than one hundred (100) words;
- (g) The measure authorizes or would have the effect of authorizing discrimination prohibited under the Human Rights Act of 1977 or any subsequent amendments; or
- (h) The measure would negate or limit an act of the Council enacted pursuant to § 446 of the Home Rule Act [“Enactment of Local Budget by Council”].

3 DCMR § 1000.5. In applying these restrictions on initiative proposals, “[w]e are required to construe the right of initiative liberally . . . and may impose on the right only those limitations expressed in the law or clearly and compellingly implied.”¹² We will not, therefore, interfere with the right of initiative based on speculative concerns.¹³ We are also mindful that “the power of the electorate to act by initiative is coextensive with the [DC Council’s] legislative power[,]”¹⁴ which is itself limited by the Constitution and the Home Rule Act, including the Charter.¹⁵

For the reasons set forth below, we find that the Measure presents a proper subject for initiative.

1. The Measure Constitutes a Proposed Law, and Section 4 Constitutes a Valid Provision

DCAR argues that Section 4 of the Measure, which calls upon the Council to act rather than

¹² *Hessey v. Burden*, 584 A.2d 1, 3 (D.C. 1990)(“*Hessey I*”), remanded, 615 A.2d 562 (D.C. 1994) (citations and quotations omitted).

¹³ See *In re: “Make All Votes Count Act of 2024,”* BOE Case No. 23-007 at p. 9 (July 25, 2023).

¹⁴ *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992)(“*Hessey III*”) (quoting *Convention Ctr. Referendum Comm. v. D.C. Bd. of Elections & Ethics*, 441 A.2d 889, 897 (D.C. 1981)(“*Convention Center*”).

¹⁵ D.C. Official Code § 1-203.02 (providing that “the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States.”)

directly amending the HPTF Act, does not propose a law and therefore renders the Measure defective, citing the Board’s recent decision in *In the Matter of the DC Equal Home Ownership Act*.¹⁶ We disagree. Section 4 is but one provision within an otherwise fully operative measure, each of which independently satisfies the law requirement.

A proposed measure is legislative in character if it “clearly includes an action which adopts a policy affecting the public generally and sets in motion the effectuation of that policy.”¹⁷ The Measure as a whole plainly satisfies this standard. Its sections directly amend multiple operative DC statutes and includes fixed legal requirements that take effect upon enactment and funding without any further Council authorization. These are binding legislative amendments that mandate observance. The Measure undoubtedly sets in motion the effectuation of housing policy as law.

This finding is consistent with the Board’s decision in *Equal Homeownership*. There, the entire operative structure of the rejected measure depended on separate, non-funding Council authorization at virtually every step; units could only be developed “if the Council separately appropriates funds or authorizes land use,” regulations required Council approval before any unit could be offered, and the measure stated that it constituted a “statement of policy” until budgeted for. That measure, as written, could never independently compel anything, regardless of voter approval or Council funding. The instant Measure presents no such problem; its operative sections stand on their own.

Even if Section 4 is precatory, it does not invalidate the operative character of the entire Measure. A statute may contain precatory provisions alongside operative ones without losing its

¹⁶ BOE Case No. 26-005 (February 4, 2026).

¹⁷ *Hessey III*, 615 A.2d at 578.

character as a law. DC courts have recognized that an initiative may contain a “ ‘non-binding policy statement’ that revenues should be allocated for specified purposes” as part of an otherwise operative measure.¹⁸ Section 4 simply expresses the voters’ preference that the Council act; it does not condition or delay any other provision of the Measure, and it requires no Council action to trigger the Measure’s operative effects.

2. The Measure Does Not Appropriate Funds

a. Section 4 Does Not Appropriate Funds

The sole defect in the second version of the Measure was Section 4’s direct amendment of the HPTF Act to change household income thresholds, which, under *Hessey II*, constituted an impermissible appropriation because it would have reallocated special fund revenues among income categories in a manner reserved to the Council’s authority. The subject-to-appropriations clause in that measure could not cure that because, once funded, the HPTF amendment provision would still have forced the Council to allocate funds contrary to its own legislative judgment.

The revised Section 4 cures this deficiency; rather than directly amending the HPTF Act, it provides that “[t]he electors of the District of Columbia call upon the Council”¹⁹ to make those changes. This is precisely the kind of non-binding policy statement that *Hessey II* and later cases have approved. The initiative right to propose legislation that the Council could enact is “essentially

¹⁸ *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005)(“*Campaign for Treatment*”)(quoting *Hessey II*, 601 A.2d at 19).

¹⁹ See Measure, Section 2 (amending Title II of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01 through 42-3502.24)).

unfettered,”²⁰ and an initiative may contain a non-binding policy statement that revenues should be allocated for specified purposes. The revised Section 4 does not disturb the Council’s existing HPTF allocation, does not change the purposes for which those revenues are allocated, and does not force the Council to use the fund in any particular way. Whether the Council enacts corresponding legislation is entirely within its discretion.

b. Section 6 Does Not Appropriate Funds

DCAR argues that Section 6, which increases affordable housing mandates on multifamily Developments resulting from the District’s disposition of real property constitutes an impermissible appropriation because it would reduce the revenues the District could otherwise receive from property sales, thereby interfering with the Council’s revenue allocation authority. We do not agree.

Section 6 imposes regulatory requirements on private developers who acquire District property. However, it does not direct how any District revenues are spent, establish or reallocate a special fund, or mandate that the District fund any activity. The *Hessey II* line of cases prohibits initiatives that require the allocation of revenues to new or existing purposes or that interfere with the Council’s authority to establish and direct special funds. Section 6 does none of those things. It changes the regulatory conditions attached to a land disposition; what the District chooses to negotiate for its property, and whether any particular disposition occurs at all, remains within the discretion of the Council and the Mayor.

DCAR’s theory — that increasing regulatory burdens on disposed property indirectly reduces revenue and thus constitutes an appropriation — would extend *Hessey II* beyond its holding and reasoning. The court in *Hessey II* was concerned with direct interference with the

²⁰ *Hessey II*, 601 A.2d at 19.

Council’s authority to allocate revenues placed in a special fund. Collateral economic consequences affecting what the District might receive from a transaction are categorically different. No court has extended the appropriations limitation to treat indirect revenue effects of a regulatory requirement as a law appropriating funds. Additionally, to the extent that Section 6 imposes any fiscal obligation on the District, the Measure’s subject-to-appropriations clause ensures that those obligations would not take effect absent Council funding.

3. The Measure is Not Patently Unconstitutional

Opponents contend that Section 2 of the Measure is unconstitutional, arguing that it: (1) effectuates a regulatory taking without just compensation in violation of the Fifth Amendment; (2) substantially impairs existing lease agreements in violation of the Contracts Clause; and (3) imposes arbitrary and irrational economic regulations in violation of the Due Process Clause. They also assert that the absence of hardship mechanisms, legislative findings, or individualized relief distinguishes the Measure from rent regulation schemes previously upheld by the courts. For the reasons set forth below, these objections do not provide a basis for the Board to reject the Measure.

The Board’s regulations provide that it shall reject a proposed measure if it finds that the measure “would violate the U.S. Constitution.”²¹ The Board construes this obligation in harmony with the District of Columbia Court of Appeals’ guidance covering pre-election constitutional

²¹ 3 DCMR § 1000.5(d).

review of proposed initiatives, which is derived from its rulings in *Hessey v. Burden*²² and *Committee for Voluntary Prayer v. Wimberly*.²³

In *Hessey III*, the court surveyed approaches to pre-election constitutional review of proposed initiatives and identified two competing lines of authority. The majority rule treats constitutional challenges to proposed initiatives as unripe prior to adoption, reflecting the principle that courts should not pass on the validity of legislation that does not yet exist and whose effects remain speculative. A minority of jurisdictions permits pre-election review in limited circumstances, reasoning that the right of initiative does not extend to unconstitutional measures and allowing review where a proposed measure is patently invalid and proceeding to an election would constitute a futile expenditure of public resources. In these jurisdictions, courts have operationalized that principle by confining pre-election review to cases where the proposed measure is “unquestionably and palpably unconstitutional on its face”²⁴ or “clearly invalid on its face[.]”²⁵

Drawing on these authorities, the court in *Hessey III* stated that “*the [election] statute [does not] require[] either the Superior Court or the Board to entertain and rule on constitutional challenges before an election[,]*”²⁶ but recognized that

there may be extreme cases in which it would be both appropriate and efficient to decide the constitutionality of a proposed initiative. An initiative proposing to

²² 615 A.2d 562 (D.C. 1992)(“*Hessey III*”).

²³ 704 A.2d 1199 (D.C. 1997)(“*Wimberly*”).

²⁴ *State v. Murray*, 394 P.2d 761 at 765 (Mont. 1964).

²⁵ *Dulaney v. City of Miami Beach*, 96 So.2d 550, 551 (Fla. Dist. Ct. App. 1957).

²⁶ *Hessey III*, 615 A.2d at 574 (emphasis added).

establish an official religion in the District of Columbia, for example, would be patently unconstitutional. If someone proposed such a measure for submission to the voters, *the Board* and the Superior Court might well decide to classify it as an improper subject before public funds are spent on an election.²⁷

In *Wimberly*, the court reaffirmed this framework and emphasized that pre-election constitutional review is generally “imprudent” and “in the great majority of cases[,]” both the courts and the Board should “decline to consider pre-election challenges to the constitutionality or legality of an initiative.” Such review should be “very sparingly exercised” and reserved for the “truly extreme case[,]” where, for example, a proposed measure “would be patently unconstitutional.”²⁸

Consistent with the guidance provided by *Hessey III* and *Wimberly*, the Board construes and applies 3 DCMR § 1000.5(d) so as to permit refusal of a proposed initiative measure on constitutional grounds only where the measure is patently unconstitutional, *i.e.*, where a constitutional defect is apparent on the face of the measure and clearly established by binding judicial precedent. The Board’s role at this stage is not to resolve close or fact-dependent constitutional questions, but rather to determine whether a measure presents the type of clear and unequivocal constitutional violation contemplated by *Hessey III* and *Wimberly*.

Because the Measure has not yet been enacted or applied, the Board’s review at this stage is properly limited to whether the Measure is facially unconstitutional, as opposed to whether it would be unconstitutional as applied. That limitation reflects settled principles of judicial restraint:

²⁷ *Id.* (emphasis added)

²⁸ *Wimberly*, 704 A.2d at 1201-1202 (quoting *Hessey III*, 615 A.2d at 574).

facial challenges rest on generalizations about a law’s operation and require courts to avoid hypothesizing “imaginary” applications not grounded in a developed record.²⁹ Such challenges “impose a heavy burden on the parties and rarely succeed[. . .] because ‘a plaintiff can only succeed in a facial challenge by ‘establish[ing] that no set of circumstances exists under which the [a]ct would be valid.’”³⁰ Moreover, “facial challenge[s] must fail where the statute has a ‘plainly legitimate sweep.’”³¹ The Measure, which regulates residential rent increases in specific circumstances, certainly has such a “plainly legitimate sweep.”

The threshold question, therefore, is not whether the Opponents have raised substantial constitutional objections, but whether those objections demonstrate that the Measure is patently unconstitutional on its face under controlling precedent. They do not. As the OAG notes in its supplementary advisory opinion, the Opponents have not

cited[] any case law holding that a temporary prohibition against increasing rents for residential tenants is a facial violation of the Takings Clause, Contracts Clause, or Due Process Clause. To the contrary, courts have consistently upheld laws limiting the amount of rent that a landlord may charge a tenant against similar constitutional challenges.[³²]

In addition, each objection the Opponents raise depends on analytical frameworks that require fact-specific, context-dependent analysis and cannot be resolved by looking at the face of the Measure alone. First, with respect to the regulatory takings claims under the Fifth Amendment, those are governed by the multi-factor balancing test set forth in *Penn Central* which requires a

²⁹ *Washington State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (“*Washington State Grange*”).

³⁰ *Plummer v. United States*, 983 A.2d 323, 338 (D.C. 2009) (citations omitted).

³¹ *Washington State Grange*, 552 U.S. 442 at 444.

³² Letter from Brian Schwalb, Atty Gen. (March 24, 2026), at 3.

case-by-case examination of economic impact, interference with investment-backed expectations, and the character of the governmental action. As the Supreme Court has explained, this analysis entails “essentially ad hoc, factual inquiries” and “complex factual assessments” of a regulation’s effects.³³ Because this framework is inherently fact-intensive, it does not permit a determination at this stage that the Measure would constitute a taking in all of its applications as written. Second, Contracts Clause claims similarly require a context-dependent inquiry into whether a law substantially impairs contractual relationships and, if so, whether it is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose.³⁴ Courts have consistently upheld rent control measures against similar challenges, deferring to legislative judgments regarding necessity and reasonableness.³⁵ Opponents identify no controlling precedent that holds that a temporary residential rent freeze violates the Contract Clause on its face, and the authorities they do cite do not establish such a rule. These claims, therefore, do not demonstrate the clear conflict with controlling precedent that is required to establish patent unconstitutionality. Third, due process challenges to economic regulation are governed by rational basis review, which sustains legislation if it is not “arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt.”³⁶ The protection of tenants from housing cost instability is well-recognized as a legitimate government interest. Opponents identify no controlling authority holding

³³ *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002).

³⁴ *See Sveen v. Melin*, 584 U.S. 811, 819 (2018).

³⁵ *See, e.g., Edgar A. Levy Leasing Co. v. Siegal*, 258 U.S. 242, 249 (1922).

³⁶ *See Pennell v. City of San Jose*, 485 U.S. 1, 11 (1988).

that a measure of the kind presented fails that deferential standard, and nothing in the governing doctrine establishes that it would be invalid in all of its applications as written.

The Opponents' remaining arguments do not alter this conclusion. The absence of legislative findings does not establish patent unconstitutionality, as legislative bodies are under no obligation to articulate findings supporting their enactments.³⁷ Nor do the distinctions the Opponents draw between Section 2 and other rent regulation schemes demonstrate a clear constitutional prohibition.

Because the Opponents have identified no controlling precedent clearly establishing that the Measure is patently unconstitutional on its face, and because each constitutional objection depends on fact-based inquiries that cannot be resolved at this stage, we conclude that the Measure is not patently unconstitutional and therefore does not provide a basis for its rejection on constitutional grounds.

4. The Measure does not violate the Charter.

The Opponents argue that the Measure violates the Charter because it would usurp power that is exclusively vested in the Mayor and the Council by effectively establishing a rent-freeze regime outside of DC's established statutory and emergency authority framework and because its automatic self-executing CPI trigger would impermissibly constrain the Council's delegated discretion over rent regulation.

Liberally read, the claim that the Measure usurps powers reserved to the Mayor and the Council could fall within the scope of the prohibition on initiatives that are contrary to the Charter. It is well-settled, however, that the power of the electorate to act by initiative is coextensive with

³⁷ See *FCC v. Beach Communications*, 508 U.S. 307, 315 (1993).

legislative power.³⁸ The Opponents’ position that the Measure would impermissibly constrain the Council’s authority is therefore without merit. Further, in order to establish that the Measure violates the Charter because it interferes with powers reserved to the Mayor, the Opponents would have to demonstrate that the Council lacks the power to direct the Mayor to the same extent as the Measure would direct Mayoral action. They have not done so. Accordingly, we cannot reject this voter-proposed legislation for the reason that it conflicts with the Charter.

5. The Measure Otherwise Presents a Proper Subject for Initiative

The Measure is neutral on its face; there has been no suggestion that it authorizes unlawful discrimination. It does not seek to amend the District Charter. The Proposer has filed the required campaign finance documentation. The Measure was submitted in the proper form. In sum, all proper subject requirements are satisfied.

Conclusion

For the foregoing reasons, the Board finds that the “DC Housing Modernization and Accessibility Act of 2026” presents a proper subject for an initiative. Accordingly, it is hereby:

ORDERED that the “DC Housing Modernization and Accessibility Act of 2026” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2). The Board issues this written order today, which is consistent with its oral ruling rendered on April 1, 2026.

Dated: April 29, 2026



Gary Thompson
Chair

³⁸ See *Convention Center*, 441 A.2d at 897.