

Memorandum

To: The Honorable Phil Mendelson, Chairman, Council of the District of Columbia

From: Jenny Reed, Policy Director, DC Fiscal Policy Institute

Date: December 13, 2012

Subject: DC Council Rules and Procedures Recommendations for Council Period Nineteen

We are writing to submit suggestions for changes to the DC Council Rules and Procedures for Council period twenty. This memorandum outlines proposed changes to the Council of the District of Columbia's rules and procedures to enhance the transparency of the Council's operations and public access to information during the upcoming council period. The recommendations are supported by the following organizations:

Organizations

- Capital Area Food Bank
- Children's Law Center
- DC Alliance of Youth Advocates
- D.C. Employment Justice Center
- DC Environmental Network
- DC Fiscal Policy Institute
- DC Jobs Council
- DC Jobs with Justice
- DC Open Government Coalition
- DC Statehood Green Party
- Defeat Poverty DC
- Fair Budget Coalition
- Healthy Families/Thriving Communities Collaborative Council
- Metropolitan Washington Council, AFL-CIO
- Miriam's Kitchen
- Sasha Bruce Youthwork
- The Arc of District of Columbia
- Quality Trust for Individuals with Disabilities
- Washington Legal Clinic for the Homeless
- We Are Family

Individuals

- David Schwartzman
- Janet Brown
- Mary Levy

The recommendations are centered around eight major categories; hearing/roundtable procedures, hearing/meeting logistics, the budget process, the legislative process, John A. Wilson building access and use, public access to information, open meetings, and council structure. In most instances, additional resources should not be required to carry out the suggested changes. However, we recognize that some of the suggestions could require additional resources, or technology, and that the District has limited resources at this time. If resources are not available to carry out some of the suggested changes, we urge you to consider revisiting those recommendations for the following Council period.

If you have any questions concerning the recommendations please contact Jenny Reed, Policy Director, DC Fiscal Policy Institute at reed@dcfpi.org or 325-8812.

On behalf of the supporting organizations and individuals, thank you,

Jenny

Jenny Reed
Policy Director

DC Fiscal Policy Institute
reed@dcfpi.org
202-325-8812

HEARING / ROUNDTABLE PROCEDURES

1. Require Committees to provide 5 business days' notice to the public for:
 - a. Roundtables
 - b. Mark-ups
2. Require that all hearing/roundtable notices clearly state:
 - a. The process for individuals to request interpretation services in accordance with D.C. Official Code § 2-1902(d)¹ and to request accommodations in accordance with the federal *Americans with Disabilities Act of 1990*². Clarify that providing additional time for testimony is a valid form of accommodation;
 - b. The process for securing copies of witnesses' testimony from a Committee after the hearing has concluded
3. In order to improve the ability and process for a member of the public to testify at a hearing and/or roundtable, require all Committees to:
 - a. Confirm receipt of all requests to testify within 2 business days;
 - b. Establish a process so that the public can get notice about scheduled, rescheduled or cancelled Committee meetings from the Secretary at same time as committee members and that there be, at a minimum, 24-hr notice.
 - c. Establish a process for members of the public (or, at a minimum, witnesses) to see the witness list prior to the hearing. For example, witness lists could be posted to the Committee web site or could be emailed to all registered witnesses;
 - d. Encourage witnesses to submit electronic copies of their testimony prior to a hearing, in addition to a written statement. This would be consistent with paperwork reduction initiatives in other jurisdictions and would increase access for individuals who may not have the resources to make photocopies;
 - e. Establish a process and guidelines for individuals to testify anonymously, to accommodate domestic violence survivors and similar situations;
 - f. Allow substitution of witnesses upon request; and

¹ D.C. Official Code § 2-1902(d): "Whenever a communication-impaired person is a witness before any legislative committee, the appointing authority conducting the proceeding may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person."

² Effective July 26, 1990, 104 Stat. 327, 42 U.S.C. § 12101 et seq.

- g. Ensure that interpretation services are available and that Committee staff know how to help witnesses and members of the public access these services.
4. Require a review of the committee print by the Office of General Counsel prior to the committee mark-up to ensure technical and legal sufficiency.
5. Require that for all legislation a fiscal impact statement, completed by the Office of the Chief Financial Officer, be prepared and made available at the time a public hearing notice is provided.
6. Require that draft committee reports and draft committee prints be circulated to committee members and available to the public at least two working days before the committee mark-up.
7. Require that all testimony, documents, and materials obtained by a committee in connection with consideration of a bill or resolution, be (i) identified to the public (ii) made available to the public and (iii) made part of the report on a bill or resolution adopted by the committee.
8. Require Committees to generate reports annually on their activities, rather than biennially.

HEARING / MEETING LOGISTICS

1. Balance the need for long hearings with the public's desire to be present at hearings by:
 - a. Limiting the length of public hearings to seven hours, and prohibiting hearings from running past 9:00 p.m. Hearings that need to go longer than seven hours or past 9:00 p.m. should be spread over two days; and
 - b. Requiring a 30 minute lunch break during long hearings, Committee meetings and legislative hearings.
2. Have a TV showing the hearing proceedings in one of the break rooms (e.g., the vending room on the 4th floor, or some other room) so that people who are attending a hearing can have a snack or quiet conversation and still monitor the hearing.
3. Designate a room that can be used for child care/babysitting for witnesses during public hearings.
4. Ask the Office of Cable Television and Telecommunications to provide hearings in an MP3 format for podcasts and Smartphone use.

BUDGET PROCESS

1. Legislative provisions which address programmatic initiatives not directly related to or in support of the fiscal year budget should be prohibited from enactment through the annual Budget Support Act.

2. Require that all documents that will be reviewed/acted on by the full Council as part of the approval of the Budget Request Act (BRA) and Budget Support Act (BSA), including, but not limited to, the Committee of the Whole Budget mark-up report, the BSA and BRA be made available to the public at least two working days prior to the legislative meeting to take action on the BRA and BSA.

LEGISLATIVE PROCESS

1. Require the Council to use “people first” respectful language when referring to individuals with disabilities in official documents, in accordance with the *People First Respectful Language Modernization Act of 2012* & *People First Respectful Language Modernization Act of 2006*;³
2. Require a roll call vote for any item on the non-consent agenda of the Committee of the Whole or a Committee;
3. Delete the provision which allows a Committee to waive the hearing requirement if a hearing was held “on the same or a similar bill in a prior Council period.”
4. Improve the transparency of the use and notice of amendments by:
 - a. Including proposed amendments as part of the original legislation’s complete record in LIMS, the Legislative Information Management System. The LIMS record should include notation of the councilmember who sponsored the amendment and action taken on the amendment—recording whether it was withdrawn, tabled, accepted as friendly or voted upon. If the amendment is voted upon, the vote tally on the amendment should be included as part of the legislation’s record.
 - b. Submitting amendments in writing to the Council Secretary prior to a full vote by the Council on the measure. The written amendment will be read aloud by the Council Secretary prior to the vote, so members as well as the public are aware of the amendment being voted upon.
5. Improve the transparency of the use and notice of emergency legislation by:
 - a. More rigorously defining the presence of emergency circumstances to minimize their use and using the emergency legislative process only if the hardship that will be caused by delays inherent in the standard legislative process substantially outweigh the hardship that will be caused by excluding the public and shortening the time for Council deliberations through use of the emergency process.
 - b. Requiring that the text of emergencies be posted in their entirety on the Council’s website for the public at the time the notice of the emergency is circulated to the members of the Council, three business days before they are to be considered by the legislature.

³ A16-438, enacted July 18, 2006; effective September 29, 2006. Act 19-361, enacted May 15, 2012; effective September 26, 2012.

- c. Clarifying the rule against successive emergencies to limit the number of times a bill can be passed as an emergency, then as a Congressional emergency, and then as an emergency again to two times.

JOHN A. WILSON BUILDING USE AND ACCESS

1. Work with the Mayor to ensure that the Wilson Building is fully accessible to people with disabilities.
2. Establish a clear process for individuals who lack photo identification to be able to enter the Wilson Building.
3. Identify a meeting room that could be used by members of the public during business hours that provides space for up to 20 people. Designate a central place to call to book the room.

PUBLIC ACCESS TO INFORMATION

1. Require that any documents submitted to, or by, the Council Committees as part of the agency performance and budget oversight process be made available to the public. For example, Committees often submit lengthy questions to agencies they oversee during the agency performance and budget oversight process. These questions and the answers to them should be made available to the public on the Council web site.
2. Require the Secretary's Log of Introductions to be available, along with the printed agenda, to the public at the beginning of a Legislative session or Committee of the Whole meeting.
3. Require the Council to provide a similar level of access to individuals with limited or no-English proficiency as is required of the Executive branch under the *Language Access Act of 2004*.⁴ As enacted, the *Language Access Act* does not apply to the Council. Ideally, the Council should adopt similar provisions in its own rules so that individuals with limited or no-English proficiency can have improved access to DC Council proceedings and documents.
4. Work with the Secretary of the Council to improve public access to important legislative documents by posting to the Council's online Legislative Information Management System (LIMS):
 - a. Require that all committee reports and mark-up reports be posted at least two business days prior to the presentation of the report at the Committee of the Whole.
 - b. Put all underlying documents on LIMS (e.g. the full text of Medicaid State Plan Amendments, supporting documents for contract approval resolutions, supporting documents for reprogrammings, full text of amendments, fiscal impact statements, tax abatement financial analyses, etc.); and

⁴ Law 15-167, effective June 19, 2004, D.C. Law 15-167, D.C. Official Code § 2-1931 *et seq.*

- c. Require that all documents be posted on LIMS within one business day of filing with the Secretary
5. Establish a comprehensive citizen outreach strategy that not only improves methods for providing notice of hearings, but includes additional ways of increasing public awareness of, and involvement in, Council activities. For example, in addition to current methods for providing notice of public hearings, provide notice in newspapers, on District cable television at regular intervals, on the Council web site, through an e-mail distribution list, through Twitter, and on a recorded telephone message.
 6. Establish a process for allowing members of the public to sign up for notices by Council Committee. This would allow members of the public to receive timely information on hearings, roundtables and mark-ups, as well as changes to scheduled Committee meetings for those Committees they are interested in. All too often, mark-ups, roundtables or other Committee events are called or re-scheduled without timely notice to the public.
 7. Fees established for public access to records should track FOIA fees. See D.C. Code (2001) § 2-532.
 8. Adopt a binding rule directing that” (1) all government business engaged in by Members via email or other electronic means shall be communicated via the Council's email and not through Members' private accounts, and (2) where Council email is not available and a message must be sent on government business, Members shall send a copy to their Council email address.” Additionally, the rule should provide that “the Council will deem that all government business communicated on a Member's private email account will be considered subject to the Freedom of Information Act and are subject to search and production if covered by a FOIA request.”

OPEN MEETINGS

Suggestions #1 and #2 below to make changes to improve public access to Council meetings come from the Open Meetings Act, D.C. Code § 2-571, *et seq.*

1. Require that an executive session is only permitted for discussion of specific subjects listed below: (Rule 306)
 - a. A meeting, or portion of a meeting, may be closed for the following reasons:
 - (1) A law or court order requires that a particular matter or proceeding not be public;
 - (2) To discuss, establish, or instruct the Council’s staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;
 - (3) To discuss, establish, or instruct the Council’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

(4) (A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and the Council, or to approve settlement agreements; provided, that, upon request, the Council may decide to waive the privilege.

(B) Nothing herein shall be construed to permit the Council to close a meeting that would otherwise be open merely because the attorney for the Council is a participant;

(5) Planning, discussing, or conducting specific collective bargaining negotiations;

(6) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

(7) To discuss disciplinary matters;

(8) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;

(9) To discuss trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(10) To train and develop members of the Council and staff;

(11) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

2. The rules that allow the council to close meetings for good cause should be amended to specifically state when meetings can be closed and should track D.C. Code § 2-577(c), (d) and (e).
3. Testimony and discussion in executive session should be made public when the relevant exemption no longer applies, and should not require a vote to be made public. In addition, witnesses should not be given the opportunity to redact the record before disclosure.

COUNCIL STRUCTURE⁵

The current Council committee structure has led to certain unintended negative consequences. The most critical unintended consequence for the public is that committees do not truly function as *committees*. Instead, the appointed Chair of the committee is very often the sole acting member of the committee. Other members of the committee play a very limited role in the legislation and oversight that is conducted through committees of which they are not chairs. This unintended consequence should be addressed.

The Fair Budget Coalition (FBC) has identified several ways to address this concern:

- Reduce the number of committees, so that not every Councilmember chairs one.
- Name co-chairs of each committee, who work together to address the committee's business.
- Require attendance by more than just the chair at committee meetings. Most large cities have quorum requirements for committee meetings. The District currently follows this practice to a very limited extent, defining a quorum for a committee hearing as one and a quorum for a committee meeting at which a vote is taken as three. A quorum of two Councilmembers could be required for each committee hearing and/or roundtable.

This group supports the goal to identify and enact a solution to address the unintended negative consequences of the current committee structure and foster a culture that encourages full participation in committee hearings.

⁵ The DC Open Government Coalition takes no position on the recommendations around Council Structure