

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Brian Schwalb
Attorney General

January 15, 2026

ADVISORY OPINION OF THE ATTORNEY GENERAL

Re: Proposed Initiative, “The DC Equal Homeownership Act”

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 23, 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 “The DC Equal Homeownership Act” (“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 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 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,

¹ If the Board accepts the Proposed Initiative, in accordance with D.C. Official Code § 1-1001.16(c)(3), this Office may provide further recommendations for ensuring that it is prepared in the proper legislative form.

² D.C. Official Code § 1-204.101(a).

³ *Id.* § 1-204.103.

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

⁵ D.C. Official Code § 1-204.107.

⁶ *Id.* § 1-1001.16(a)(1).

the Board must refuse to accept it if the Board determines that it is not a “proper subject” of initiative.⁷

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.⁸

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.⁹ The Board must then adopt the summary statement, short title, and legislative form at a public meeting.¹⁰ Within 24 hours after adoption, the Board must publish its formulation and the fiscal impact statement.¹¹ 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.¹² 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.¹³

FACTUAL BACKGROUND

The Proposed Initiative would establish a policy statement regarding publicly owned housing resources and authorize a “Public Homeownership Program” through which District agencies may develop affordable “Public Homeownership Units,” subject to Council funding and authorization.

Specifically, section 3 of the Proposed Initiative would establish a “[p]olicy” that, “[s]ubject to federal law, the Home Rule Act, and Council authorization, District-owned land and public housing resources may be prioritized for publicly developed, permanently affordable homeownership rather than private-developer rental housing.” It would further provide that “[t]his

⁷ *Id.* § 1-1001.16(b)(1).

⁸ *Id.* §§ 1-204.101(a); 1-1001.16(b)(1); 3 DCMR § 1000.5.

⁹ D.C. Official Code § 1-1001.16(c).

¹⁰ *Id.* § 1-1001.16(d)(1).

¹¹ *Id.* § 1-1001.16(d)(2).

¹² *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).

¹³ *Id.* §§ 1-204.103, 1-1001.16(p)(1).

is a statement of policy only” and that it does not mandate expenditures, appropriate funds, require land use, limit Council authority, or create enforceable obligations, and that “[n]o provision has independent legal effect without separate Council action.”

Section 4 of the Proposed Initiative would authorize District agencies to develop “Public Homeownership Units” “only if the Council separately appropriates funds or authorizes land use.” These units would not require a down payment and would be priced according to an “Affordability Formula.” The Proposed Initiative defines “Affordability Formula” as:

a uniform, non-discretionary pricing methodology established by [rule] and approved by the Council designed to target, but not guarantee, a monthly housing payment substantially below prevailing market rents and approximately \$700 per month in 2025 dollars, inclusive of principal, interest, taxes, and insurance. The formula does not require District subsidies or mandatory financing.

Section 5 of the Proposed Initiative would establish requirements for “eligible purchasers” and provide for “priority consideration” for certain residents.¹⁴

Finally, section 6 would authorize District agencies to issue rules necessary to implement the Proposed Initiative as authorized by the Council and in compliance with law. Section 7 would provide that the Proposed Initiative “has no fiscal impact and is implemented only if included in an approved Council budget or plan,” and that “[o]therwise, it functions solely as a statement of policy.”

ANALYSIS

Because the Proposed Initiative does not violate any of the limitations on the use of the initiative process, we conclude that it is a proper subject of initiative.

The right of initiative “is a power of direct legislation by the electorate.”¹⁵ Accordingly, a threshold requirement for any initiative is that it must “propose [a] law[.]”¹⁶ 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.¹⁷ As the District of Columbia Court of Appeals has explained, with certain exceptions, “the power of the electorate to act by initiative is coextensive

¹⁴ We note that section 5 of the Proposed Initiative is ambiguous. It is not evident from the language on its face what the relationship is between section 5 detailing requirements for “eligible purchasers” and “priority consideration” and the rest of the Proposed Initiative. Nothing in the express language of the Summary Statement or Legislative Text states what “eligible purchasers” are eligible to purchase, or how “priority consideration” would be used. Based on the overall structure of the Proposed Initiative, however, we would construe these terms to establish a framework for determining who may purchase a Public Homeownership Unit developed under section 4.

¹⁵ *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).

¹⁶ D.C. Official Code § 1-204.101(a).

¹⁷ *Convention Ctr.*, 441 A.2d at 913 (internal citations and quotations omitted).

with the legislative power.”¹⁸ The District’s legislative power is limited by the Constitution and the Home Rule Act, including the Charter.¹⁹

1. The Proposed Initiative is legislative.

The Proposed Initiative satisfies the requirement that an initiative must propose a law. As the D.C. Court of Appeals has explained, because “the power of the electorate to act by initiative is coextensive with the legislative power[,] an initiative cannot extend to administrative matters.”²⁰ In distinguishing legislative acts from administrative matters, the Court noted that legislative power “includes an action which adopts a policy affecting the public generally and sets in motion the effectuation of that policy.”²¹ A legislative act “is the declaration and adoption of a policy and program by which affairs of general public concern are to be controlled.”²²

Construing the right of initiative “liberally,” as we must, the Proposed Initiative meets the threshold requirement of proposing a law. Section 4 authorizes District agencies to undertake a specific program: developing “Public Homeownership Units,” which may be priced and sold under an “Affordability Formula,” as those terms are defined in section 2. Under section 4(a), agencies may act “only if the Council separately appropriates funds or authorizes land use.” Section 5, as we construe it, establishes eligibility and priority criteria for determining who may purchase these “Public Homeownership Units.” It is true that the Proposed Initiative requires further Council legislative action before District agencies may carry out this program, and that whether the Council acts is entirely within its discretion. However, the Proposed Initiative establishes basic parameters of the program and designates District agencies as responsible for carrying out aspects of the program. This is sufficient to “set[] in motion the effectuation of th[e] policy” that the Proposed Initiative establishes.²³

2. The Proposed Initiative does not appropriate funds.

The Proposed Initiative also does not violate the Home Rule Act’s express prohibition against initiatives appropriating funds.²⁴ 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.’”²⁵ Although the right of initiative must be

¹⁸ *Hessey v. Burden*, 615 A.2d 562, 578 (D.C. 1992) [hereinafter *Hessey II*] (quoting *Convention Ctr.*, 441 A.2d at 907).

¹⁹ D.C. Official Code § 1-203.02.

²⁰ *Hessey II*, 615 A.2d at 578.

²¹ *Id.* (quoting *Woods v. Babcock*, 185 F.2d 508, 510 (D.C. Cir. 1950), vacated as moot *sub nom. City of Los Angeles v. Woods*, 340 U.S. 908 (1951)).

²² *Woods*, 185 F.2d at 510.

²³ *Hessey II*, 615 A.2d at 578 (quoting *Woods*, 185 F.2d at 510); *see also Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1176 (Alaska 1985) (noting that initiative’s provisions “establish a public policy and they make it the chief executive’s duty to carry that policy out,” and that “[t]hey are a solemn expression of legislative will, and that is what law is all about”).

²⁴ D.C. Official Code § 1-204.101(a).

²⁵ *D.C. Bd. of Elections & Ethics v. District of Columbia*, 866 A.2d 788, 795 (D.C. 2005) (“*Campaign for Treatment*”) (quoting *Dorsey v. D.C. Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (internal citations and quotations omitted)).

construed broadly, the court has construed this limitation to prohibit an initiative that would compel the allocation of funds to carry out mandatory provisions.²⁶

“Initiatives can, however, ‘propose authorizing legislation that the Council could enact,’ . . . or ‘contain[] a non-binding policy statement that revenues should be allocated for specified purposes.’²⁷ 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.²⁸ In recounting the legislative history of the “laws appropriating funds” limitation, the court has observed that the Council intended “that the citizens by initiative could create a[] [new program] but could not also fund it. Once a program or activity was authorized, it was for the Council initially to determine in the budget process whether and what amount of revenue would be dedicated to that program or activity.”²⁹ Thus, according to the court, “[t]he initiative right to propose authorizing legislation that the Council could enact is essentially unfettered.”³⁰

The Proposed Initiative does not violate the Home Rule Act’s prohibition against measures appropriating funds because it expressly makes all steps to implement the program contingent on the Council separately providing authority and appropriations. None of its provisions “impose . . . mandatorily-phrased obligations upon [the District government] to effectuate its goals.”³¹ Section 3, by its express terms, “is a statement of policy only.” Moreover, although section 4 of the Proposed Initiative authorizes District agencies to develop a “Public Homeownership Program” with respect to this policy, it conditions the program’s implementation on separate Council “fund[ing] or authoriz[ation].” And section 6 permits District agencies to issue rules implementing the Public Homeownership Program only with Council authorization. These rules are necessary to establish the “Affordability Formula,” which is a prerequisite for implementing the Public Homeownership Program. Therefore, even the provisions in the Proposed Initiative that purport to authorize a new program do not by themselves authorize the District to do anything in the absence of further Council legislative action. Finally, section 7 makes the entire Proposed Initiative subject to appropriations.³² Thus, even if the Office of the Chief Financial Officer determines that the Proposed Initiative would have unbudgeted costs, the measure by itself cannot compel the allocation of funds because it would require the Council to appropriate funds for it to take effect.³³

²⁶ *Id.* at 795–796.

²⁷ *Id.* at 795 (internal quotations omitted) (quoting *Hessey v. D.C. Bd. of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991) [hereinafter *Hessey I*] (en banc)).

²⁸ *Hessey I*, 601 A.2d at 12.

²⁹ *Id.*

³⁰ *Id.* at 19.

³¹ See *Campaign for Treatment* at 796.

³² In our attached recommended language, as a technical change, we have suggested conforming the subject-to-appropriations provision the Council’s drafting style. See Office of the Gen. Counsel, Council of the Dist. of Columbia, *Legislative Drafting Manual* § 5.3.4 (2019), available at <https://dccouncil.gov/wp-content/uploads/2019/02/Legislative-Drafting-Manual-2019-Edition-FINAL.pdf>.

³³ See *Campaign for Treatment*, 866 A.2d at 797 (opining that initiative would be a proper subject if it “condition[ed] . . . compliance with its dictates upon funding by the Council” by being subject to appropriations).

CONCLUSION

For the reasons above, it is the opinion of this Office that the *DC Equal Homeownership Act* is a proper subject of initiative.

Sincerely,



Brian L. Schwalb
Attorney General for the District of Columbia

SHORT TITLE

The DC Equal Homeownership Act

SUMMARY STATEMENT

This initiative establishes a nonbinding statement of policy that, when separately authorized by the Council of the District of Columbia and permitted by law, District-owned land and public housing resources may be used for publicly developed, affordable homeownership instead of private rental housing. It also allows District agencies, only with Council approval and funding, to develop and sell for-sale housing on District-owned land with no required down-payment using an affordability formula intended to target monthly payments of \$700 in 2025 dollars. This initiative does not appropriate funds or create any entitlement.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “DC Equal Homeownership Act”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Public Homeownership Unit” means a for-sale residential housing unit constructed on District-owned land and sold pursuant to this Act, only if separately authorized by the Council.

(2) “Affordability Formula” means a uniform, non-discretionary pricing methodology established by rule and approved by the Council, designed to target, but not guarantee, a monthly housing payment substantially below prevailing market rents and approximately \$700 per month in 2025 dollars, inclusive of principal, interest, taxes, and insurance. The formula does not require District subsidies or mandatory financing.

(3) “Eligible Purchaser” means District resident meeting eligibility requirements under section 4.

(4) “Priority Consideration” means a nonbinding regulatory preference that does not guarantee selection, create a right to housing, establish an entitlement, or condition eligibility on political activity.

Sec. 3. Policy regarding public housing resources.

(a) Policy: Subject to federal law, the Home Rule Act, and Council authorization, District-owned land and public housing resources may be prioritized for publicly developed, permanently affordable homeownership rather than private-developer rental housing.

(b) This is a statement of policy only. It does not:

- (1) Mandate expenditures;
- (2) Appropriate funds;
- (3) Require land use;
- (4) Limit Council authority; or
- (5) Create enforceable obligations.

(c) No provision has independent legal effect without separate Council action.

Sec. 4. 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.

Sec. 5. Eligibility and priority consideration.

(a) **Eligibility:** Eligible Purchasers are District residents who:

(1) Are first-time homebuyers

(2) Have completed approved homeownership counseling

(b) **Permissible Priority Consideration (nonbinding, place-based, safe):**

(1) First-time homebuyers who have resided in the District since before January 1, 2000;

(2) Residents who currently live in, or previously lived in, neighborhoods that experienced historic housing discrimination, redlining, or sustained disinvestment, as defined by rule;

(3) Former District residents involuntarily displaced due to rising housing costs or redevelopment;

(4) Residents with demonstrated housing need (cost-burdened, overcrowded, housing-insecure);

(5) Residents who served as essential workers during the COVID-19 public health emergency; and

(6) Any additional categories established by rule consistent with this act.

(c) **Political Neutrality:** Priority cannot be conditioned on political activity, petition participation, or First Amendment exercise.

(d) **No Entitlement:** Priority does not create a right to housing or private action.

Sec. 6. Implementation and rulemaking.

District agencies may promulgate rules necessary to implement this Act only after Council authorization and in compliance with existing law.

Sec. 7. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

(d) Otherwise, this act functions solely as a statement of policy.

Sec. 8. Effective date.

This act shall take effect after 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.