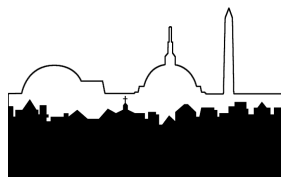
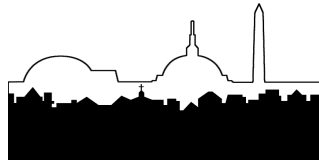

DC APPLESEED CENTER REPORT

OPERATIONAL REFORM OF THE DISTRICT OF COLUMBIA COUNCIL: A FIX-IT-YOURSELF MANUAL

February 1999



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DC APPLESEED CENTER

The DC Appleseed Center is a nonprofit public interest organization dedicated to addressing systemic management and financial problems of the District of Columbia. The solutions DC Appleseed presents to the public, civic leaders, and government representatives are based on nonpartisan analysis and include concrete proposals for change. DC Appleseed is one of a number of local centers across the country fostered by The Appleseed Foundation.

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EXECUTIVE SUMMARY

In the Home Rule Act of 1974, Congress established the District of Columbia Council as an elected legislature with responsibility for passing laws, adopting an annual budget, and overseeing operations of the executive branch and independent agencies. This broad mandate ensures that the D.C. Council significantly affects virtually every aspect of the District government, from law enforcement to public education to economic development. Until very recently, however, efforts to make the District government work better have focused almost exclusively on executive and independent agencies. Little has been said about how the operations of the D.C. Council might be improved.

For that reason, the DC Appleseed Center began, in late 1997, to examine the Council's operations. To do so, we assembled a Project Team that included individuals knowledgeable about the operations of the D.C. Council and legislatures elsewhere. The Project Team gathered data on how other city councils operate; interviewed community members as well as advocates who deal with the Council regularly; and studied the rules governing the Council's operations.

We concluded that there are major shortcomings in the operations of the Council. If the Council is to maintain its position as an equal branch of government, it must increase the clarity of its legislation, communicate more productively with the public, perform more meaningful oversight, and enhance Council members' access to expertise in virtually every area of the Council's operations. Above all else, the Council must improve the organization of its staff.

This report recommends changes that will enable the Council to work more effectively in each of those operational areas. While others—including the Mayor, Congress, and District residents—affect the way the Council operates, this report is about what the *Council* can do on its own, under its existing authority, to fulfill its responsibilities under the Home Rule Act. Highlights of DC Appleseed's recommendations are summarized below, followed by a full listing of recommendations contained in this report.

A. Centralize Staffing

The fundamental conclusion of DC Appleseed's study is that inadequacies in the Council's current staffing structure lie at the heart of many of the Council's operational problems. The decentralized nature of the staffing structure—in which most staff members are hired by, report to, and serve at the pleasure of individual members of the Council—favors the creation of 13 different power centers, each with its own agenda, as opposed to a work program designed to fulfill the Council's legislative responsibilities. As a result, the Council's work product is highly variable and too often poor in quality. Moreover, the staff's limited expertise in major subject areas and its lack of necessary technical skills—such as legislative oversight, policy and fiscal analysis, legislative research and drafting, and public information—constrain the Council's ability to exercise its powers effectively.

The most important difference between the D.C. Council and the 11 other city councils surveyed for this study is staffing structure.¹ For example, not one of these 11 councils follows the D.C. Council's practice of giving exclusive authority to an individual member to hire and fire staff for committees that he or she chairs. The D.C. Council has 41 committee staff positions—almost one-third of the entire staff—each of which is under the sole control of the appointing member.

DC Appleseed believes that, unless the Council changes its staffing structure to focus on the institutional needs of the legislative body, its operational problems will persist. The Council has the authority to take a major step toward curing its problems by establishing a merit-based, centralized staffing structure that does not rely on patronage. DC Appleseed offers three basic recommendations for such a system:

Provide each Council member funding for four full-time equivalent (“FTE”) positions for his or her individual office, and provide four additional positions for the office of the Council Chair (a total of 56 FTE positions).

Establish a central staff operation to meet the institutional needs of the Council, to support the work programs of the Council and its committees, and to help each Council member carry out his or her responsibilities as an elected representative. The central staff—which would be located physically outside of any member's office—would consist of 60 FTE positions, about half of all Council staff. These staff members would work in four offices: Policy/Fiscal Analysis and Research; Legislative Oversight; General Counsel; and Council Secretary. Staff members would constitute a professionally trained and qualified, non-partisan staff, many of whom would have incentives to remain in career positions, although perhaps not with the full rights and protections of the merit system.

Abolish the existing committee staff structure and use the expanded central staff to support the work of the Council committees.

The chart on the next page depicts the difference between the Council's current staffing and DC Appleseed's recommended structure.

¹ While the D.C. Council has responsibilities of both a state and a city legislature, DC Appleseed chose to compare the D.C. Council to other city councils (rather than state legislatures) because the Council's *operations*—the subject of this report—are much more like those of a city council. Those similarities are detailed in Appendix I to the report.

**Accountable only
to Individual
Council Members**
(total of 95 FTEs)

Individual Council
Member Staff (54)

Committee
Staff (41)

Office of the Council
Secretary (24)

Budget Office (3)

Office of the General
Counsel (8)

DC Appleseed's Proposal

Individual Council
Member Staff (56)

**Accountable
to Entire Council**

Office of the Council
Secretary (26)

Office of Policy/Fiscal
Analysis and Research (18)

Office of Legislative
Oversight (6)

Office of the General
Counsel (10)

²

We do not, of course, pass judgment on individual members of the Council or its staff because we have not performed the kind of case-by-case review that would qualify us to draw such conclusions.

Appleseed proposes several ways that the Council can provide better and more timely information to Council members and the public, including:

requiring that each bill be reviewed for legal and technical sufficiency by the Office of General Counsel *before* a Council committee votes on the bill, so that during committee deliberations Council members have the information they need to ensure that Council laws do not violate the legal rights of District residents;

preparing Fiscal Impact Statements (“FIS”) earlier in the legislative process—prior to public hearings rather than after committee consideration—and making FISs publicly available before public hearings, thereby enabling Council members and the public to consider more thoroughly the effects of legislative proposals at an early stage in the process; and

circulating a draft version of a bill to committee members at least two working days before committee consideration (as opposed to the common practice of circulating a draft only moments before a committee mark-up session) and routinely making such drafts available to the public, thereby promoting more informed debate and better constructed legislation.

C. Reduce the Use of the Emergency Legislative Process

The Home Rule Act allows legislation to be considered on an expedited basis under “emergency circumstances,” that is, when serious adverse consequences would result from the delays associated with the standard legislative process. The D.C. Council has employed its emergency powers far more frequently than anticipated in the Home Rule Act, enacting *almost half* of all legislation in recent years under truncated emergency procedures.

There are several causes for the Council’s heavy reliance on the emergency legislative process, not all created by the Council. In addition to reacting to genuine emergencies, the Council uses the emergency legislative process to respond to: (1) emergencies caused by a lengthy Congressional review process, which delays the effectiveness of Council-enacted legislation for at least six weeks, and often for much longer; (2) poor planning by the District’s executive branch, which forecloses the Council’s use of the standard legislative process; and (3) poor planning by the Council, which uses the emergency legislative process, sometimes repeatedly, in demonstrably avoidable situations.

Regardless of the cause, the effect is the same. Each time the emergency legislative process is employed, public participation is severely limited because, typically, no hearing is held and the legislation is enacted after a single reading (as opposed to two readings at least 13 days apart). As a result, the public’s views are neglected and the Council may be left unaware of important facts and perspectives that could inform its conclusions.

DC Appleseed recommends that the Council reduce its use of the emergency process by taking more care to account for the Congressional review period when planning the Council’s

legislative calendar. Specifically, the Council can decrease the number of emergency enactments by: (1) considering the likely length of the Congressional review period in its standard legislative planning process, and accommodating that review as often as possible without resorting to use of the emergency process; and (2) employing the emergency legislative process only when the hardship that would be caused by delays inherent in the standard legislative process substantially outweighs the harm that would be caused by excluding the public and limiting the time for Council deliberations. Moreover, when the emergency legislative process is unavoidable, the Council should seek at least limited public participation—through public hearings and otherwise.

D. Promote Meaningful Dialogue at Public Hearings

The Council’s conduct of public hearings is in dire need of repair. Shortcomings include insufficient and tardy public notice; inadequate public access to relevant materials (sometimes including the bill itself); failure to begin hearings on time and to explain to waiting witnesses when delayed hearings will commence; and a lack of discipline in keeping the statements of both witnesses and Council members succinct and relevant to the matter being considered. For public hearings to fulfill their central purposes of allowing the Council to gather information and encouraging the public to participate in legislative deliberations, DC Appleseed recommends several changes, including:

increasing public participation in the legislative process by providing an opportunity for public hearing before enactment of each piece of standard legislation, and abolishing “roundtables,” which serve only to reduce the amount of public notice provided before a hearing occurs;

ensuring that the public has an opportunity to participate meaningfully in the legislative process by providing the public (1) adequate notice of a hearing through various means (*e.g.*, web site, newspapers), and (2) documents containing sufficient and understandable information about the matters to be considered at the hearing, including the full text of proposed legislation, a copy of the sections of the law that are to be amended by proposed legislation, and a “plain language” summary of proposed legislation; and

conducting public hearings in a more orderly manner to encourage public participation and to promote useful exchanges of information and viewpoints, in particular by managing witness testimony through uniform and rigorous enforcement of time limits on executive branch witnesses, public witnesses, and Council members themselves.

* * * * *

The recommendations in this report (which are listed as an attachment to this Executive Summary) provide a coherent plan for improving the D.C. Council’s operations. While adopting each recommendation independently will have a beneficial effect, collectively they make even more sense. Most importantly, fundamental changes to the Council’s staffing structure are essential if the Council is to improve significantly legislation, budgets, public hearings, oversight

of executive and independent agencies, and public information.

Enacting changes is not enough to bring about reform; the Council must commit itself to implement the changes and assure that back-sliding does not occur. For example, the Council will fully realize the benefits of a centralized staff only if top-level managers who are expert in policy and oversight are hired to direct the new policy and oversight offices. Similarly, shortening time limits for witnesses and Council members at public hearings will result in streamlined hearings only if the limits are enforced.

DC Appleseed strongly believes that the Council should maintain and, indeed, expand its role as the central legislative body serving the District of Columbia, and as a co-equal branch of government along side the executive and the courts. The recommendations in this report provide the basis for significant operational reforms that will allow the Council to better fulfill its responsibilities.

Summary of Recommendations - Staffing

Recommendation 1: Provide each Council member funding for four FTEs for his or her individual office, plus four additional positions for the office of the Council Chair (a total of 56 FTE positions).

Recommendation 2: Expand the central staff to meet the institutional needs and support the work programs of the Council and its committees, to help individual Council members carry out their responsibilities as elected representatives, and to better serve the public.

Recommendation 3: Create four central staff departments located outside of Council members' individual offices, and allocate 60 full-time equivalent ("FTE") staff members among them as follows:

The Office of Policy/Fiscal Analysis and Research (18 FTEs) would include specialists in budget and policy analysis as well as subject matter experts to assist the Council and its committees in carrying out their legislative and budget responsibilities;

The Office of Legislative Oversight (six FTEs) would undertake program evaluations, management reviews, investigations, and general oversight of the executive and independent agencies;

The Office of the General Counsel (10 FTEs) would provide legislative research and drafting services and provide legal advice; and,

The Office of the Council Secretary (26 FTEs) would provide administrative services support, public information, and technological and logistical support.

Recommendation 4: Directors of the four departments would be hired by a majority of Council members, with the intent that the positions would be a long-term career positions. Staff in each department would be hired, retained, and promoted by each director on a merit-based personnel system.

Recommendation 5: Abolish the existing committee staff structure and use the expanded central staff to support the work of the Council committees.

Summary of Recommendations - Standard Legislative Process

Recommendation 6: Require that all legislation be reviewed by the Office of General Counsel before the public hearing notice is published to ensure that legislation is in the proper form.

Recommendation 7: 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.

Recommendation 8: Adopt a germaneness rule for amendments offered at the committee mark-up and at the legislative session.

Recommendation 9: Require that, for all non-consent legislation, a record be made publicly available that reflects which Council members voted for and which voted against legislation.

Recommendation 10: Codify all titles of the D.C. Code.

Recommendation 11: Require that, for all legislation, a fiscal impact statement be prepared and made available at the time public hearing notice is provided.

Recommendation 12: Improve committee reports by assigning central staff to assemble such reports according to a standard format, and including in such reports an analysis of the impact the legislation may have on non-governmental entities.

Recommendation 13: 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.

Recommendation 14: Make committee reports available to the public at a central location within one calendar week after the committee mark-up of legislation.

Recommendation 15: Prepare and make publicly available for all “breakfast meetings” (meetings that now occur immediately prior to legislative sessions) minutes that describe, in general terms, any matter on the public agenda that was discussed by a quorum of either a Council committee or the entire Council.

Recommendation 16: Hold “breakfast meetings” far enough in advance of legislative sessions (perhaps the night before) to ensure that legislative sessions begin on time.

Summary of Recommendations - Emergency Legislative Process

Recommendation 17: Minimize the use of the emergency legislative process by:

more rigorously defining the presence of emergency circumstances;

considering the likely length of the Congressional review period in the Council's overall legislative planning process; and

using the emergency legislative process only if the hardship that will be caused by delays inherent in the standard legislative process substantially outweighs the hardship that will be caused by excluding the public and shortening the time for Council deliberations through use of the emergency process.

Recommendation 18: When use of the emergency legislative process is unavoidable, utilize as many mechanisms as possible to allow at least limited public participation—including holding a public hearing.

Summary of Recommendations - Public Hearings

Recommendation 19: Require that public hearings be held prior to enacting any standard legislation. Hearings for which no witnesses sign up to testify by close of business the day before the hearing should be consolidated and conducted at a *pro forma* hearing by a hearing officer.

Recommendation 20: Strictly follow Council rules that provide for at least 15 days' public notice; and require that any shortening of the notice period be accompanied by at least two days' advance notice with an explanation of good cause for shortening the notice period.

Recommendation 21: Abolish "roundtables" because the only apparent difference between a roundtable and a public hearing is that no public notice is required for roundtables.

Recommendation 22: 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.

Recommendation 23: 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, and on a recorded telephone message.

Recommendation 24: Develop a pamphlet describing the public hearing process, distribute it to witnesses at hearings, and make it available at public libraries, at the Council's information office, and on the Council's web site.

Recommendation 25: Provide the following materials at the time of hearing notice: (1) the full text of each bill, (2) copies of each section of existing law that will be amended by the bill, (3) a "plain language" summary of the bill, and (4) a fiscal impact statement.

Recommendation 26: Require a quorum of two Council members to commence a committee hearing and a quorum of one for a hearing to continue.

Recommendation 27: Commence hearings on time.

Recommendation 28: Manage witness testimony more effectively by strengthening and enforcing rules on time limits and germaneness.

Recommendation 29: Recess to another day hearings that extend for more than four hours.

Recommendation 30: Improve the manner of selecting which hearings are broadcast on District cable television.

Recommendation 31: Expand information provided during District cable television broadcasts of Council hearings by routinely identifying speakers and the subject and date of the hearing.

Recommendation 32: Explore methods for better preserving the hearing record, including written transcripts and video-taped recordings.

Recommendation 33: Lower the dais in the Council chambers.

APPENDIX III: Focus Group Summary and Participant Descriptions

On November 17, 1998, the DC Appleseed Center held a focus group of nine District residents who have each testified before the D.C. Council once or a few times, but none of whom have testified frequently. As described in the Methodology section of this report (*see* Appendix I at I-5), the group represented a cross-section of District residents. The focus group was moderated by Peter Szanton, a nationally known mediator, and by Joshua Wyner, DC Appleseed's Executive Director. A summary of the discussion and a more detailed description of each participant follows.

I. PRE-PUBLIC HEARING

Notice. Participants are frustrated by the system for giving notice of public hearings. There was consensus that the notice process does not seem to be designed to reach the average citizen. Citizens must be affiliated with a well-functioning organization or have a relationship with Council staff members in order to reliably receive notice of meetings. The *D.C. Register* was not deemed an adequate source of notice. Only one participant subscribes to the *Register*, while most participants did not know about the existence of the *Register*.

Participants believe that notice is often too brief, with mailings coming only days before the hearing. The participants felt that this short notice period favors professional lobbyists, who are much better situated to prepare testimony and gather supporters on an accelerated basis.

In order to improve notice, participants agreed that notice should be:

- ^ placed in local daily, weekly, and monthly newspapers;
- ^ put on the Council's web site (and that the web site should include the entire *D.C. Register*);
- ^ available by telephoning a central phone number; and,
- ^ distributed through mailings and by e-mail to interested parties.

The Council should also distribute notice to a wider set of organizations, such as civic associations, and should more regularly notify Advisory Neighborhood Commissioners.

Materials. There was a sense that bills are usually available to the public upon request, but that more could be done to let the public know what information is available and where it can be found. One participant had received bills from the Office of Legislative Services ("OLS") and described this office as reliable, but also mentioned that OLS occasionally runs out of copies, and, rather than making a copy when requested, asks citizens to return later. Most participants did not know about the existence of OLS. Another participant stated that witnesses who know a committee staff member can call and have a copy of a bill sent by facsimile.

Testimony. Only one participant was asked by staff before a hearing to explain what he would testify about. In all other cases, the participants stated that the Council staff had not asked for such information.

II. HEARING PROCESSES

There was consensus that, although Council members and staff are individually accessible in the District, the Council process is not geared towards the public. As a result, many focus group participants reported feeling “insulted” at some point during the process.

Arrival at the chambers. The participants expressed concern that the hearing process is designed for those who testify frequently. Participants reported that, when arriving at the Council chambers to testify for the first time, they did not know what to do or where to go. One participant compared this to testifying at the Prince George’s County Council, which routinely provides instructions and materials to witnesses. To facilitate better understanding of the legislative process, participants recommended that:

- ∞ in each public hearing notice, the Council identify a resource for readily available background information (such as a pamphlet) on how hearings are organized and how witnesses should prepare; and
- ∞ the Committee Chair begin hearings with a description of the stage of the legislative process that a proposal is presently in, so that witnesses understand their role in the process.

The participants all felt that the Council does not provide enough information to the public at the hearings. The Council puts witness lists and other information on a side table, and rarely has enough copies for all participants. This was compared to Prince George’s County, where plenty of materials are provided at an obvious location.

Participants expressed the opinion that the Council should not ask witnesses for 15 copies of written testimony. This request puts a hardship on many citizens who do not have access to a copier. The Council should make it as easy as possible for the public to testify, and thus, should only ask witnesses to bring in one copy of their testimony and the Council should make enough copies to distribute to the public and Council members.

Executive. There was consensus that the hearings are not arranged to facilitate the testimony of citizens. Executive-branch officials typically speak first and are given a virtually unlimited amount of time to speak. Public witnesses must wait (often for hours) to testify until the executive representatives finish. Participants agree that this process gives citizens the impression that they are not important. Participants also expressed concern because agency representatives rarely stay to listen to the public.

While there was general consensus that the executive should speak first, one participant disagreed, stating that, in order to be fair, all witnesses, including the executive, should be placed in a lottery for position on the witness list. However, the group agreed with one participant's suggestion that the executive should be limited to approximately 30 minutes at the start of the hearing and should speak again at the end of a hearing to respond to public concerns.

Waiting time. No participant had ever waited less than an hour to testify, and most had waited far longer. Participants stated that they generally do not know when they will speak, and they just sit and wait.

Council members' attendance. The participants noted that the Council members do not stay at hearings for very long, and felt strongly that stringent quorum requirements should be established. Participants stated that, after the executive testifies, Council members often leave. A few participants reported occasions when they were speaking only to the cameras, leaving the impression that the Council members simply do not care about the public's testimony.

Quality of hearings. Members of the group expressed the opinion that the Council rarely appears to be in an information gathering mode during hearings, and instead appears to be just going through an exercise; the Council members have made up their minds, and are just providing time for the public to "vent." Three participants, however, had attended extremely useful hearings in which the Council members appeared to listen to the public and learn from the process. After citing examples, the group concurred that hearings are useful and productive when the subject is simple, and the positions are easily defined. Examples presented of well-run hearings include those on the possible closing of Eastern Market, and on the construction of the Barney Circle Freeway. In each of these, witnesses were described as well-prepared and organized, and Council members as attentive. The group surmised that the Council has more difficulty at hearings on more complex issues, such as police redistricting and tax legislation.

Time limits. Participants stated that time limits are not now, but should be, uniformly enforced. Currently, Council members will selectively allow witnesses to testify for long periods of time and will limit others to a short period. One participant mentioned that she did not know time limits existed; she attended a hearing once in which a witness spoke for 45 minutes, presenting two separate videotapes. The group agreed that a system of lights to demonstrate when witnesses are running out of time would be useful.

Council member preparation. The participants stated that Council members too often appear unprepared for hearings, and rarely ask good questions of the witnesses. Understanding that it is difficult to force Council members to prepare, the group agreed with one participant's recommendation that witnesses and the public be allowed to suggest questions to Council members. They also felt that the public should commend Council members who prepare for hearings and encourage others to follow the example. One group member recommended that committee members collectively determine the purpose of a hearing before it starts so that the hearing can be focused on the most important issues.

Post-hearing. There is little follow-up with witnesses after hearings. One witness indicated that a Council member met with her after she testified concerning the subject of her testimony. Other participants received form letters as follow-up. One participant noted that she had seen Council members ask witnesses for contact information during hearings, but had no knowledge of whether those Council members followed-up with the witnesses.

III. STAFFING

Participants had varying experiences with staff, agreeing that the quality varies a great deal between committees. Participants agreed that having a personal connection with staff makes it easier to receive materials. When a personal connection does not exist, participants agreed, staff members exhibited concern that any information provided to witnesses concerning a legislative proposal would be used to embarrass the Council member and, thus, very little information was offered.

One participant stated that although staff members are often bright, they don't know much about the legislative issues to which they are assigned, and don't seem to make efforts to learn. The consensus among participants was that the burden is on the citizens to approach the staff and educate them the issues.

IV. OTHER

Six of the nine participants subscribe to cable television. All of them watch Council activities on District Cable television.

Focus Group Participants:

Participant one is a D.C. government employee, a D.C. public school parent, and a PTA member who has testified twice: before the Committee on Education, Libraries and Recreation on school lunch quality, and before the Committee on Human Services about health insurance.

Participant two is an artist who testified once before the Committee on Government Operations on the status of Eastern Market.

Participant three is the executive director of a nonprofit organization who, as a representative of neighborhood and city-wide groups, has testified before the Council committees a total of six times. He testified before the Committees on Education, Libraries and Recreation; Consumer and Regulatory Affairs, and Local, Regional and Federal Affairs on the Rock Creek Park General Management Plan, the DRP budget, housing code enforcement, shuttle links and Metrorail, low-income housing needs, and zoning.

Participant four is a retired federal staff member and a member of Capitol Hill nonprofit organizations who has testified many times before the Council over the past 30 years on issues such as environment, zoning, historic preservation, and economic development. In recent years, she has testified before the Government Operations, Public Works and Environment, and Finance and Revenue Committees.

Participant five is the executive director of a nonprofit organization who has testified a total of 15 times before Council committees. She has testified before the Judiciary, Human Services, Economic Development, and Finance and Revenue Committees on issues including health mergers, McMillan Reservoir, and police department redistricting.

Participant six is a commercial real-estate appraiser who has testified twice before the Council: before the Economic Development Committee on a banking bill involving the use of licensed appraisers in D.C., and before the Finance and Revenue Committee on the proper valuation method for appraising cooperative apartments.

Participant seven is a landscape architect, a member of a number of environmental organizations, and a D.C. public school parent who has testified once before the Local, Regional, and Federal Affairs Committee on the General Management Plan for Rock Creek Park.

Participant eight is a language minority education specialist who has testified before the Committee on Education, Libraries & Recreation approximately five times on education issues, including the D.C. School of Law closing, special education, charter schools, and other issues related to language minority students.

Participant nine is a twelve year-old student at a D.C. public elementary school who has testified twice: before the Committee on Education and Libraries on school lunch quality, and before the Committee on Human Services about health insurance.

**APPENDIX IV:
The District of Columbia Council’s Standard Legislative Process**

To become law under the District’s “standard” legislative process, a legislative proposal must pass through several stages: introduction, committee review, three separate meetings of the full Council, signature by the Mayor, Control Board review and Congressional review. During this process, the bill will undergo at least five drafts: the introduced bill, the draft committee print, the committee print, the Engrossed Original, and the Enrolled Original. Each stage and draft is described below.

I. INTRODUCTION OF A BILL

A. Drafting

Only Council members may introduce legislation, although the Council must also introduce legislation that the Mayor and independent agencies submit for introduction.¹ Legislation that the Mayor or independent agencies wish to introduce must be submitted to the Council’s Secretary for a determination as to whether it is in the proper form.² If the form is approved, then the Chair of the Council is required to introduce the legislation.³ Legislation introduced by Council members is governed by the following separate requirements: it must (1) be typewritten; (2) be signed by the member introducing it; (3) include a “long title” that identifies the bill’s subject matter; and, (4) be in substantial compliance with the “form required for final adoption.”⁴

Legislation may be drafted by any of the following:

Committee Staff. Legislation drafted by committee staff is—like that drafted by individual office staff—of uneven quality. Moreover, as discussed in Chapter 1, committee chairs control the workload of committee staff, including legislative drafting assignments. While there is no written prohibition against other committee members using committee staff to draft legislation, the general practice is that such assignments must be cleared in advance with the committee chair. As a result, even a Council member who wishes to draft and introduce a bill whose subject matter is under the jurisdiction of a committee on which he or she serves, but does not chair, is likely to have that bill drafted by a member of his or her individual staff who is unlikely to be proficient in the subject matter. Compounding the problem, the bill is often not reviewed prior to introduction by a knowledgeable person on the committee staff.

¹ Council Rule 401. Pursuant to the Home Rule Act, five District agencies are independent of the Mayor’s office: Board of Elections; Zoning Commission; Public Services Commission; Armory Board; and Board of Education. Home Rule Act, Pub. L. 93-198, §§ 491-495 (1973).

² See Council Rule 401(b).

³ *Id.*

⁴ See Council Rule 442(a).

Individual Member’s Staff. Because committee staff work for the committee chair, Council members often rely on their individual office staff members to draft legislation that they wish to introduce. Although most Council member offices have a staff member with the title “legislative assistant,” those staff do not necessarily draft all the Council member’s legislation, nor are they necessarily proficient in legislative drafting. Very few individual office staff at the Council arrive at the Council with (or are provided) formal training in legislative drafting.

General Counsel’s Office. Under the Council’s rules and (DC Appleseed understands) in reality, all Council members have access to the General Counsel’s office for legislative drafting purposes. The General Counsel’s office has recognized expertise in legislative drafting and Council members rely on the office for some legislative drafting services. However, the office is not used as often or as effectively as it could be. One reason for underuse of the General Counsel’s office, according to those interviewed by the Project Team, is the limited amount of staff available for this purpose.

Lobbyists. As happens in other legislatures, lobbyists for businesses, labor, and other interest groups often draft legislation, either on their own initiative or at the request of a Council member. The degree of scrutiny given lobbyist-drafted legislation—as with all legislation—varies considerably among Council members. Indeed, the DC Appleseed Project Team was told during interviews with those who lobby the Council that some Council members will introduce, without modification, legislation drafted by lobbyists.

B. Information Accompanying Introduced Legislation

A Council member introducing legislation is required to provide only a signed original of the legislation to the Secretary; Council rules do not require bills or resolutions introduced in the Council to include any information explaining their purpose or impact.⁵ While such legislation may nonetheless be accompanied by a statement or press release, these documents tend to provide little detail or analysis of either the matter to be addressed by the legislation or the legislation itself.

By contrast, legislation transmitted by the Mayor for introduction by the Chair is uniformly accompanied by a “letter of transmittal” that explains why the legislation is needed and what the legislation seeks to accomplish. While some of those interviewed by the Project Team described these letters as helpful, others described them as containing little useful detail and analysis. Mayoral legislation is sometimes also accompanied by a report from the agency that generated the legislation or a section-by-section analysis, but is neither required nor normally provided.

⁵

See Council Rule 402(a).

II. CONSIDERATION BY A COMMITTEE

A. Information Gathering

Following introduction, a bill is referred by the Council Chair to the Council committee (or committees) that has (or have concurrent) substantive responsibility for the subject matter of the legislation. Typically, a committee will review proposed legislation and receive public comment through the formal public hearing process, although public hearings are not required. In addition, the committee will assess the position and/or concerns of the executive branch, other public entities, and Council members through informal means. During this stage, one or more “discussion” redrafts of the bill may be generated, but officially the bill remains unchanged.

B. Mark-up

When a committee chair decides to report a bill to the full Council for consideration, the committee schedules a meeting to mark up the legislation. In addition to considering proposed legislation, the committee must consider the adoption of a committee report. The Council’s rules require that a draft committee report be circulated to committee members before the committee considers a piece of legislation, unless the committee votes to waive this requirement for a particular bill or resolution.⁶ The rules do not specify the amount of time prior to a mark-up session that the draft report must be circulated.

That report, which must accompany any bill reported to the full Council, must contain at least the following information:

- ↖ a statement of the legislation’s purpose and effect;
- ↖ a chronology of action, including the date of introduction, public hearings or roundtables,⁷ and date and description of any action taken at a committee meeting;
- ↖ a detailed section-by-section analysis;
- ↖ a fiscal impact statement;
- ↖ an analysis of the legislation’s impact on existing provisions of law;
- ↖ dissenting, separate, and individual views of committee members, if a member requests the opportunity to state his or her views;
- ↖ additional information that the committee directs to be included;

⁶ See Council Rule 443(a). If there is a waiver of this requirement, the committee must vote on the draft report at a regularly scheduled, additional, or special meeting of the committee before filing the report and the reported bill or resolution with the Secretary’s office.

⁷ See Chapter 5 of this report at 45, for a description of roundtables.

- ↖ a record of the results of a voice vote or, if a roll call vote was taken, the votes for and against adoption of the legislation by the committee; and
- ↖ recorded votes on amendments made to the bill in committee.

In most instances, the committee staff prepares a draft committee print of the legislation, incorporating the committee chair's changes to the introduced version. Such changes can range from simple corrections of minor drafting errors to wholesale alterations that create, in essence, a new bill that has little in common with the introduced version other than its title and bill number. In addition, new provisions can be added to the draft committee print version of the bill that are not germane to the original subject matter of the bill introduced.

At the mark-up session, any of a committee's five members can offer amendments to the draft committee print version of the legislation. All amendments, the committee print, and the committee report are then voted on, with approval defined as an affirmative vote by a majority of a committee quorum (which consists of a minimum of three members).⁸

III. CONSIDERATION BY THE FULL COUNCIL

Normally, the full Council holds three separate meetings to consider every piece of standard legislation: Committee of the Whole ("COW") review and two readings at two separate legislative sessions.

A. The COW Session

After a committee print and committee report are approved by a committee, they are forwarded to the Secretary's office and—as long as they are "timely" filed—are scheduled for consideration at the next session of the Committee of the Whole ("COW"), which is the entire Council sitting as a committee. Legislation is neither debated nor amended at COW sessions. Rather, COW sessions are intended to provide Council members the opportunity to ask questions about legislation, to allow the Council to determine whether legislation is legally and technically sufficient, and to permit a determination as to whether legislative records are complete.⁹

The General Counsel's office reviews legislation for technical and legal sufficiency prior to COW consideration. While the General Counsel's review may be coordinated with the committee responsible for the legislation, more often, this review takes place after committee action. The general practice is for the General Counsel to prepare and circulate to all Council members a list of "technical amendments" needed to make the bill technically and legally sufficient.

⁸ Council Rules 226(b) and 304. The Chair of the Council sits as an *ex officio* voting member of all the Council's committees and may be counted towards the quorum requirement, but does not increase the quorum (Council Rule 222). Thus, the committee print of a bill and the committee report can be approved by as few as two standing committee members, or one standing committee member and the Council Chair.

⁹ The COW session may be, and often is, waived by a vote of two-thirds of Council members. See Council Rule 1003.

B. The First and Second Readings

In order to become law, all standard legislation must be approved by the Council in substantially the same form at two separate legislative sessions attended by a majority of Council members with at least 13 days between each reading.¹⁰ Council approval is defined as a vote for approval by a majority of the members present and voting. A bill approved upon first reading becomes known as the “Engrossed Original,” and is automatically referred for second reading. A bill approved at a second reading becomes known as the “Enrolled Original,” and is sent to the Mayor.

At legislative sessions, bills are grouped into two categories—consent and non-consent. Bills are placed on the consent agenda if the Council Chair believes they will be approved unanimously and without debate.¹¹ Bills placed on the consent agenda are considered twice at separate legislative sessions. Council members cast a single vote at each legislative session on all items listed on the consent agenda. Even a bill on the consent agenda may be amended by the chair of the committee that sent it to the Council if the amendment is delivered to the Secretary of the Council and circulated at the Committee of the Whole meeting.¹²

Any Council member may remove a piece of legislation from the consent agenda without consulting with other Council members. In addition, any Council member may, at the legislative session, move an item from the non-consent to the consent agenda as long as no other Council member objects.

At the first reading of non-consent agenda legislation, any Council member may offer an amendment to the committee print. Amendments may propose to alter a particular provision of the bill, add a provision to the bill, or may present an entirely new bill that simply maintains the same title and bill number—known as an amendment in the nature of a substitute. Indeed, there is no germaneness requirement for amendments offered by Council members.

When a bill is passed by the Council at the first reading, it becomes the Engrossed Original. At the second reading, the Engrossed Original is placed before Council members for a vote. As at first reading, amendments may be offered by any Council member. While there is no germaneness requirement for amendments offered at second reading, because the Engrossed Original must be “in substantially the same form” as the Enrolled Original, any substantive changes between the two will require that the Council hold a third reading, which necessitates another 13 day wait.

While the Engrossed and Enrolled Originals are prepared by the General Counsel’s office, staff of the committee that approved the legislation generally reviews and comments on

¹⁰ Home Rule Act, Pub. L. 93-198 §412(a).

¹¹ Council Rule 411.

¹² *Id.*

the versions of the bill prepared by the General Counsel. Both the Engrossed and Enrolled Originals must reflect exactly what was approved by the Council, incorporating all amendments made and adopted.¹³

C. Fiscal Impact Statements

In addition to approving the actual bill (or resolution), the Council must concurrently approve a fiscal impact statement (“FIS”) for the bill (or resolution) to be enacted. An FIS can appear either in the text of the legislation itself, in a committee report, or in a separate document presented to the Council. An FIS both (1) estimates the costs which will be incurred by the District government in each of the first four fiscal years that the act is in effect, and (2) includes the basis for that estimate. The required contents of an FIS have been greatly expanded in recent years, in conjunction with the Control Board’s responsibility for reviewing legislation adopted by the Council. Under the Council’s current rules, an FIS must include:

- ↖ a general statement of the effects the measure will have on the operating and capital budgets for the current and next four fiscal years;
- ↖ a quantitative estimate of the expenditures needed to implement the measure;
- ↖ if the measure is to be implemented within the current fiscal year, an identification of the revenues and funds currently available, or likely to be available, from existing revenue sources to implement the measure, and a statement of the extent to which current appropriations are available to finance implementation of the measure; and,
- ↖ an identification of the specific funding source to be recommended by the Council to implement the measure in any fiscal year in which the cost of implementation is estimated to exceed \$100,000.¹⁴

IV. MAYORAL CONSIDERATION

After receiving the legislation, the Mayor has ten working days to sign the bill (at which point it becomes an act) or to veto it. If the Mayor takes no action, the bill automatically becomes an act.¹⁵ If the Mayor vetoes the bill, and sends it back to the Council, the Council then has 30 calendar days—at a legislative session attended by a majority of Council members—to override the veto by two-thirds of the members present and voting.¹⁶ If the bill becomes an Act, it is assigned an act number and is transmitted to the Control Board for review.¹⁷

¹³ The General Counsel is authorized to make—on his or her own—technical changes to amendments offered at the legislative session. *See* Council Rule 263.

¹⁴ Home Rule Act, Pub. L. 93-198 § 602(c)(3), *amended by* District of Columbia Financial Responsibility and Management Assistance Act of 1995 § 301(d). *See also* Council Rule 443(c).

¹⁵ Home Rule Act, Pub. L. 93-198 §404(e).

¹⁶ *Id.*

¹⁷ Council Rule 444(b)(3).

V. CONTROL BOARD AND CONGRESSIONAL REVIEW

The Control Board has a minimum of seven calendar days to review (and, if it wishes, to reject) legislation enacted by the Council in order to determine “whether [the bill] is consistent with the applicable financial plan and budget . . . and with the estimate of costs accompanying the Act.”¹⁸ The Control Board may request an additional seven days for review, for a total of 14 days.¹⁹ If the Control Board fails to reject legislation during the review period, approval is assumed.²⁰

Next, Congress has an opportunity to reject the law during a 30 legislative day period, which must expire before a bill becomes law.²¹ If the period expires without Congressional action, the bill automatically becomes law. Because a legislative day is defined as a day that at least one house of Congress is in session and thus excludes Saturdays and Sundays,²² the review period lasts a minimum of six weeks, and, if the review period extends over a Congressional recess, can last many months. The counting stops for Congressional vacations and other breaks which can last from a few days to over a month. Also, the 30-day period must begin and end during one Congressional session. This means that, in a federal election year, unless Council legislation is submitted to Congress more than 30 workdays before the Congress adjourns, the time period will begin anew during the next Congressional session, and any time accrued during the election year will be lost.

VI. CODIFIED LAW

Once they become law, most acts of the Council are reflected in the District of Columbia Code. While the Code is the most comprehensive source of District of Columbia statutory law, it is not complete. Acts that enact or amend D.C. government regulations are not contained in the Code, but can only be found in the D.C. Municipal Regulations. Moreover, acts that have cleared Congressional review but are not yet “codified” are available only from the Council itself or through on-line computer services, such as WESTLAW. Accordingly, the text of the D.C. Code cannot be relied upon as including every provision of D.C. law.

¹⁸ District of Columbia Financial Responsibility and Management Assistance Act, 109 Stat. 100; § 203(a)(2) (1995).

¹⁹ D.C. CODE § 392.3(a)(5).

²⁰ *Id.*

²¹ D.C. CODE §§ 1-144(e) - 147(c)(1) (Supp. 1979).

²² *See* D.C. CODE § 1-147(c)(1) (Supp. 1979).

INTRODUCTION

Under the Home Rule Act of 1974, the District of Columbia was established by Congress as a separation of powers government with a “strong mayor” and an independent Council sharing power and responsibility for governing the Nation’s Capital. The office of Mayor is “strong” in the sense that it has a role separate from the Council’s—for example, the Mayor appoints city officials, may veto legislation passed by the Council, and plays a major role in fiscal decision-making. The District of Columbia Council, the focus of this report, has independent responsibilities as well—for example, enacting legislation, adopting budgets, and conducting legislative oversight to assure that the government operates effectively and efficiently. This distribution of powers is similar to that found in our national and state governments, as well as in many local governments across the country.

Over the past four years, a concerted effort has been made to reform operations of the District’s executive and independent agencies. The Financial Responsibility and Management Assistance Authority (“Control Board”) extensively studied the problems faced by executive and independent agencies, and hired highly regarded managers to run several key functions, including the public schools and the Police Department. And the Control Board has recently returned much power to the locally-elected Mayor, who has promised further executive branch reforms.

By contrast, the Council’s internal operations have not been the subject of disciplined scrutiny. As a co-equal branch of government, the Council must accept a significant share of the responsibility for the problems that gave rise to the Control Board’s creation. Indeed, widespread criticisms of the Council’s oversight, legislative research and drafting, and budget analysis predate the Control Board’s creation. Yet, while the Council has made an effort to cooperate with the executive branch—for example, by working with the Mayor and the Control Board to develop a consensus budget—the Council has done little to improve its own operations. Ongoing reforms of the executive branch make it, if anything, more important that the Council operate efficiently and effectively.

This report focuses on the Council’s internal operations. It does not address broader issues related to the Council’s structure, such as whether Council members should be elected to staggered terms, whether Council members should hold outside employment or should serve full-time, whether the Council Chair should be elected by Council members as opposed to being elected directly by the public, and whether the current method of electing five at-large members (including the Chair) and eight ward-based members best serves the public interest. Nor does this report address the extent to which the Council’s actions should be subject to Congressional review.

These questions deserve examination. But, while *structural* reform requires long-term examination and Congressional action (possibly including Charter amendments), *operational* reforms can be undertaken immediately by the Council itself. Accordingly, a DC Appleseed Center Project Team has, since December 1997, been examining the Council’s internal operations related to staffing, the standard and emergency legislative processes, and public hearings.

The DC Appleseed Project Team sought archival information from the D.C. Council in several areas of our research for this report. Surprising amounts of data were unavailable because, it appears, the Council either does not collect the data and/or the data are not kept at a central location. In light of our research experience, DC Appleseed notes the lack of transparency regarding the D.C. Council’s internal operations, and suggests that the Council examine this issue further.

The recommendations in this report are based on research conducted over a ten-month period (March-December 1998), including (1) a survey of 12 city councils, including the D.C. Council, to elicit information about their practices relating to the operational issues we examined;¹ (2) meetings with D.C. Council members and their staffs; (3) interviews of 16 business, labor, nonprofit, and citizen advocates who spend much of their time meeting with and lobbying the D.C. Council; (4) a “focus group” meeting of nine District residents, each of whom has testified at one or more D.C. Council committee hearing, but none of whom has testified frequently; and (5) research of D.C. law, Council Rules, and other available archival sources.

While the D.C. Council has responsibilities of both a state and a city legislature, its *operations* and *organization* are much more like those of a city council. Like other city councils, and unlike state legislatures, the D.C. Council has a relatively small number of members, meets year-round, is unicameral, and represents a population of less than one million people.² Because this report examines the *operational* aspects of the D.C. Council, the DC Appleseed Project Team chose to compare the D.C. Council to other city councils—rather than to state legislatures.

The recommendations in this report cover four areas, each discussed in a separate chapter. The opening chapter recommends substantial centralization of the Council’s staffing structure. Chapter 2 makes several recommendations for improving the Council’s current legislative process. Chapter 3 details the problems associated with, and the changes needed to abate, the Council’s overuse of the emergency legislative process. Chapter 4 recommends reforms to the Council’s public hearing process.³

¹ The 11 other cities—chosen by a methodology described in Appendix I—are Baltimore, Boston, Buffalo, Columbus, Denver, Indianapolis, Milwaukee, Minneapolis, Pittsburgh, San Francisco, and Seattle.

² Consider this summary profile of state legislatures: more than 90% have more than 75 members; 70% meet, on average, for four months or less per year while only four state legislatures meet for longer than eight months per year; all are bicameral other than Nebraska; and the median state population is 3.8 million and the mean 5.3 million. See Appendix I - Methodology, Chart II. By contrast, the legislatures in the cities surveyed for this report have fewer than 30 members; meet for 10 months or more per year (Baltimore, the sole exception, meets for an average of 7.5 months per year); are unicameral; and represent populations of less than 800,000. See Appendix I - Methodology, Chart I.

³ Appendix I details our methodology and approach; Appendix II is a copy of the questionnaire used in the 12-city survey; Appendix III provides a summary of our focus group with District residents; and Appendix IV provides an overview of the District’s legislative process.

CHAPTER 1: STAFFING

I. INTRODUCTION

The District's Mayor and the 13 members of the Council require significant support to help them fulfill their respective roles in governing in an efficient and effective manner. The mayor is able to call upon the extensive resources of the executive branch of the government for assistance. And, while no legislature should (or could) assemble a staff as broad and deep as that available to the executive, the Council must be organized to ensure that it can carry out its responsibilities in an effective and efficient manner.

The Council and its members should have available to them independent, timely, and reliable information, research, and analysis needed to enact beneficial legislation, to make sound fiscal decisions, and to perform meaningful oversight. Council members also should have support that enables them to communicate with the public and to respond in a timely manner to constituent inquiries and requests. Similarly, the public is entitled to have access to information in a timely fashion and in an understandable format regarding those matters being considered by the Council and its committees.

DC Appleseed has concluded that the D.C. Council's staff is not now configured to provide the Council or the public with the expertise needed to fulfill each of these functions. This chapter addresses the Council's current staffing practices, and recommends changes in the composition and organization of the staff.

II. CURRENT PRACTICES: THE D.C. COUNCIL'S CURRENT STAFFING STRUCTURE AND ITS DETRIMENTAL EFFECTS

A. Legislative Staffing Models

A legislature may organize its staff in a variety of ways. Two important characteristics of staff are (1) the degree to which the management of the staff is centralized, and (2) the terms of individual staff members' employment.

In a totally *centralized* system—one extreme of the spectrum—there is an *institutional* focus and staff are appointed by vote of the full council or by its designated representative (such as a staff director). At the other extreme is a *decentralized* structure that allows *individual* council members to appoint and remove staff members at will. Of course, there are intermediate options. Rather than being appointed either by the full council or an individual member, staff may be appointed by a committee chair, the council chair, a majority of a committee, the unanimous vote of a committee, or a majority of council members. A more centralized system is likely to foster a staff that responds to the institutional needs and responsibilities of the council as a whole as opposed to a more decentralized system which responds to the concerns and priorities of individual council members.

Regarding the terms of employment, hiring decisions can be based on a system where an individual “serves at the pleasure of” the appointing person or authority, or, at the other extreme, can be selected and retained based on a merit system. In addition to merit and patronage appointments, staff can be hired as term employees, contract employees, or with limited merit system protections.

In general, legislative bodies will utilize some combination of these various staffing models.

B. The D.C. Council’s Decentralized Staffing Structure

The District of Columbia Council—which employs 130 full-time equivalent (“FTE”) positions with salaries totaling \$4.9 million—currently emphasizes a decentralized model in which about 3 out of every 4 FTE staff members are hired by, and are accountable only to, individual members of the Council. The 41 FTE staff members that most frequently perform policy and fiscal analysis, legislative research, and legislative drafting are accountable solely to individual Council members: *i.e.*, each staff member reports to one of the chairs of the various Council committees. Individual Council members also appoint the 54 FTE staff members who work in their offices. Only the remaining 35 FTE positions are accountable to the full Council: 24 administrative services staff in the Office of the Secretary; eight positions in the General Counsel’s Office; and three positions in the budget office.⁴

Because committee staff serve at the pleasure of the committee chair, staff loyalty strongly favors the chair. Indeed, virtually every interviewee that spoke to DC Appleseed’s Project Team on the issue stated that the Council’s budgeted allocation between committee staff and individual members’ office staff is rarely, if ever, followed in practice. Many committee chairs reallocate a portion of their committee staff budgets to pay the salaries of additional staff for their own offices. Moreover, neither members of a committee who are not the chair nor other members of the Council are generally free to draw directly on the expertise and support of committee staff absent permission of the committee chair. That mentality is reinforced by the physical location of committee staff offices within the suite of the committee chair, making access more difficult for other Council members.

⁴ While it is clear that some of the 35 central FTE positions are covered by the District’s merit personnel system, we were unable to determine the exact number because we were able to gather only appropriated—as opposed to actual—staffing figures.

C. The Toll of Decentralization and Patronage

The pernicious effects of this decentralized structure are myriad. DC Appleseed's Project Team interviews uncovered broad criticism of virtually every institutional function of the Council.

Policy expertise was described as at best variable, and at worst sorely lacking. While some staff were described as very good, the prevailing view is that the overall level of policy expertise among Council staff is quite low. On a 10-point scale, no one interviewed rated policy expertise higher than five; several gave it a two or three.

Budget expertise was mentioned by several interviewees as particularly poor. The prevailing view is that the existing three-person central budget staff is far too small to do an adequate job of analyzing the operating budget—which is approximately \$5 billion per year—and providing advice on fiscal matters. Accordingly, the bulk of the budget work must necessarily be done, if at all, by committee staff members, few of whom have the necessary expertise.

Legislative drafting is done primarily by committee staff, as opposed to the General Counsel's Office, and was described as being of uneven quality. The consensus was that, on average, drafting expertise is low and the quality of bills is inadequate—imprecise, poorly researched, and poorly written. In addition, bills were described as frequently varying from their intent, and often difficult to implement and/or enforce. Beyond improved research and drafting, several interviewees noted the lack of plain language drafting, inadequate legislative summaries, and the absence of section-by-section analyses of bills.

Legislative histories often inadequately reflect the debate that took place. As a whole, there is a concern over the wide variation between products, and an impression that no training or standards exist to guide staff in preparing legislative histories.

Legislative oversight of executive and independent agency operations was roundly criticized by interviewees as poor, frequently *ad hoc*, and too low a priority in the Council's work program. The overall impression is that, when oversight is undertaken, Council staff is frequently "out gunned" by lobbyists, interest groups, and the executive. Further, the oversight performed was perceived as insufficiently rigorous, and as sometimes not performed with sufficient distance from outside parties and the executive to be objective.

Planning and scheduling the legislative work program was most frequently described as non-existent. The perception is that the Council reacts to issues presented to it, and rarely plans and executes its own initiatives over the longer term.

Public notification of hearings was described as inadequate, especially by the members of the focus group who are not regular "Council watchers." The *District of Columbia*

Register (“*D.C. Register*”)⁵ was deemed inaccessible by many, and unreliable by others. Notices were described as lacking quality, timeliness, clarity, and uniformity. Because notice is prepared by staff of the committee holding a hearing, the quality of notice depends on the committee staff.

Records management was described as decentralized, fragmented, and in need of improvement. Records vary widely in quality and are dependent on the priorities of a committee chair and/or the responsible staff member. Files and records were described as frequently incomplete and sometimes difficult to obtain. Since some records maintenance is the responsibility of the committees, official and individual member files are often commingled. Gaining access to committee files when there has been a change in committee chair was noted as being a particular problem.

Human resources management issues were cited as posing problems for an effective staff operation. High turnover, a lack of career path opportunities, a lack of staff development opportunities, a lack of proper supervision, and low salaries for some staff were cited as significant concerns.

Overall, the comments of those interviewed by DC Appleseed’s Project Team evidence a highly variable work product that is too often poor in quality. There is little doubt that the Council’s decentralized staffing structure plays a major role in that outcome. For example, as currently configured, the Council relies on committee staff, who are hired by individual members, to perform the Council’s public information function. That structure virtually guarantees a fragmented approach with uneven results because Council members place different relative values on the Council’s public information function. A more centralized public information function would allow the Council to develop a coherent public outreach strategy using a variety of techniques, including more effective use of the Council’s web site and District cable television.

⁵ The *D.C. Register* is a weekly publication of the D.C. Office of Documents and Administrative Issuances. It contains all actions of the D.C. Council as well as all administrative actions of the executive branch and independent agencies. Except in the case of emergency rules, no rule or document of general applicability and legal effect is effective until it is published in the *Register*. The *Register* is available at D.C. Public Libraries, Advisory Neighborhood Commissions, and by subscription at a cost of \$150 per year.

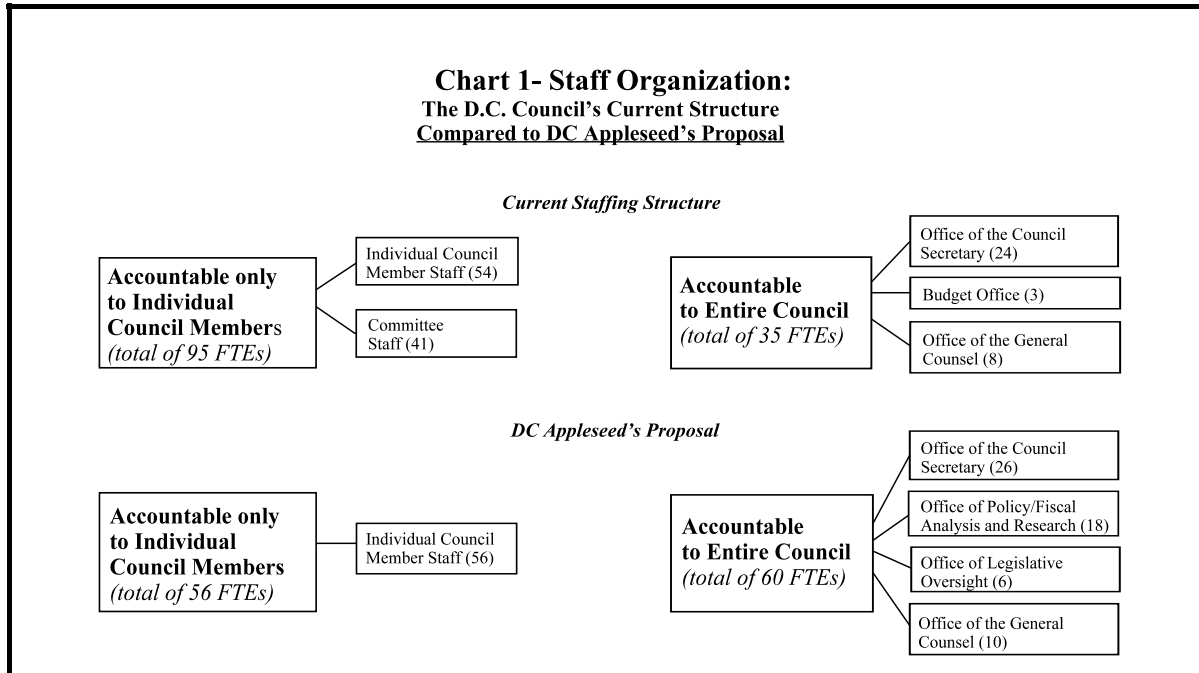
III. RECOMMENDATIONS

DC Appleseed proposes that the D.C. Council change the way it makes staffing decisions by placing greater focus on the long-term institutional needs of the legislative branch of the government. We offer three general recommendations:

Establish a central staff operation to meet the institutional needs and support the work programs of the Council and its committees, to help individual Council members carry out their responsibilities as elected representatives, and to better serve the public. The central staff—who would be physically located outside of members’ offices—would consist of 60 full-time equivalent (“FTE”) positions working in four divisions: Policy/Fiscal Analysis and Research; Legislative Oversight; General Counsel; and Council Secretary. These central staff members would be career appointees, although perhaps not with the full rights and protections of the merit system.

Abolish the existing committee staff structure and use the aforementioned central staff to support the work of the Council committees.

Provide each Council member funding for four FTE positions for his or her individual office, plus four additional positions for the office of the Council Chair (a total of 56 FTE positions).



These recommendations can be implemented with no increase in fiscal resources. In fact, it is likely that modest budgetary savings may be realized due to a reduction in staff from 130 to 116 under DC Appleseed's proposal.⁶ The recommendations are discussed in greater detail below.

A. The Council's Staffing Needs

Three broad types of expertise are needed among staff members to assist the Council in carrying out its *on-going* activities.

Constituent services staff, who help individual Council members fulfill their community responsibilities and respond to their constituents.

Research and analysis staff, who provide policy and budget information and analysis, legal research and legislative drafting, and legislative oversight. This staff would include subject matter experts (for example, public education, facilities, Medicaid, public safety, public works) as well as those who specialize in policy analysis, budget and fiscal analysis, legislative research and drafting, legislative oversight, program evaluation, contract review, and public information and outreach.

Administrative services staff, who maintain records, keep minutes, ensure that deadlines and legal requirements are met, provide technological and logistical support, publish documents, process correspondence and other materials, perform personnel functions, and generally support the operation of the Council office.

While Council staff is currently assigned to fulfill each of these functions, most staff members perform their responsibilities under the direction of individual Council members. By centralizing staff, the Council can markedly improve its ability to exercise its powers and meet its responsibilities.

B. Individual Member Staffs

Under DC Appleseed's proposal, the main functions served by individual Council member's staff would be to provide constituent services, to respond to citizen inquiries and requests in a timely manner, to represent the member at meetings and other forums, to undertake special projects and/or initiatives for the member, and to manage the member's office. Under our proposal, this staff would continue to serve at the pleasure of Council members and would not be subject to the District's merit system.

⁶ The D.C. Council has a substantially larger staff and budget than any of the 11 other cities surveyed by DC Appleseed. We did not draw direct staffing comparisons because the D.C. Council—unlike the 11 other cities surveyed—has both state and city responsibilities. Nonetheless, DC Appleseed's recommendations—which are based on a review of the Council's needs—would result in a 10% reduction from the current staffing level. We note that even with this reduction, the D.C. Council's staff would be almost 60 percent larger than the next highest level of any city council surveyed (the Milwaukee City Council has a staff of 72).

The current level of four FTE positions for each D.C. Council member's office should be retained, although it is higher than in any of the other 11 cities surveyed by the DC Appleseed Project Team. Ten of the 11 cities surveyed provide staff resources for the individual offices of council members. The number of staff provided to each member in those 10 cities ranges from one to three FTE positions, and the median provided per member is two FTE positions.⁷

The District government differs from other local governments because it serves both municipal and state functions. While it is not possible to quantify precisely the number of additional staff members in each Council member's office needed to assist in this regard, DC Appleseed recognizes that some additional staff is warranted. Four FTE positions per Council member (one-third more than the highest number for any other city in our survey) seems adequate to assist D.C. Council members in handling their unique requirements. DC Appleseed further recommends that an aggregate annual budget of \$150,000 (adjusted annually for inflation) be provided to each Council member for annual staff salaries (not including benefits) in his or her office. This would represent a modest increase from the current level of \$138,000 in staff salaries allocated for each member's office.⁸

C. Central Staff Support

The current practice of having each member designate a defined number of staff to each D.C. Council committee should be discontinued. Rather, the Council should create a professionally trained and qualified, permanent cadre of nonpartisan staff to assist the full Council, its committees, and individual members in carrying out the legislative agenda.

This approach would be consistent with the staffing structures of the 11 other city councils surveyed by the DC Appleseed Project Team. While each legislature surveyed has a formalized committee structure and assigns the work of the council to a committee before the full council takes final action, only the D.C. Council has an organizational structure which, at least on paper, assigns staff to work solely on the functions of Council committees (41 FTE positions for its ten standing committees). None of the other 11 cities surveyed follows this practice; in each of these jurisdictions, staff work for committees is provided by a central staff that works for the full council and is under the leadership of a staff director.⁹

⁷ Only the DC Council provides 4 FTE positions per member (a total of 54 positions); three cities provide 3 FTE; four provide 2 FTE; and three provide fewer than 2 FTE. Indianapolis provides no staff for individual member offices.

⁸ The Council further reports that each office is provided \$6,885 annually for "non personal services," such as furniture and travel.

⁹ All cities, including the District of Columbia, have staff that work for the full council, although there is great variation in the level of support. For example, in Minneapolis the executive branch provides staffing for the legislative branch, and only two people work directly for the full council to provide limited administrative support (reception, etc.). In contrast, Seattle and Milwaukee have 43 and 49 FTE to support the legislative work program for the full council. In the District, as noted earlier, 35 FTE work for the full Council.

DC Appleseed recommends that the D.C. Council's entire central staff (including professional, clerical, and support staff) be organized into four offices—Policy/Fiscal Analysis and Research; Legislative Oversight; General Counsel; and Council Secretary. Each would be headed by *a director appointed by a majority of Council members*. The intent is that the directors would serve in long-term, professionally qualified career positions, and would serve at the pleasure of the Council as a whole. Each director would hire the professionally qualified staff for his or her office with logistical assistance from the Council's personnel staff. Some central staff would be under the District's merit system, while others would be hired for certain and defined terms. Appropriate career paths and salary ladders should be created to help limit turnover, and salaries should be competitive both within the government and in the region.

To staff the four offices, DC Appleseed suggests a complement of 60 FTE positions to be allocated as follows: 18 positions (about one-third) for the Office of Policy/Fiscal Analysis and Research; six positions (one tenth) for the Office of Legislative Oversight; 10 positions (one-sixth of the central staff) for the Office of General Counsel; and 26 positions (about 40 percent) for the Office of the Council Secretary. Staff allocations in each office include professional and support staff. Staff in each office would have clearly delineated responsibilities as described below:

Office of Policy/Fiscal Analysis and Research staff would include specialists in budget and policy analysis as well as subject matter experts (similar to staff employed by the Congressional Budget Office and the Congressional Research Service). One member of this staff would assist the Council and its committees, working with the respective chairs, in managing the flow of the legislative work program and in scheduling the various agendas. A major responsibility of this staff would be to assist the Council in carrying out its responsibilities regarding budget and fiscal matters. For some staff this would be a year round undertaking—issues for future research and analysis would be identified during a given year's budget review, thereby establishing an agenda for the months leading up to the subsequent year's budget review. Other responsibilities would include preparing fiscal impact statements to accompany proposed legislation; conducting policy research and analysis in consultation with the General Counsel's legislative drafting staff; and working with legislative oversight staff in the conduct of their evaluations and reviews.

Office of Legislative Oversight staff would undertake program evaluations, management reviews, investigations, and general oversight of executive and independent agencies for the Council (similar to staff employed by the General Accounting Office). When establishing its work program, this staff should coordinate closely with the other legislative branch offices, including the Auditor,¹⁰ and with appropriate staff in the executive branch, including the Inspector General.¹¹ The focus of the oversight staff should not be to micro-manage executive and independent agencies, but rather to examine broadly whether programs and agencies are efficient and effective. If it operates well, this office will be able to offer constructive critiques to executive and independent agency managers.

Office of General Counsel staff would provide legislative research and drafting services and provide legal advice.

Office of the Council Secretary staff would provide administrative services support—provide minutes, publish documents, process correspondence, and provide the technological and logistical support for the Council office (purchasing, payroll, personnel, information systems, etc.). Within this office would be an expert in records management to centralize the maintenance of all Council and committee records. There also would be an addition of three public information and outreach staff to develop a coherent strategy for communicating with the citizens of the District. Included in this effort would be a media relations program which includes the activities currently carried out by the press secretary. Additional responsibilities would include organizing and administering the public hearing process (including provision of public notice, preparation of advertising, witness lists, etc.), providing legislative information services, and managing the web site and District cable television.

For a more centralized staffing system to succeed, it will be critical that (1) the Council perform a broad search for central office directors who are expert in managing the functions for which they will be responsible, (2) the central office directors and their staffs work as a team to assist the Council, the committees, and the individual members, (3) the office directors consult closely among themselves, as well as with the Council and committee chairs and individual Council members, (4) central staff expertise be shared so that each Council member has access to central staff resources, and (5) work programs be coordinated so that, for example, the oversight schedule supports the legislative process and adequate resources are dedicated to fiscal analysis during budget season.

¹⁰ The District of Columbia Auditor is appointed by and reports to the D.C. Council, and is charged with conducting annual audits of D.C. government accounts and operations. D.C. CODE §47-117 (1987). Because the Auditor's budget is independent of the Council's, the Auditor's office is not reviewed in this report.

¹¹ The Inspector General's office is part of the executive branch of government, and is charged with conducting "independent" audits of D.C. government accounts and operations. D.C. CODE §1182. 8.

In implementing these recommendations, clear and enforceable safeguards to ensure confidentiality must also be put in place. When seeking the assistance and advice of central staff, each Council member must be able to talk freely and in confidence with members of the central staff, secure in the expectation that the substance of confidential discussions will not be passed on to other members, the executive, or the public at large. This principle must be clearly understood by all concerned, and there must be severe consequences for any staff member who breaches confidentiality.

In addition, the citizens of the District and all concerned with the operations of the Council must have a high level of trust in Council members and Council employees. Safeguards must be in place to ensure that staff is not subject to any improper influence or the appearance of improper influence. Therefore, in addition to current laws and regulations governing the conduct of Council members,¹² appropriate conflict-of-interest and ethics statutes to govern the professional and political activities of Council staff must be in place and strictly enforced. Rules for employees should address such matters as gifts, outside employment, nepotism, participation in activities in which a staff member may have an economic interest, participation in partisan political activities, and using the prestige of one's office for personal gain.

D. Advantages of the Recommended Approach

Centralizing staff operations offers numerous advantages, which, together, can strengthen the D.C. Council as a separate and equal branch of the government. As revealed by the DC Appleseed Project Team's interviews and observations, the Council is currently lacking adequate professional expertise not only in fiscal matters, but in evaluation and oversight, policy analysis, legislative drafting and research, preparation of legislative histories, planning and scheduling, outreach and public information, records management, and technology management. By improving the support available to the Council in these areas, the legislative branch of government will be strengthened.

1. Improve the Quality of Staff Assistance through Increased Specialization and Merit-Based Hiring

By centralizing staff, the Council can better ensure quality and consistency of staff assistance. Under the current system, in which each of the ten committee chairs independently hires the analytical, research, and legislative drafting staff, the skill levels of those assigned to work on the Council's complex and diverse legislative agenda vary greatly based upon the priorities of different Council members. Thus, if a committee chair is more interested in hiring staff based on patronage than merit, the quality of work for the entire Council in the areas covered by that committee can be adversely affected.

Alternatively, if staff is managed centrally, the Council as an institution will not have to rely on individual committee chairs to hire staff. Instead, because they will be responsible to the

¹² See D.C. CODE §§ 1-1461, 1-227; Council Rule 202.

entire Council, staff directors should have an incentive to meet the needs of the Council and its committees by hiring the best available experts in various subject matters and disciplines (including legislative research and drafting, fiscal analysis, policy analysis, program evaluation, and oversight). Council members should have an incentive to hire directors with expertise in managing both a staff and a legislative work program in an efficient and effective manner.

The benefits of a centralized staff can be gleaned from the experience of Congress, which employs independent experts at the Congressional Budget Office (“CBO”), the General Accounting Office (“GAO”), and the Congressional Research Service (“CRS”). For example, CBO provides a permanent, nonpartisan, professional staff to supply Congress assistance in three basic areas: developing a plan for the budget, staying within the budget, and considering issues of budget and economic policy.¹³ And, as scholars have observed,

CBO was to provide a bastion of neutral analysis, loyal to the institution of Congress, rather than to committees or parties. Its director is appointed jointly ... for a four year term. ... [CBO] won a reputation for both competence and neutrality. [CBO] reminds us that our institutions can work well. ... Its technical work has been credible, albeit not always popular.¹⁴

The budget reform of 1974 moderately increased the level of centralization and coordination, but equally important, it provided a professional staff of budgeteers to help Congress make budget policies.¹⁵

The D.C. Council cannot afford, and does not require, the deep and wide-ranging expertise provided by CBO, GAO, and CRS. However, by centralizing its staff, the Council will provide itself greater access to the enhanced level of expertise needed to serve public needs without relying so heavily on information generated by lobbyists and other interested parties or by the District’s executive branch.

2. Provide the Full Council, its Committees, and its Members Equal Access to Information, Research, and Analysis

A centralized staff also has the benefit of equalizing access by Council members to information, research, and analysis on all items on the legislative agenda. Under the current system, as a practical matter, committee chairs control the work programs of their committee staffs. Moreover, because some committee chairs reallocate a portion of their committee staff

¹³ See, generally, U.S. Congressional Budget Office, *Responsibilities and Organization of the CBO*. Washington, DC : Government Printing Office (1993).

¹⁴ Aaron Wildavsky and Naomi Caiden, *New Politics of the Budgetary Process*, third edition. New York: Addison Wesley Longman, Inc. (1997) at 76.

¹⁵ Irene Rubin, *The Politics of Public Budgeting*, third edition. Chatham, NJ: Chatham House Publishers, Inc., (1997) at 103.

budgets for additional individual office staff, committees often have even less access to the expertise necessary to accomplish the committee’s agenda.¹⁶

In contrast, under a central staff model, a Council member would request policy research and analysis, drafting, oversight, etc. from the central staff directors, who would assign staff to fulfill those requests. Because the staff directors would be accountable to the full Council, they would have an incentive to respond fairly and in a timely fashion.

3. Improve the Quality of Legislation and Accompanying Reports

According to most of those interviewed by the DC Appleseed Project Team, legislation introduced by Council members varies dramatically in quality. This variability exists not only among bills introduced by different Council members, but also among bills introduced by a single Council member in a single session. This uneven quality in legislative drafting can be attributed to the fact that, within the Council, bills are not consistently drafted by staff in any one office, but, instead, each bill may be drafted by any of the following: committee staff or the Council member’s personal staff—few of whom have expertise in legislative research and drafting—or staff in the General Counsel’s office.¹⁷ By having so many people draft legislation, the Council virtually guarantees an inconsistent work product.

According to those interviewed by the DC Appleseed Project Team, the quality of committee reports that accompany legislation vary greatly not only from committee to committee, but among reports prepared by the same committee. Most often, the section-by-section analysis portion of the report is merely a recitation—often verbatim—of the legislative language. Rarely does it truly explain the substance or policy goals of the proposed legislation. The “impact on existing law” portion of the report is frequently limited to a listing of the laws that are amended by the legislation and a generalized description of the changes being made. The statement of the legislation’s purpose and effect rarely provides an exposition of the history of an issue, alternatives considered or tried, or a concise rationale of the need for and intent of the legislation. Too often, this portion of the report simply asserts—without supporting evidence—several conclusions favoring enactment of the legislation.

¹⁶ One interviewee cited a former committee chair who shifted much of the budget allocated to hire staff for his committee into salaries for staff in the Council member’s individual office in addition to the Council member’s office staff allocation of four FTEs. The DC Appleseed Project Team has been told by Council members, staff, and others that this practice is widespread, even though it appears to violate Council Rule 273, which states that staff salaries are “subject to appropriations and positions allocated by the Council.” In reality, current practice inappropriately allows individual Council members to decide what amount of Council resources will be dedicated to each substantive area.

¹⁷ Some bills introduced by the Council are drafted by lobbyists for business, labor, and other interest groups. The general perception among those interviewed is that, while legislation drafted by lobbyists is often technically well drafted, the Council does not pay adequate attention to the details of legislation to ensure that (even after it goes through the legislative process) it serves the public interest rather than the narrow interest of the drafters.

The Council can improve the quality of legislation and legislative reports by having a greater amount of legislation drafted in the first instance by staff in the General Counsel's office. DC Applesseed recommends an increase of two FTE positions in the General Counsel's office to provide additional drafting assistance.

4. Increase Efficiency

By centralizing staff, the Council can increase staff specialization, which should improve the efficiency of the Council's legislative drafting, fiscal, and oversight functions. Under the current system, a Council member who wishes to pursue an initiative that is not favored by the chair of the relevant committee will generally have two choices: abandon the issue, or have his or her individual staff conduct the research, regardless of whether the staff has the relevant expertise. On the other hand, under a centralized staff model, research on a given issue would be assigned to the staff member or members with the greatest expertise in that issue area, regardless of which Council member initiated the request. The staff will be likely to have the basic understanding needed to research and analyze the issue and thereby provide a soundly-based response in a shorter period of time.

Moreover, a centralized staff structure would foster greater efficiency when two Council members are interested in related issues that arise in different committees' subject areas. For example, if the Council is simultaneously considering oversight of contracts let to repair public school buildings and contracts let to repair other government-owned buildings, a single central staff member may be best suited to handle both inquiries. Indeed, a central policy staff would be expected to have at least one person well versed in government contract law, and, perhaps, someone with expertise in building renovation as well (a person with an engineering background would likely be a member of the policy analysis staff). Under the current committee-based staffing system, public school oversight is handled by staff for the Committee on Education, Libraries, and Recreation, while the oversight of repairs to other District buildings would likely be handled by staff of either the Committee on Public Works and the Environment or the Committee on Government Operations. Because these committee staff work for different members, and are physically located in different offices, it is unlikely that staff of one committee would coordinate its work program with the work of the other committee. A centralized staff structure would help minimize such inefficiencies.

5. Foster a Comprehensive Approach to Council Responsibilities

The current staffing structure inhibits the Council's ability to meet certain responsibilities in a coherent manner. For example, consideration and analysis of the Mayor's annual budget proposal is fragmented among the staffs of all of the committees. Such a system hinders the Council's ability to analyze tradeoffs between programs assigned to different committees, such as whether the level of funding for human services should be increased or decreased in relation to the budget for public works. Instead, the current system encourages tradeoffs within the programs under the jurisdiction of a single committee, such as whether increased residential trash collection should be funded through a reduction in road repair. Because the vast majority of staff members who analyze the various sections of the budget report to individual committee

chairs, there is very limited centralized information and advice on which the Council can draw as it attempts to consider the budget as a coherent whole.¹⁸

Under a centralized staffing system, on the other hand, budget analysis would be performed by a staff accessible to every Council member on an equal basis. Council members would have access to the expertise necessary to understand not only the areas of the budget within the jurisdiction of the committee they may chair, but also other areas of the budget that may be of concern or interest to the member. Centralization of budget information and analysis will enable the Council to consider the budget holistically.

Similarly, a centralized staffing structure will provide Council members access to professional oversight and policy staff who, collectively, would have broad knowledge of legislative issues. As a result, each Council member will be able to gain a better understanding of legislation outside of the purview of his or her own committee. Such understanding should serve to improve the Council's ability to consider government operations in a comprehensive manner.

6. Provide Sound Management and Planning of the Legislative Work Program and Agenda

Currently, each committee chair sets the legislative agenda for his or her committee. When committee agendas overlap, the chairs may hold joint hearings on a particular subject.¹⁹ But such collaborations occur only on an *ad hoc* basis, and are not the result of a Council-wide work plan based explicitly on Council priorities. A well-configured centralized staffing structure would include staff dedicated to helping the Council and its committees plan and manage their work program over a period of time, allowing the Council and its committees to focus energy over the longer term on areas of concern to the entire Council.

A prime example of the improved planning that would flow from centralization can be found in the area of legislative oversight of executive and independent agency operations. Presently, the Council performs oversight on an *ad hoc* basis. Whether oversight is done well (or done at all) in a particular subject area depends upon whether the Council member chairing the relevant committee deems oversight important. The result is that oversight is generally performed only after a government function becomes so seriously dysfunctional that the public and press become aware of and outspoken concerning that dysfunction. While there is surely a need to perform oversight under such circumstances, the Council also must increase its capacity (1) to anticipate problems and perform oversight on issues before they reach crisis proportions,

¹⁸ Existing central budget staff members (3 FTEs) are, however, able to provide general information concerning D.C. government spending.

¹⁹ For example, based on a shared concern by committee chairs over the operations of the Metropolitan Police Department, the Judiciary and Government Operations Committees held joint oversight hearings in 1998.

and (2) to conduct oversight as a means of gathering information to evaluate planned legislative proposals.

By centralizing oversight staff, the Council can ensure that oversight priorities are established over a longer period of time. For example, the Council may be interested in evaluating a program's effectiveness so that it can decide whether the program should be expanded, modified, or eliminated. Without improved planning, it will remain very difficult for the Council to dedicate adequate resources to fulfill its oversight and other responsibilities. A centralized staff charged with ensuring that such long-range work plans are devised and implemented would greatly improve the Council's oversight function.

7. Increase Access to Information for Both the Public and Council Members

Under current practices, the committee staffs play a central role in providing information to the public and Council members. Committee staff are responsible for disseminating notices of public hearings and are a main source of documents relating to legislation under consideration by the Council or a committee. For example, the draft committee print of a bill scheduled for mark-up is generally available to the public, if at all, only through committee staff, and even Council members often do not receive the draft committee print until they arrive at a mark-up session.

The Council should accept as mandatory providing the general public and Council members full and timely access to understandable information about matters being considered by the Council and its committees. A well-staffed public information office within the Office of the Secretary should have the time and resources to consider such matters. This should include a regular analysis of the locations where, and the processes through which, the public is most likely to gain access to information, as well as the potential for employing new and existing technologies to disseminate information. Such analysis is unlikely to occur under the current system.

8. Improve the Ability to Attract and Retain Highly Qualified Staff

Centralizing the Council's operations will also increase the Council's ability to attract and retain a highly qualified, stable cadre of professional staff members to assist the Council, its committees, and its members. Those interviewed by the DC Appleseed Project Team stressed that the problems of inadequate expertise and poor institutional knowledge flow, in part, from the high rate of turnover among Council staff. The decentralized nature of the Council's staffing structure is a major contributor to these problems. Because so many Council staff are hired by individual members, staff jobs depend upon the reelection of the Council members that appointed them and not solely on the quality of staff work. While some Council members retain existing committee staff when they are first given a chairmanship, the norm is for Council members to hire their own committee staff.

Moreover, the current staffing structure stifles the Council's ability to create performance incentives through staff advancement. At present, approximately three-fourths of all staff members report to individual Council members. Thus, for most staff, the opportunity for advancement is limited to the possibility of moving from one position to another within the office of the member for whom they work. Such opportunities are further limited by the fact that (1) each Council member, on average, employs only eight staff members,²⁰ and (2) staff members in each office have vastly disparate responsibilities. Hence, there is little room for Council members to create career paths with accompanying opportunities for promotion.

By contrast, under a centralized system, analysts, attorneys, and administrative staff would be hired at varying levels of experience and training, which would allow for promotion opportunities. By including appropriate career paths and salary ladders, a centralized staffing model provides incentives for able employees to remain in career positions. Salaries should be established to be competitive both within the government and in the region. These incentives should help reduce staff turnover, which in turn should improve continuity and institutional memory among Council staff.²¹

9. Create and Maintain Complete and Comprehensive Records of Council and Committee Proceedings

As described in Chapter 4 of this report, no one person has the responsibility of ensuring that necessary records of Council and committee proceedings and the history of enacted legislation are assembled and maintained. DC Appleseed's Project Team understands that, while certain records (such as committee reports) are stored at a central location, those records are sometimes incomplete, and the missing information resides only in committee offices, if it exists at all. Compounding the problem, when a committee chairmanship is transferred to a new chair, committee files are often not transferred to a central location and are often in such disarray as to be unusable. Moreover, files and documents are not always provided to the Office of Legislative Services in a timely fashion, making it difficult for the public to research legislative histories.

²⁰ The exceptions are the Chair of the Committee on Local, Regional, and Federal Affairs (who has authority to hire only six FTE positions) the Council Chair (who has authority to hire ten FTE positions) and the two Council members without committee assignments (who may hire only four FTEs).

²¹ The DC Appleseed Project Team's research reveals that Council staff salaries are, on average, \$39,248 which is at the median of staff salaries in the 11 other city legislatures surveyed (\$38,854). However, the DC Appleseed Project Team did not analyze how the distribution of salaries among D.C. Council staff compares to salary distributions in other city Councils. Moreover, DC Appleseed did not compare Council staff salaries to salaries in the District's executive branch.

Each D.C. Council member is paid an annual salary (\$80,605) that is higher than the salary paid to members of any other council surveyed, the highest of which (Seattle) pays each member \$75,505 per year. Recognizing that while D.C. Council members are defined by law as part-time, many work full time, in part, because they are both city and state legislators. Accordingly, DC Appleseed does not believe that members' salaries should necessarily be lowered. We do believe, however, that, given the relatively high salaries of D.C. Council members, citizens can fairly demand superior performance, including attention to operational issues such as those raised in this report.

A well-run records management office within the Office of the Secretary should be created to establish a records management program and to implement a system to store and maintain all files related to Council and committee proceedings, legislation, and internal operations. Such an office, properly managed, would enable the public and Council members to find legislative documents at a single location, not only after legislation is enacted, but during the legislative process itself.

10. Increase Coordination with the Executive Branch

A centralized staff structure would increase the Council's opportunity to develop appropriate institutional relationships with the Mayor and specific offices within the executive branch. Several persons interviewed by DC Applesseed's Project Team noted that, in years past, the Council met with the executive branch to discuss legislative proposals before they were enacted. Specifically, representatives of the Council members who sponsored legislation would meet with members of the Mayor's Office of Intergovernmental Relations and appropriate executive-department personnel to discuss each branch's perspective on specific legislative proposals. These meetings no longer routinely take place. By assigning a central staff member to this function, the Council could ensure that proposals are commented upon by representatives of the executive offices that will implement the legislation.

11. Increase Input from Local Institutions

As the national capital, Washington and the surrounding region is home to an extraordinary wealth of expertise on issues that the Council deals with in governing the District. Council staff should be encouraged to work with local universities and nonprofit agencies (such as the National League of Cities and the International City/County Management Association) to establish internships at the Council, as well as to take advantage of the expertise of professors and staff of these institutions. By centralizing the policy and research functions and thereby developing and retaining a higher degree of staff expertise, the Council will likely foster a greater number of long-term relationships with institutions that have particular contributions to offer the Council in carrying out its responsibilities.

CHAPTER 2: THE STANDARD LEGISLATIVE PROCESS

I. INTRODUCTION

The Council’s existing legislative process has numerous shortcomings, many of which relate to the inadequacy of information available to Council members and the public during the legislative process. Analyses critical to evaluating legislative proposals contained in documents such as fiscal impact statements and evaluations of a bill’s legal, policy, and technical adequacy are not produced early enough in the legislative process (if at all) to allow Council members and the public to consider effectively, and improve upon, legislative proposals. Drafts of bills are sometimes not distributed to Council members until moments before they must vote, and are often never given to the public. Other Council practices (*e.g.*, the lack of a germaneness requirement) severely curtail the public’s opportunity to participate in the consideration of certain legislative provisions, and the Council’s failure to record many legislative votes prevents the public from evaluating the voting record of each Council member. The net result of these processes is that the Council enacts bills before they are adequately reviewed and considered, leading to laws that are often difficult to interpret and, at times, impossible to enforce effectively.

II. CURRENT PRACTICES: THE STANDARD LEGISLATIVE PROCESS

Under the Home Rule Act, there are two primary processes that the Council can use to enact legislation: “standard” and emergency. Many of the Council’s internal operating practices—such as who drafts a bill and when it is reviewed for legal and technical sufficiency—are similar for both processes. However, because the opportunities for Council consideration and public participation are substantially lessened when the Council engages in the emergency—as opposed to the “standard”—legislative processes, emergency legislation is addressed separately, in Chapter 3 of this report.²² The remainder of this chapter discusses the various stages of the standard legislative process—introduction, consideration by a Council committee, consideration by the full Council, and actions after Council enactment.

A. Introduction of a Bill

The Home Rule Act and the Council’s Rules of Procedures establish the process by which the Council considers standard legislation.²³ The Council’s Rules require that the Council place a notice in the *D.C. Register* at least 15 days before enacting a bill or resolution, or

²² A third process for enacting legislation—the “temporary” legislative process—is merely a procedural mechanism made necessary by the existence of emergency legislation. Because the temporary process does not raise independent concerns, it is not evaluated in this report, although it is described in Chapter 3.

²³ District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198 (1973) (hereinafter “Home Rule Act”); D.C. Council Resolution 13-1, “Rules Resolution for the Council of the District of Columbia, Council Period XIII Resolution of 1999,” 46 D.C. Reg. 306 (1999).

conducting a legislative or investigative hearing.²⁴ Thus, there is no requirement that a public hearing be conducted on every piece of legislation, but the public must be notified before the Council takes formal action on a legislative proposal.

B. Consideration by a Committee

Following introduction, a bill is referred by the Council Chair to the Council committee (or committees) that has (or have concurrent) responsibility for the subject matter of the legislation. Typically, a committee will review proposed legislation and receive public comment through the formal public hearing process, although a public hearing is not required. In addition, the committee chair will typically assess the position and/or concerns of the executive branch, other public entities, and Council members through informal means. A bill and committee report are then considered by the committee at a mark-up session, and, if approved, the bill and report, as amended, are forwarded to the full Council.

C. Consideration by the Full Council

After a bill has been approved by a committee, the full Council will begin its consideration at a session of the Committee of the Whole (“COW”).²⁵ This stage is intended to provide Council members the opportunity to ask committee chairs and sponsors questions about each bill, and to allow the Council to ascertain whether each bill is legally and technically sufficient, to review fiscal impact statements, and to determine whether legislative records are complete. If a bill clears COW review, it is automatically scheduled for consideration by the full Council at a legislative session.

Under the Home Rule Act, standard legislation must be “read [by the Council] twice in substantially the same form, with at least 13 days intervening between each reading.”²⁶ At the “first reading,” if a quorum is present, a majority of Council members present and voting can (1) approve the legislation with or without amendment, in which case the bill is scheduled for a second reading, (2) reject the legislation entirely, (3) “table” the legislation for possible consideration at a subsequent legislative session,²⁷ or (4) decide to send the legislation back to a Council committee for reconsideration or amendment. At the second reading, standard

²⁴ Council Rule 422.

²⁵ Although the COW also conducts public hearings and mark-up sessions relating to its substantive responsibilities (e.g., planning and zoning, grants management), the “COW Session” serves a separate function for all legislative proposals.

²⁶ Home Rule Act, Pub. L. 93-198 § 412 (a) (hereinafter “Home Rule Act”). See also D.C. CODE § 1-229, D.C. CODE § 1-146(a) (Supp. 1979).

²⁷ The Council can table legislation either (1) for consideration at a specific legislative session, in which case the legislation is automatically placed on that session’s agenda, or (2) without setting a specific date for subsequent consideration, in which case the legislation will be considered at a subsequent session only if a Council member moves to add it to that session’s agenda.

legislation may be enacted by the Council if a quorum is present and a simple majority of those who are present and voting approve the bill.²⁸

At legislative sessions, the agenda will list bills in two groups—consent and non-consent. The consent agenda includes those bills the Council Chair believes will be approved unanimously without debate.²⁹ Council members cast a single vote for all items listed on the consent agenda. All other bills are considered individually on the non-consent portion of the agenda.

For every bill, resolution, or amendment to a bill that the Council approves, the Council must concurrently approve a fiscal impact statement (“FIS”).³⁰ The FIS can appear either in the text of the legislation itself, in a committee report, or in a separate document. The FIS (1) estimates the costs which will be incurred by the District government in each of the first four fiscal years that the act is in effect, and (2) includes the basis for that estimate. The required contents of an FIS have been greatly expanded in recent years, in conjunction with the Control Board’s responsibility for reviewing legislation adopted by the Council.³¹

D. Actions After Council Enactment

After the Council passes a piece of standard legislation, the Home Rule Act requires that three steps be taken before the bill becomes law—approval by the Mayor, Control Board, and Congress. First, the Mayor must sign the Act, or take no action within 10 working days of receiving the Act from the Council.³² Second, following the Mayor’s signature but before Congressional review, the Control Board has a minimum of seven calendar days to review (and, if it wishes, to reject) legislation enacted by the Council in order to determine “whether [the bill] is consistent with the applicable financial plan and budget . . . and with the estimate of costs accompanying the Act.”³³ If the Control Board fails to reject legislation during the review period, approval is assumed.³⁴ Third, Congress has an opportunity to reject the law during a period of 30 legislative days, but to do so Congress must pass a joint resolution, which must be

²⁸ At the second reading, the Council can approve, reject, or table legislation, or return legislation to a committee.

²⁹ Council Rule 411.

³⁰ Home Rule Act, Pub. L. 93-198 § 602(c)(3), *amended by* District of Columbia Financial Responsibility and Management Assistance Act § 301(d) (1995).

³¹ The specific requirements for an FIS are discussed in Appendix IV and are contained in Home Rule Act, Pub. L. 93-198, § 602(c)(3), *amended by* District of Columbia Financial Responsibility and Management Assistance Act, § 301(d) (1995). *See also* Council Rule 443(c).

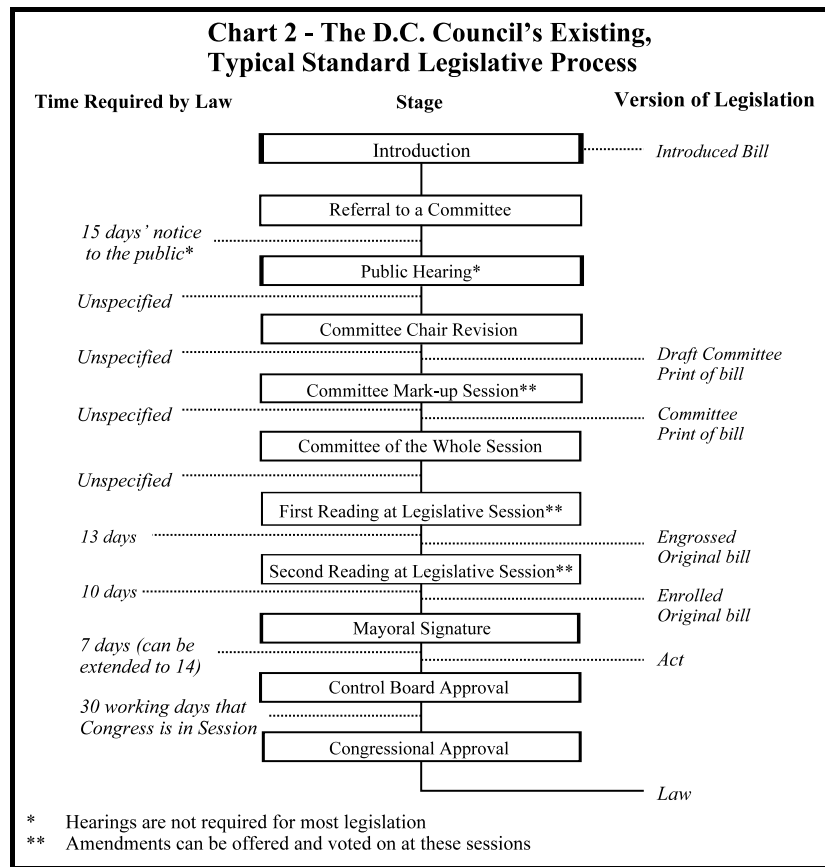
³² Home Rule Act, Pub. L. 93-198 § 404(e) (1973). If the Mayor vetoes the Act, two thirds of Council members present and voting (if a quorum is present) may override the veto. *Id.*

³³ District of Columbia Financial Responsibility and Management Assistance Act, 109 Stat. 100; § 203(a)(2) (1995). The Control Board may request an additional seven days for review, for a total of 14 calendar days. D.C. CODE § 392.3(a)(5).

³⁴ *Id.*

signed by the President or passed by a two-thirds vote of both the House of Representatives and the Senate over a Presidential veto.³⁵ Because a legislative day is defined as a day that at least one house of Congress is in session and thus usually excludes Saturdays and Sundays,³⁶ the review period lasts a minimum of six weeks, and, if the review period extends over a Congressional recess, can last many months. The counting stops for Congressional vacations and other breaks which can last from a few days to over a month. Also, the 30-day period must begin and end during a single Congressional session. This means that, in a federal election year, unless Council legislation is submitted to Congress more than 30 workdays before Congress adjourns, the time period will begin to run anew during the next Congressional session, and any time accrued during the election year will be lost. The chart below depicts the Council's standard legislative process, and Appendix IV provides a more detailed description of this process.

III. RECOMMENDATIONS



³⁵ D.C. CODE, §§ 1-144(e) - 147(c)(1) (Supp. 1979). The Congressional review period is 60 days for criminal laws. *Id.*

³⁶ See D.C. CODE, § 1-147(c)(1) (Supp. 1979).

DC Appleseed offers below a series of recommendations, which we believe will accomplish the following:

assure technical accuracy and legality of legislation enacted by the Council;

increase the public's ability to participate in the legislative process, to understand the law, and to evaluate Council members' voting records; and

increase the availability to the public and Council members of documents that describe and evaluate legislative proposals.

The recommendation to create a central staff structure responsible for legal and policy research and legislative drafting also will assist in achieving these objectives (refer to Chapter 1 for a discussion of staffing). Further recommendations related to the legislative process are presented in Chapter 4: Public Hearings.

A. Assure Technical Accuracy and Legality Before a Bill is Considered

1. Require that All Legislation be Reviewed by the Office of General Counsel to Ensure that it is in the Proper Form *Before* the Public Hearing Notice is Published

To facilitate informed and reasoned debate regarding proposed legislation, it is imperative that bills introduced in the Council be well written. Members of the public interested in a particular piece of legislation, and legislators responsible for establishing policy, are less likely to understand a poorly drafted bill, making it more difficult—if not, at times, impossible—for them to participate effectively in deliberations.

Moreover, a poorly drafted bill merely postpones the work to later stages of the legislative process, a more time-consuming and less efficient way of doing business. Too often, other factors such as inattentiveness or lack of time may prevent such changes from ever being made. Thus, when a bill is poorly drafted to begin with, it is more likely that the enacted version will continue to suffer from the effects of poor draftsmanship. These problems will be minimized if the vast majority of legislative research and drafting is performed by the central staff of experts recommended in Chapter 1.

To alleviate these problems further, the Council should require that—prior to publishing the notice of its public hearing—proposed legislation be reviewed by the General Counsel's office to ensure that it complies with the Council's legislative drafting manual and, in fact, would do what is intended. Any problems with technical and legal sufficiency should be documented, forwarded to the sponsor and the committee chair, and made publicly available prior to a hearing. This review is not intended to assess the wisdom of enacting legislation for any particular purpose.

2. Require a Review of the Committee Print for Technical and Legal Sufficiency by the Office of General Counsel *Prior* to the Committee Mark-up

At present, the General Counsel's office typically reviews legislation for technical and legal sufficiency after a committee completes its work but prior to Committee of the Whole ("COW") consideration.³⁷ DC Appleaseed believes that this review process occurs too late in the legislative cycle to allow adequate time for the Council to give appropriate consideration to final legislative proposals. Council and committee members are entitled to be assured that a bill does not violate federal law or the Constitution before the committee takes its first formal action on the legislation at mark-up. Requiring that committee members vote before receiving that analysis is to deny them the information they need to ensure that they are not enacting laws that violate the legal rights afforded District residents.

Similarly, review of a bill's "technical sufficiency" should not be left until the last minute. Technical corrections to a bill may change a bill's substantive meaning. Thus, when such changes are circulated just prior to the vote of the entire Council, there is an increased risk that substantive changes will inadvertently be made through the technical corrections process and will escape Council members' attention.

Accelerating the General Counsel's review of a bill so that a determination of legal and technical sufficiency has been made prior to committee mark-up, and adopting any necessary technical amendments at that time, would significantly improve the process. It would enhance the committee's control over the version of the legislation presented to the full Council and allow each Council member to review (1) legal adequacy to ensure that the proposed legislation is permissible, and (2) technical amendments to ensure that they are truly "technical" in nature. The General Counsel could still make the certifications to the full Council at the COW session, but the bill presented to Council members at that time would already have been corrected to ensure legal and technical sufficiency. In addition, this earlier review would reduce confusion on the dais, thereby enhancing the perception that the Council is a deliberative, professional body.

³⁷ The general practice is for the General Counsel to prepare and circulate to all Council members a list of "technical amendments" needed to make the bill technically and legally sufficient. Frequently, technical amendments are not circulated to Council members until the first reading of the bill during a legislative session.

B. Increase the Public’s Ability to Participate in the Legislative Process, to Understand the Law, and to Evaluate Council Members’ Voting Records

1. Adopt a Germaneness Rule for Amendments Offered at Committee Mark-up and Legislative Sessions

At present, Council members may offer amendments to a bill during a committee mark-up session or at a Council legislative session whether or not the amendment is germane to the legislation introduced. Thus, amendments on issues that have not been subject to public hearing or debate or to prior consideration by Council members may be presented for a vote without warning. Indeed, amendments in the nature of a substitute can alter any aspect of a legislative proposal, including its basic subject matter. DC Appleseed recommends adopting a germaneness rule for amendments at committee mark-up and legislative sessions to ensure that the public and Council members receive an opportunity—through the hearing process—to consider carefully all proposed legislative provisions.

Because germaneness requirements may result in a loss of some flexibility to the Council, DC Appleseed further recommends that a rule be established allowing the Council to override the germaneness requirement by affirmative vote of two-thirds of a quorum of the body (whether a committee or the full Council) present and voting. If the Council is not able to waive the germaneness rule but nonetheless feels strongly that a provision contained in the non-germane amendment is necessary, a new bill can be introduced and the Council can proceed through the legislative process anew.

2. Require a Recorded Vote on all Non-consent Legislation

At a legislative session, bills and amendments to bills on the non-consent agenda are voted by voice vote unless a member demands a roll call vote.³⁸ Any member may request a roll call vote either before or immediately after the voice vote. On a voice vote, any member may ask that his or her individual vote be recorded.

If a roll call vote is taken, each Council member’s vote is recorded in the legislative record. Conversely, the vote of each individual Council member is not recorded when a voice vote is taken; the record merely states that a voice vote was taken and that a bill was approved or disapproved. Thus, unless a voice vote is unanimous or a Council member requests that his or her vote be recorded, the public does not know who voted for and against a particular piece of legislation when a voice vote is taken.

DC Appleseed recommends that the system be changed so that votes are individually recorded for all non-consent agenda legislation. Simply put, the public has a right to know its legislators’ voting records when assessing their performance at election time. Providing such

³⁸ Votes need not be recorded for legislation enacted from the consent agenda because such legislation, by definition, can only be enacted by unanimous vote.

information does not require that a roll call vote be taken on every bill; electronic voting, for example, would allow votes to be cast silently. Nonetheless, a record of all legislative votes must exist to ensure accountability.

3. Reform “Breakfast Meetings”

In recent years, the Council has held—immediately prior to virtually every legislative session—private “breakfast meetings,” during which Council members discuss the matters on the agenda at that day’s legislative session. These meetings—which are not a part of the Council’s formal legislative process—exclude all persons except the Council members and their staffs. These meetings were raised as an issue of concern by some of those interviewed for this report by the DC Appleseed Project Team. Several interviewees pointed out that other legislative bodies operate under the requirements of open meetings laws and seem to function effectively without closed-door meetings, thus avoiding the appearance that deals are made and votes are exchanged, away from public scrutiny.

Others disagreed, suggesting that such meetings serve a valuable purpose, providing a setting in which Council members can candidly air their concerns. With a clearer understanding of the issues under consideration, Council members will be better able to participate constructively in public meetings. Accordingly, in legislative bodies such as the Council, many believe that such discussions are an appropriate, if not a necessary, component to political decision-making.

DC Appleseed believes that both viewpoints have merit. Since the public does not attend, we do not know how breakfast meetings are conducted or whether the meetings are used by the Council to decide matters on its public agenda prior to its legislative session. Some former Council staff members interviewed by the DC Appleseed Project Team have attended breakfast meetings and told us that they are far from being “dress rehearsals” for the legislative sessions but instead are merely *ad hoc* discussions among small groups of Council members. They point to the number of times that Council members appear to change their minds during open meetings as indications that little (if anything) is actually decided in breakfast meetings.

If the Council is not, in fact, meeting in private to decide—as a body—matters on which it will hold public meetings, breakfast sessions are not a problem. However, while informal sharing of ideas should be encouraged, decisions ought to be made by the Council in a public forum. Votes should not be taken in private session. Moreover, some members of the public believe that decisions are being made, regardless of what the Council actually does in these private sessions. Particularly because the breakfast meetings occur immediately prior to (and often cause delay in the start of) legislative sessions, they are seen by many as a substitute for open legislative deliberations. Thus, the meetings create the impression that the Council wishes to evade public scrutiny of its debates and decision-making.

Ultimately, DC Appleseed does not oppose the general idea of informal meetings among Council members. We nonetheless believe that certain changes should be made (1) to reduce the

likelihood (and the perception) that public issues will be decided privately, and (2) to prevent breakfast meetings from delaying legislative sessions.

The Council should prepare minutes to increase public understanding of what takes place at breakfast meetings and to assure the public that votes are not being taken in these private sessions. The minutes should describe, in general terms, any matter on the public agenda that was discussed by a quorum of a committee or the Council, but need not reflect casual conversations between Council members.³⁹ The minutes should not attribute particular comments to individuals, for doing so might deter frank and open exchanges. However, the minutes should include a list of attendees and the matters discussed.

There is a simple solution to the problem of breakfast meetings delaying the commencement of legislative sessions: change the schedule. The breakfast meetings should be held far enough in advance of legislative sessions (perhaps the night before) to ensure that legislative sessions begin on time. This change alone would increase the perception that the Council respects the public's time, and would decrease the public's sense that the Council is conducting public business in private.

4. Codify All Titles of the D.C. Code So that the Council Need Not Continue to Amend Organic Acts

A serious impediment to making Council legislation accessible to citizens and lawmakers alike is the fact that the D.C. Code—which is the source of District law relied upon by most citizens, lawyers, and the courts—rarely contains the text of the actual law. With few exceptions, the original act that created a law and the enacted amendments to the original law are the only source of the actual law. As a result, researching D.C. law is quite difficult, as is amending the law, since the Council must refer to the original act and trace each amendment to the original act.⁴⁰

If all titles of the D.C. Code were codified, legislation would be much easier to draft and understand. In addition, drafting errors could be expected to occur less frequently and be easier to spot and correct. For example, assume the Council wants to amend “An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1426; D.C. Code § 1-901 *et seq.*)” Council staff must track all amendments and additions to this Act to be sure that all subsections of the law amended between its creation in 1901 and the date of the new amendment are changed in a way that carries out the Council's intent. That process is inherently fraught with the possibility for error and cannot be the most productive use of the Council staff's time. It would be eminently simpler and clearer for the Council to amend D.C. Code § 1-901.

³⁹ Of course, Council discussions regarding non-public items such as internal personnel decisions, procurement, litigation, or collective bargaining, etc. would not have to be reflected in the minutes.

⁴⁰ Of the 49 titles in the Code, only 14 have been enacted as law: Titles 11-17 Judiciary and Judicial Procedure; Titles 18-21 Decedents' Estates and Fiduciary Relations; Title 23 Criminal Procedure; Title 28 Commercial Instruments and Transactions; and Title 47 Taxation.

Because simplifying the legislative process by codifying the Code would provide such a great benefit to the Council and the public, the Council should take appropriate steps to begin the codification process.⁴¹

C. Increase the Availability of Documents to the Public and Council Members that Describe and Evaluate Legislative Proposals

A Council member introducing legislation is required to provide only a signed original of the legislation to the Secretary; Council Rules do not require bills or resolutions introduced in the Council to include any information explaining their purposes or impacts.⁴² The information provided to Council members and to the public at the time legislation is introduced is clearly inadequate. Rarely if ever is a bill accompanied by a detailed policy justification or fiscal analysis, and it is often difficult to discern what the legislation is intended to do or how it changes current law. Legislative reports that describe the policy justifications for, and fiscal impact of, legislation are never provided until a bill is presented to the committee for consideration. This is simply too late in the legislative process to circulate information that is critical to well-informed public comment and Council deliberation.

1. Require that, for All Legislation, a Fiscal Impact Statement Be Prepared and Made Available Prior to the Notice of the Public Hearing

The Home Rule Act requires that a fiscal impact statement (“FIS”) be adopted for all legislation passed by the Council.⁴³ Despite comprehensive requirements for what must be included, FISs are often not useful.⁴⁴ The quality of FISs varies among committees, as do FISs prepared for different bills reported out of the same committee. Those interviewed by DC Appleseed’s Project Team suggested that many of the staff members who draft FISs have little or no expertise in developing the information required. As a result, the vast majority of FISs are based primarily on information, provided by the executive branch, which is incorporated into a committee report’s FIS without substantive review by the Council. Even when a Council committee member questions or challenges the information provided by the executive, the

⁴¹ DC Appleseed has not researched precisely what would be needed to codify the Code. While it may be possible to pass one bill adopting the entire D.C. Code as currently constituted, questions remain regarding the effect such enactment would have on the effectiveness of provisions in original acts that are not contained in the D.C. Code. If the process proves to be time-consuming, the Council should investigate the possibility of obtaining outside *pro bono* assistance from District law firms to complete this task.

⁴² See Council Rule 402(a).

⁴³ Home Rule Act, Pub. L. 93-198 § 602(c)(3), *amended by* District of Columbia Financial Responsibility and Management Assistance Act § 301(d) (1995). See also Council Rule 443(c).

⁴⁴ See Appendix IV for a list of requirements.

Council has little or no in-house expertise to evaluate information or to develop alternative analyses.⁴⁵

Further, many FISs are prepared too late in the process to assist Council members and the public in the decision-making process. Some legislation goes through the standard process and is presented to the full Council at the COW session without an FIS, in which cases the FIS is offered at the first reading by the Council. In some cases, the FIS first appears before the Council as an amendment offered at a bill's final reading. This means that, before many Council members know what effect the legislation will have on the District's operating and capital budgets, the bill has been voted out of committee, cleared the COW, and may even have been approved by the full Council at one legislative session.

Such a practice undermines the credibility of the Council and severely hampers informed debate on legislation and consideration of alternatives by both Council members and the public. By presenting and adopting an FIS at the last possible opportunity—after preliminary votes have been cast—the Council sends a clear signal to all observers that it has not carefully reviewed the full fiscal impact of legislation. In addition to sending the wrong signal to the taxpaying public, the Council gives both Congress and the Control Board the perception that the Council is not carefully considering important fiscal aspects of its policy role. The Council should not ignore the real possibility that such a perception increases the likelihood that the Council's powers will be usurped by non-democratically elected bodies.

By the time public hearing notice is provided, the public and Council members should have ready access to an analysis of the bill's effects, through an FIS. Simply put, it is not possible to have a meaningful discussion on the merits of any bill that requires expenditures by the government without considering its fiscal impact.⁴⁶

We recommend that each FIS be prepared by central staff, with assistance from the executive branch agencies affected by the applicable bill, as well as input from the staff of the bill's sponsors. Under DC Appleseed's staffing recommendations (*see* Chapter 1), the central

⁴⁵ In some instances, the Council's budget staff can be of general assistance, but staff often lack detailed information about what it will cost to implement a program, which is necessary to provide support to committees preparing FISs.

⁴⁶ We recognize that a bill may change substantially after the public hearing is held. As a result, the FIS may have to be changed as the bill is amended. The possible need for such amendments does not, however, reduce the need for the public to have access to initial fiscal statements at the time of the hearing. In fact the FIS may lead to amendments in the legislation.

staff will be configured to provide the Council with fiscal expertise needed to produce the estimates.⁴⁷

2. 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

In order for committee members to make informed decisions on proposed legislation, it is imperative that they have reasonable time in which to review legislation before they vote. While draft committee prints and draft committee reports to be considered at mark-up sessions are, by rule, to be circulated to the committee members prior to the session, this requirement is sometimes met by circulating the documents literally minutes before the meeting begins. Often, sufficient copies are not available for the public, and sometimes *no* copies are available publicly. Committee meetings are open to the public, but without copies of the legislation being debated—especially because legislation considered by a committee often contains substantial changes from the introduced version—the public often cannot understand what is taking place.

We recommend that the Council require that both the draft committee print and draft committee report be circulated to committee members and made publicly available at least two working days before the committee mark-up. These changes would provide the opportunity for committee members to consider in a less frenetic way the matters they will be deciding and would allow the public to understand more completely issues and legislation.

3. Improve Legislative Reports

Legislative reports that accompany committee prints referred to the full Council for consideration are of uneven quality and contain inadequate information. As a result, Council and executive-branch staff, members of the public, and judiciary personnel who are interested in researching legislative histories are sometimes unable to decipher the reasons a bill was enacted. Given the technical inadequacy of some legislation, the need for sound legislative histories is even greater.

The Council can improve its legislative reports by assigning central staff to assemble such reports according to a standard format. While we understand that standards for legislative reports now exists, the comments of people interviewed by the DC Appleseed Project Team suggest that committee staff (who are the staff that generally prepare reports) sometimes ignore those standards. Moreover, the Council should enact rules which ensure that such reports are

⁴⁷ DC Appleseed further recommends that Council members be encouraged to examine—and make available to the public at the time public notice is provided—what other jurisdictions have done to address the matters covered by a proposed bill. The District is fortunate to have readily available the resources of many national organizations to provide information regarding what other cities or states are doing (National League of Cities, United States Conference of Mayors, National Conference of State Legislatures, National Association of Counties, and the International City/County Management Association are examples).

easily accessible to the public at a central location within a calendar week following the committee mark-up.

Finally, each legislative report should be required to include an analysis of the impact legislation is expected to have on non-governmental entities. Just as an FIS requires that the Council analyze the impact of legislation on the government, so too should the Council investigate the probable effects of legislation on the private sector—including citizens, neighborhoods, businesses, and other private entities. Because this analysis will be less exact, the level of detail should not be expected to rise to the level contained in an FIS, and need not be performed as early in the legislative process. Nonetheless, requiring that the Council analyze, prior to enacting legislation, the impacts laws will have on non-governmental entities will impose a needed discipline on the Council to pay attention to a wider range of effects resulting from its enactments.

CHAPTER 3: THE EMERGENCY LEGISLATIVE PROCESS

I. INTRODUCTION

The Home Rule Act allows legislation to be considered on an expedited basis under “emergency circumstances,” which are defined as those for which serious consequences would result from the delays associated with the standard legislative process.⁴⁸ As documented in this chapter, the D.C. Council has employed its emergency powers far more frequently than anticipated in the Home Rule Act, *enacting as much as 50% of all legislation* in recent years under emergency procedures. There are numerous causes for this heavy reliance on the emergency legislative process, not all created by the Council. Regardless of the causes, however, the effect is the same. Each time the emergency legislative process is employed, the public is excluded from participating in the Council’s deliberations. As a result—on numerous legislative issues—the public’s views are not heard, and the Council may be unaware of important perspectives and facts that could inform the Council’s conclusions.

Congress, the Mayor, and the Council have the power to prevent the over-use of the emergency legislative process. While all three should act, the Council—as the District’s local legislative body—has a distinct obligation to provide the public the opportunity to participate in legislative deliberations, regardless of whether Congress or the Mayor takes remedial action. As detailed below, the most important step that the Council can take to minimize use of the emergency legislative process is to plan its legislative work program more carefully.

II. CURRENT PRACTICES: THE COUNCIL’S EMERGENCY PROCESS

A. Legislation Enacted Outside of the Standard Legislative Process

The Council enacts two types of laws that are directly related to its expedited legislative process: emergency legislation and temporary legislation. Both are described below. However, because temporary legislation arises only as a result of the emergency legislative process and does not raise independent concerns, the recommendations in this chapter address only the emergency process.

1. Emergency Legislation

The Council is statutorily empowered to pass legislation on an expedited basis if two-thirds of the entire Council (9 members) votes for a declaration that “emergency circumstances”

⁴⁸ Home Rule Act, Pub. L. 93-198 § 412(a) (1973). *See also* Council Rule 412.

so require.⁴⁹ Pursuant to the implementing rules, the Council may find that an emergency exists in any

situation that adversely affects the health, safety, welfare, or economic well-being of a person for which legislative relief is deemed appropriate and necessary by the Council, and for which adherence to the ordinary legislative process would result in delay that would adversely affect the person whom the legislation is intended to protect.⁵⁰

Emergency legislation is effective for up to 90 days.⁵¹

The expedited legislative process used in the case of an “emergency” severely limits the opportunity for the public to receive notice regarding—and to comment upon—proposed legislation. Unlike the 15 days’ notice required in the standard legislative process, the expedited process merely requires that, prior to enacting an emergency bill or resolution, the Council provide 24 hours’ notice “in any . . . manner directed by the Council.”⁵² Moreover, because emergency legislation may be enacted after a single reading, the mandatory 13-day period between first and second readings of standard legislation is eliminated.

2. Temporary Legislation

An additional method used by the Council to enact legislation—the temporary legislative process—is a procedural mechanism used by the Council to extend to up to 225 days the effective period of measures contained in emergency legislation.⁵³ Temporary legislation is introduced at the same time as emergency legislation, and must be substantially similar to an emergency bill.⁵⁴ Temporary legislation, like emergency legislation but unlike standard legislation, is rarely, if ever, the subject of a public hearing, and is not assigned to committee.⁵⁵

⁴⁹ Home Rule Act, Pub. L. 93-198, sec. 412(a) (1973). The two-thirds majority is required only to pass a resolution declaring an emergency; the Council can pass an emergency bill by a simple majority.

⁵⁰ Council Rule 412(b).

⁵¹ Council Rule 412(c). D.C. CODE §§ 1-146(a) (Supp. 1979).

⁵² See Council Rules 425, 426.

⁵³ See Council Rule 413; *United States v. Alston*, 58 A.2d 587, 590 (D.C. 1990). The temporary legislative process grew out of the D.C. Court of Appeals ruling in *District of Columbia v. Washington Home Ownership Council*, in which the court stated that, when an emergency continues after the 90-day period of emergency legislation has expired, the Council can address the issue only through standard legislation rather than by using successive emergency bills. 415 A.2d 1349, 1359 (D.C. 1980). The Court left open the possibility that consecutive emergency bills would be permissible if the Congressional review period for standard legislation was extended due to Congressional recess. *Id.* at 1359 n.20. Recognizing that emergency legislation may expire before standard legislation becomes law—including Congressional review—the Council created the temporary legislative process. Because temporary legislation may remain in effect for up to 225 days (substantially longer than emergency legislation), it acts as a bridge between the expiration of emergency legislation and the enactment of pending standard legislation.

⁵⁴ Council Rule 413.

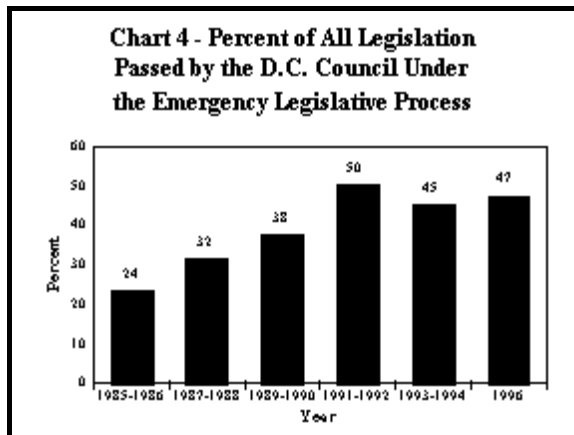
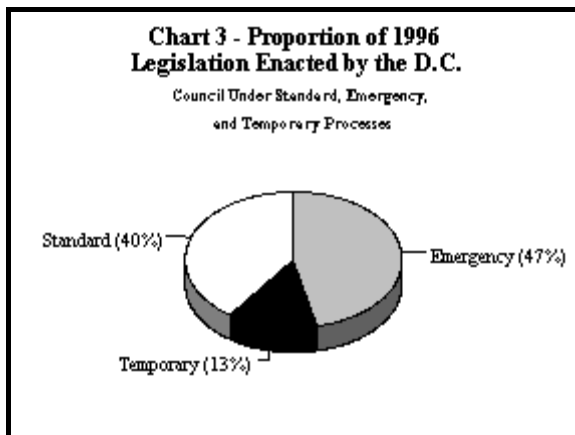
⁵⁵ Council Rule 413.

However, temporary legislation is similar to standard legislation in that it must comply with the Home Rule Act requirements that it (1) be passed on two readings, separated by 13 days, by a majority of Council members present and voting and (2) pass both Control Board and Congressional review.⁵⁶

B. The Council’s Reliance on the Emergency Process

1. Almost Half of all Legislation is Enacted on an Emergency Basis

From 1985 to 1996, the Council used the emergency legislative process at an increasing rate. According to published statistics, 24% of bills were enacted on an emergency basis in Council Period VI (1985-86), 32% in Council Period VII (1987-88), 38% in Council Period VIII (1989-90), 50% in Council Period IX (1991-92), and 45% in Council Period X (1993-94).⁵⁷ Because the District has not reported this information since 1994, DC Appleseed’s Project Team independently calculated the percentage of legislation enacted on an emergency basis in 1996, and found that this high rate has continued. Of the 260 acts (emergency, temporary, and standard) passed by the Council and signed by the Mayor in 1996, 121 (or 47%) were emergency acts.



⁵⁶ See Home Rule Act, Pub. L. 93-198 § 412(a) (1973); D.C. CODE § 47-392.3(a). The first reading of temporary legislation must occur at the same legislative session as enactment of an emergency bill on the same subject.

⁵⁷ “Indices: A Statistical Index to D.C. Services” (annual), as cited in *Letter from Fair Budget Coalition to David Clarke*, (April 13, 1995) (discussing Council’s excessive use of emergency powers). The data for Council Period X are calculated only through August 1, 1994.

2. The Overuse of Emergency Legislation Diminishes Public Participation

It is unlikely that the Home Rule Act's specific definition of emergency was intended to foster the use of an expedited process for nearly half of all enacted legislation. Each time that the emergency legislative process is utilized, public participation is lessened because (1) the Council can enact emergency bills after providing the public 24 hours' notice in any manner that the Council deems appropriate, as opposed to the 15-day notice required for standard legislation;⁵⁸ (2) only one reading is required (as opposed to two readings 13 days apart), thereby collapsing into a single day the time period in which the public may participate; and (3) the Council rarely, if ever, assigns emergency legislation to a committee or considers it at a public hearing, whereas both practices almost always occur in the standard legislative process.

District law recognizes that such limitations are warranted when an emergency exists. However, when emergency circumstances are not present, such limitations should be avoided. Formal procedures for public participation enable the Council to consider the views of constituents, experts, and advocates who might not otherwise have the time or access to make their views known to the Council. Each of the formal procedures diminished or eliminated in the emergency legislative process—public notice, public hearings, and the second reading—was created by Congress to increase public participation.⁵⁹

Defenders of the Council's heavy reliance on emergency legislation argue that public participation is not, in fact, substantially diminished when the Council uses the expedited process. Because emergency bills are effective for no more than 90 days, the Council typically considers standard legislation on the same matter, at which time the Council generally allows public participation through open hearings. This argument fails to account for several real-world effects of emergency legislation.

Several nonprofit service providers interviewed by the DC Appleseed Project Team noted that—even though emergency legislation affecting their clients is effective for a limited period of time—emergency measures may still have significant (and occasionally irreversible) consequences for people affected by the legislation. Even if such legislation is not extended through the enactment of standard legislation, its impact during its 90-day effective period should not be ignored. Moreover, anecdotal evidence indicates that legislation is less likely to be disapproved or substantially amended by the Council if it has been preceded by enactment of emergency legislation. Several people interviewed by the DC Appleseed Project Team noted that the enactment of emergency legislation creates a sense of expectation and inertia, which often makes it difficult to make changes in any proposed standard legislation that follows.

⁵⁸ See discussion of notice in Chapter 4, pp. 46-47 below.

⁵⁹ STAFF OF THE HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93D CONG., 2D SESS., HOME RULE FOR THE DISTRICT OF COLUMBIA 1042 (Comm. Print 1974).

In addition, there is evidence that the Council considers public comment during the standard legislative process to be less important when that process has been preceded by enactment of emergency legislation addressing the same issue. For example, in 1996, when considering standard legislation to reform Medicare insurance (Bill 11-627) that mirrored already enacted emergency legislation (discussed in greater detail in Case Study Three below), the Council chose not to hold a public hearing. The legislative report of the Committee of Consumer and Regulatory Affairs provides the reason: the committee “found no reasons to hold a public hearing on Bill 11-627 since it . . . puts in permanent place the changes already enacted in emergency and temporary legislation.”⁶⁰

Another reason the Council should decrease its use of emergency legislation is because the law says it must. As noted above, Congress included several procedures in the Home Rule Act (such as the second reading requirement) for the express purpose of facilitating public participation in the District’s legislative process. While recognizing that the Home Rule Act contemplates the enactment of emergency legislation in some circumstances, several court decisions interpreting the Act expressly limit the use of emergency process, holding that the process should not be used to defeat the clear intent of Congress. For example, in *District of Columbia v. Washington Home Ownership Council* (“*Washington Home*”), the D.C. Court of Appeals struck down the use of successive emergency acts to respond to an ongoing emergency, reflecting “the common-sense notion that an ‘emergency’ prerogative and procedure is extraordinary and should not be substituted freely for the regular procedure.”⁶¹

The DC Appleseed Project Team’s research reveals that, despite the *Washington Home* decision, the Council frequently used successive emergency measures in 1996 to respond to the same “emergency” situation. Specifically, of the 121 emergency acts passed by the Council and signed by the Mayor in 1996, 30 (or approximately 25%) were second or successive emergencies. A good example of this is described in Case Study Two below.

III. REASONS THE COUNCIL USES EMERGENCY LEGISLATION

There are times when genuine emergency conditions require that the Council use its expedited legislative authority to prevent harm that would result if the Council pursued the standard legislative process. Case Study One provides an example.

⁶⁰ Committee Report at 2 and 4, n.1. Although the Committee Report and the Mayor’s letter refer to temporary legislation, only emergency and standard legislation were enacted, according to both the Council’s Office Legislative Services and a review of the D.C. Register 1996 index.

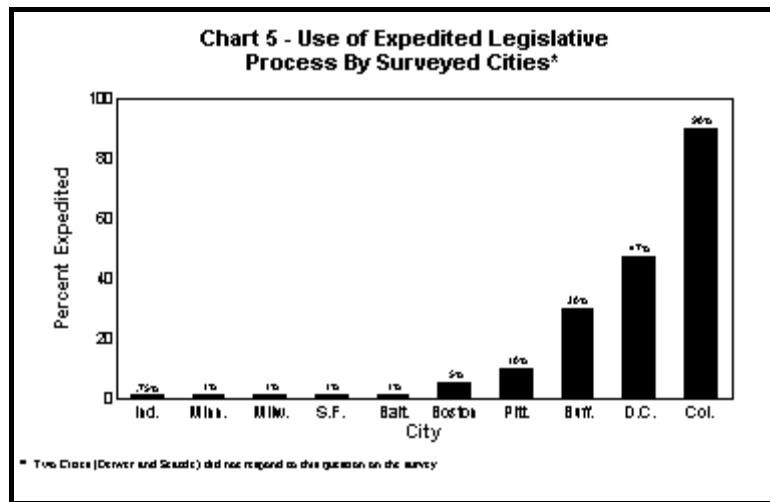
⁶¹ *District of Columbia v. Washington Home Ownership Council*, 415 A.2d at 1354, 1359. See also *United States v. Alston*, 580 A.2d 587, 590 (D.C. 1990), *American Federation of Government Employees v. Barry*, 459 A.2d 1045 (D.C. 1983). In addition to enacting laws using its emergency authority, the Council may repeal laws on an emergency basis, but upon expiration of emergency legislation, it is not clear that, without more, an emergency repeal can permanently deprive a law of legal effect. *Atkinson v. Board of Elections and Ethics*, 597 A.2d 863 (D.C. 1991).

Case Study One

An Appropriate Response to “True” Emergency

In late 1996, the Council enacted emergency legislation that allowed the Mayor to reemploy and contract with former Department of Public Works (“DPW”) snow removal employees who had accepted early retirement incentive packages that made them ineligible for reemployment.⁶² The measure was made necessary by a major snow storm, and the fact that DPW did not have enough available employees—or qualified applicants—to enable it to remove winter snow. Rapid action was important for public safety, which could not have been achieved had the Council utilized the standard legislative process, with its time-consuming requirements for public notice, two readings, Control Board review, and Congressional review. Accordingly, the Council’s use of the emergency process was an appropriate response to a genuine problem.

However, true emergencies do not explain many of the instances in which the Council enacts emergency legislation. Each of the 11 other cities surveyed by the DC Appleseed Project Team has expedited legislative procedures available, and the majority of those cities do not require public notice or hearings in such circumstances. Yet, as indicated in the Chart below, seven of the nine city councils that provided information regarding the extent to which they used the expedited process reported that they enact 10% or less of all legislation under such procedures. Only the Columbus (Ohio) City Council reported using emergency legislative procedures more than the D.C. Council does.



Apart from circumstances under which legitimate emergencies clearly exist, the DC Appleseed Project Team’s research indicates that three factors lead the D.C. Council to over-use the emergency process: the lengthy Congressional review period, poor planning by the Council,

⁶² *Fiscal Year 1997 Reemployment and Contracting Restriction Rescission Act*, D.C. Act 11-448, 43 D.C. Reg. 6864 (1996).

and poor planning by the Mayor.⁶³ While the DC Appleseed Project Team was unable to quantify the amount of emergency legislation caused by each factor, our research suggests that each plays a role in the Council’s use of the emergency legislative process.

It follows from DC Appleseed’s analysis that Congress, the Council, and the Mayor can (and should) act to reduce the number of times District residents are excluded from the legislative process. And, while Congress and the Mayor should not ignore their respective responsibilities in this regard, the D.C. Council has an independent obligation to correct those aspects of the problem under its control.

A. The Congressional Review Period

In their meetings with the DC Appleseed Project Team, several D.C. Council members cited the 30-day Congressional review period as the main reason for the Council’s use of the emergency legislative process. According to these Council members, the lengthy time during which Congress (and the Control Board) may review enacted legislation so delays the Council’s ability to respond to important issues, that the Council frequently must use the emergency legislative process to respond in a timely fashion.

DC Appleseed recognizes that such exigencies can occur. The existence of a lengthy Congressional review period may, by itself, justify the use of expedited legislative procedures in some cases. One such case is described in Case Study Two–Part One below. Without the enactment of emergency legislation, the Council would not have been able to approve any contract over \$1 million, and the D.C. government would have had difficulty operating.

Case Study Two–Part One

Emergency Legislation Caused by the Congressional Review Period

The federal law that created the Control Board, approved on April 17, 1995, also provided that “no contract involving expenditures in excess of \$1 million during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council).”⁶⁴ Because the law took effect immediately upon federal enactment, the D.C. Council recognized that it would have to enact criteria immediately so that it could review such contracts until standard legislation could be enacted. Accordingly, the Council enacted emergency legislation setting forth such criteria on July 28, 1995.⁶⁵

(continued on next page)

⁶³ While other reasons for the over-use of emergency legislation were mentioned in the DC Appleseed Project Team’s interviews—such as a conscious attempt by some Council members to exclude the public—the broad consensus was that the three factors detailed in this report are the main reasons for this problem.

⁶⁴ District of Columbia Financial Responsibility and Management Assistant Act, 109 Stat. 151 (1995); D.C. CODE § 1-1130.

⁶⁵ Council Contract Approval Emergency Amendment Act, D.C. Act 11-125 (1995), 42 D.C. Reg. 4319 (1995).

(Case Study Two–Part One, continued)

In this case, the Council’s use of the emergency legislative process was necessary. Congress mandated that the Council immediately promulgate standards to approve contracts in excess of \$1 million. Thus, had the Council not taken emergency action, the District government would have been unable to conduct business for months while standard legislation wound its way through a public hearing, committee consideration, two readings, Control Board review, and a lengthy Congressional review process. Thus, the federal mandate for the immediate promulgation of rules by the Council forced the enactment of the emergency bill.

B. Inadequate Planning by the Council

Many of those interviewed by the DC Applesseed Project Team cite poor planning as a major reason for the Council’s use of the emergency legislative process. In certain cases, the Council has failed to meet either its own deadlines or those imposed by Congress to enact standard legislation. Case Study Two–Part Two below reveals that missed deadlines often lead the Council to use—sometimes repeatedly—the emergency legislative process. Better planning could (and should) have avoided these occurrences.

Case Study Two–Part Two

Improper Enactment of Successive Pieces of Emergency Legislation

In 1996, after the first emergency legislation establishing review criteria for contracts exceeding \$1 million expired (described in Case Study Two–Part One above), the Council enacted seven successive emergency bills to address the same issue—establishing criteria for the Council’s contract review. Unlike the first emergency, however, the Council’s enactment of subsequent emergencies cannot be blamed on pressures created by the Congressional review period. Indeed, the Council itself could have avoided most (if not all) of the enactments of additional emergency bills in this case.

One month before enacting the first emergency bill, the Council introduced standard legislation for reviewing contracts on June 15, 1995. Over the next three years, the Council enacted seven additional pieces of emergency legislation and three pieces of temporary legislation in order to “avoid a gap in the effectiveness of the Council’s contract review criteria”⁶⁶ Meanwhile, Council enactment of standard legislation to create contract criteria was repeatedly delayed. Legislation introduced in Council Period XI was not enacted by the end of the two year term—December 31, 1996. Thus, standard legislation setting forth contract review criteria was reintroduced in Council Period XII, referred to the Committee on Government Operations,⁶⁷ and reported to the
(continued on next page)

⁶⁶ See, e.g., D.C. Council Resolution 11-379, § 2(d), “Council Contract Approval Modification Temporary Amendment Act of 1995 Emergency Declaration Resolution of 1996,” 43 D.C. Reg. 3071 (1996); D.C. Act 11-294, 43 D.C. Reg. 3718 (1996).

⁶⁷ Establishment of Criteria for Council Review of Contracts Act, Perm. Bill 12-144 (1997), 44 D.C. Reg. 1542 (1997).

(Case Study Two—Part Two, continued)

Committee of the Whole.⁶⁸ On March 17, 1998—a full year after the legislation was reintroduced—the Committee of the Whole considered the legislation.⁶⁹ The Council adopted the legislation on June 2, 1998, and it was signed by the Mayor on June 23, 1998—almost three years after standard legislation was first introduced to the Council.⁷⁰ In late 1998, the Control Board rejected the legislation and returned it to the Council, which must again consider the issue.

Use of the emergency process after adoption of the first emergency could have been avoided, and probably violated the standard adopted by the D.C. Court of Appeals' in *Washington Home*, which prohibits the enactment of successive pieces of substantially identical emergency acts. For example, when the Council enacted the second emergency bill, no standard legislation on the same matter was pending before Congress and no temporary bill had been introduced in the Council. By failing to advance standard legislation, the Council created the need to enact a third emergency act. The Council's adoption of these emergency acts effectively bypassed the Home Rule Act's requirements for a second reading and Congressional review.

Even if the Council's use of emergency legislation was valid under *Washington Home*, it was unreasonable for the Council to delay the enactment of standard legislation until almost three years after standard legislation was first introduced. The Council's failure to move bills through the ordinary legislative process in an efficient manner clearly led to the enactment of seven successive pieces of emergency legislation on the same issue. In this case, better planning by the Council could have avoided successive emergency acts.

C. Inadequate Planning By the Executive Branch

Several of those interviewed by DC Appleseed's Project Team cited the Mayor's failure to account for the Congressional review period when proposing legislation as a reason for the Council's use of the emergency legislative process. Case Study Three illustrates a case in which executive branch inaction compelled the Council to use the emergency legislative process.

⁶⁸ See Committee Report on Standard Bill 12-144. Council Rule 231(c) provides that "each bill and resolution reported by the committees of the Council. . . shall be referred to the Committee of the Whole for a review of its legal sufficiency and technical compliance with the drafting rules of the Council. . . ."

⁶⁹ See Committee Report on Standard Bill 12-144.

⁷⁰ See D.C. Act 12-397, "Establishment of Council Contract Review Criteria, Alley Closing, Budget Support, and Omnibus Regulatory Reform Amendment Act of 1998." Because the legislation was rejected by the Control Board, it was not published in the D.C. Register.

Case Study Three

Inattention to Deadlines by the Executive Branch Results in Need for Emergency Legislation

On October 31, 1994, Congress enacted the Social Security Act Amendments of 1994, which required the District to amend its Medicare Supplemental Insurance Minimum Standards Act to comply with new federal standards for health insurance policies sold to supplement Medicare health coverage.⁷¹ Congress directed the District to bring its Medicare law into compliance with the new federal standards by April 28, 1996, about 18 months after enactment of the federal law.⁷² If the District failed to comply by that date, sellers of Medicare supplemental insurance policies would not be able to sell such policies in the District unless the Secretary of Health and Human Services certified that the policies met the new federal standards.⁷³

On March 27, 1996—only one month before the April 28, 1996 federal deadline and almost 17 months after Congressional enactment of the standards—the Mayor sent a letter advising the Council Chair of the need to amend District law to comply with the new federal standards. Along with the letter, the Mayor transmitted proposed emergency, temporary, and standard legislation to amend District law. The next day, the Council Chair introduced standard legislation, which was referred to the Committee on Consumer and Regulatory Affairs. On May 30, 1996, the Committee on Consumer and Regulatory Affairs—which never held a hearing on the matter—recommended approval of the standard legislation, and, on July 17, 1996, the Council adopted the bill on second reading.⁷⁴ The Mayor signed the bill, the Control Board approved the legislation, and the legislation finally became effective on April 9, 1997—almost one year after the Congressionally imposed deadline.

Before standard legislation became effective, the Council enacted five pieces of emergency legislation. The Council enacted the first emergency act to protect “the health, safety, welfare or economic well-being of District residents.”⁷⁵ The remaining pieces of emergency legislation were made necessary because the standard legislation was undergoing Congressional review and the Council needed to ensure that the Congressionally required amendments to the District’s Medicare Supplemental Insurance Minimum Standards Act remained in force until standard legislation could take effect.

In this case, the Council was forced to use the emergency legislative process repetitively for one central reason—the Mayor failed to transmit standard legislation to the Council early enough in the 18-month period that Congress provided. As noted above, emergencies are authorized under the D.C. Code only when severe consequences would result from the Council’s use of the ordinary legislative process. In this case, the Council could have used the ordinary legislative process had the executive branch planned ahead of time and submitted legislation to the Council’s consideration earlier.

⁷¹ 42 U.S.C. § 1395ss(a)(2) (1998).

⁷² *Id.* (a state would be considered out of compliance with the requirements of section 188 of the Social Security Act if it failed to make changes to its statutes or regulations one year after the date the National Association of Insurance Commissioners or the Secretary of Health and Human Services modified the 1991 NAIC Model Regulation).

⁷³ Letter from Mayor Barry to Council Chairman Clarke, dated March 27, 1996.

⁷⁴ *See* Notice, D.C. Law 11-202, 44 D.C. Reg. 2397 (1997).

⁷⁵ Council Transcript, 28th Legislative Meeting (April 2, 1996) at 158; Council Resolution 11-275, 43 D.C. Reg. 1878 (1996); Notice, 43 D.C. Reg. 1913 (1996); “Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996,” D.C. Act 11-244, 43 D.C. Reg. 2119 (1996).

IV. RECOMMENDATIONS

While DC Appleseed recognizes that situations beyond the Council’s control sometimes force the emergency legislative process to be employed, we also believe that the Council itself can (and should) decrease the use of emergency legislation. Indeed, the unique Congressional review process for District legislation requires that the D.C. Council plan better than other legislative bodies. But unless Congress eliminates its review, the Council must account for the review period in the standard legislative process. The alternative—continuing to exclude the public from participating in nearly half of all legislative deliberations—is unacceptable.

The Council should be more rigorous in defining the presence of emergency circumstances. Merely citing the presence of the Congressional review period does not automatically warrant the use of emergency legislation. Instead, the Council should consider the likely length of the Congressional review period in its overall legislative planning process. Important legislative initiatives that can be foreseen should be scheduled to allow for Congressional review *and* public participation through the standard legislative process. The staffing recommendations in Chapter 1 address this point directly by recommending a centralized policy staff that would include personnel to support the planning of the Council’s legislative work program.

If, despite this planning, exigencies still suggest the possibility of using the emergency process, the Council must—as elected representatives of the public—weigh the hardship that will be caused by delays inherent in the standard legislative process against the hardship that will be caused by excluding the public through use of the emergency process. The Council should use the emergency legislative process only if the immediate need to enact legislation substantially outweighs the benefits of public participation and extended legislative deliberations. And, even then, the Council should attempt to utilize as many mechanisms that provide for public participation—including holding a public hearing—as time will allow.⁷⁶

In addition, the Council should improve communications with the District’s executive branch in order to reduce the number of times the executive refers legislation to the Council too late to allow the Council to use the standard legislative process. For example, the Council should re-establish a close relationship with the Mayor’s Office of Intergovernmental Relations to ensure that the executive’s planned legislative initiatives are communicated to the Council as early as possible.

⁷⁶ Congress and the Mayor should also take action to alleviate this problem by, respectively, eliminating (or substantially curtailing) Congressional review of most District legislation and planning into executive branch initiatives the Congressional review period. Detailed recommendations to Congress and the Mayor are beyond the scope of this report.

CHAPTER 4: PUBLIC HEARINGS

I. INTRODUCTION

Public hearings are an important element of the legislative process. When properly structured, public hearings can significantly enhance the quality of legislation and help the citizenry play a constructive role in their own governance. “In the hands of motivated individuals and mobilized groups, these [hearings] have been effectively used. They have transformed the local level into a much more open and accessible context than are state and federal government processes for the typical citizen.”⁷⁷

Ideally, a well-run public hearing process can provide numerous benefits, including:

- improving Council members’ understanding of the problems addressed by, and the effects of, specific proposals;
- increasing the Council’s access to expert advice and technical data;
- educating the public about issues and the reasons for policy decisions;
- enhancing citizen participation in government; and
- increasing public respect for government.

If not carefully designed, however, public hearings may have little value or even prove, on balance, to be counterproductive; poorly run hearings erode the public’s confidence in, and lower its expectations of, a legislative body.⁷⁸

DC Appleseed’s research suggests that the D.C. Council’s hearings have some value and enormous potential, but need significant improvement. The long time that witnesses must wait to testify, the apparent disorganization of the public hearing process, the lack of information describing and explaining the issues being addressed, and the lack of preparation by both Council members and executive-branch witnesses gives the public the impression that the Council does not respect the public or the legislative process. Moreover, there is the perception that private meetings between Council members and lobbyists have a greater impact than does public hearing testimony, and that hearings often do not have a substantive effect on legislation.

⁷⁷ Elaine B. Sharpe, *Urban Politics and Administration: From Service Delivery to Economic Development*, (1990) at 82.

⁷⁸ For example, public hearings have been described as “ritual” or “useless” endeavors that rarely affect government decisions; as generally providing participants with the feeling that no one is listening; and as often too large and unwieldy to foster productive discussions. See John Clayton Thomas, *Public Participation in Public Decisions: New Skills and Strategies for Public Managers*, 115; The Harwood Group, Kettering Foundation, *Citizens and Politics, A View from Main Street America* (1991) at 14-15.

Public hearings may not always be ideal vehicles for public input. Accordingly, the Council should consider additional ways for the public to participate, such as establishing written comment periods, convening town hall meetings, and holding open office hours for Council members. See, generally, Elaine B. Sharpe, *Urban Politics and Administration: From Service Delivery to Economic Development*, (1990).

In light of the wealth of expertise and ideas possessed by the citizens of the District who are eager to testify, this is a sad result. After a brief section that describes the procedural rules governing public hearings, DC Applesseed offers recommendations for improving the legislative public hearing process.⁷⁹

II. CURRENT PRACTICES: THE COUNCIL'S PUBLIC HEARING PROCESS⁸⁰

A. Public Hearings and Roundtables

The Council Rules do not require that a hearing be held for all legislation, but rather that the Council (either as a body or through a committee) “*shall* hold a hearing when required by law and *may* hold a hearing on any matter relating to the affairs of the District.”⁸¹ Either the Chair of the Council, the Council itself, or a committee chair may call a hearing.⁸² Because most hearings are conducted by committees, this chapter generally discusses committee hearings. In cases where full Council hearings are substantially different, the differences are noted.

According to Council Rules, unless a hearing is required by law or regulation, committees may hold either a hearing or a “roundtable” on any matter within their jurisdiction.⁸³ The Council’s Rules establish only a single difference between roundtables and hearings: for roundtables, the Council need not provide notice to the public.⁸⁴ Although the precise number of hearings conducted by the Council and its committees is not known, some public session to receive public comment—either a hearing or a roundtable—is held on most pieces of standard legislation. Committees frequently hold roundtables in place of public hearings.

⁷⁹ While the Council holds hearings outside of the legislative context (*i.e.*, for budget review, oversight) DC Applesseed’s specific recommendations relate only to hearings on legislation and legislative issues. Nonetheless, several of our recommendations (*e.g.*, rigorous enforcement of time limits and germaneness on both witnesses and Council members) apply with equal force to budget and oversight hearings.

⁸⁰ Public hearings held by the Council and its committees are governed by the Rules of Organization and Procedure for the Council of the District of Columbia Council Period XIII (“Rules”), effective January 4, 1999. These Rules are effective until superseded by Rules of Organization and Procedure adopted in a succeeding two-year Council Period pursuant to Rule 301. *See* Council Rule 1005. In addition, certain individual committees have passed resolutions imposing additional procedures or requirements. This report addresses only the rules generally applicable to hearings held by all committees and by the Council as a body.

⁸¹ *See* Council Rule 501. Hearings are required for legislation on certain issues, for example, Real Property Tax legislation, *See* D.C. CODE § 47-812 (emphasis added).

⁸² *See* Council Rule 501.

⁸³ *See* Council Rule 501(c).

⁸⁴ *Id.*

B. The Quorum Requirement

The Rules provide that one member of the Council (or a committee) must be present for hearings held by the Council or a committee.⁸⁵ This minimal requirement is usually observed, at least at the start of a hearing, when the chair of the committee is generally in attendance. However, a majority of committee members is rarely present for an entire hearing, although Council members will sometimes assign staff to monitor hearings. Anecdotal evidence suggests that, occasionally, witnesses will testify without any Council member present.

C. Timing and Means of Notice

Council Rules require that 15 days' notice be provided to the public before the Council or one of its committees conducts a legislative hearing.⁸⁶ Notice of the time, date, and subject of the hearing must be published in the *D.C. Register*, which is published weekly. Less than 15 days' notice of a hearing is permissible if the Council has "good cause," as explained in a statement published with the notice.⁸⁷ Finally, the Rules require the Secretary to provide notice of all public hearings to each member of the Council.⁸⁸

In addition to the *D.C. Register*, notice that a public hearing will be held generally appears in a weekly Council Calendar.⁸⁹ Some committees also mail notice to certain interested parties, and District cable television provides notice of hearings sporadically. The Council's web site does not provide notice of public hearings.

Notwithstanding the requirement for 15 days' notice, those interviewed by DC Appleseed's Project Team indicated that the Council sometimes provides substantially less notice. While the *D.C. Register* is generally viewed as a good resource, the Council Calendar is not, because it often arrives in the mail only a few days before a hearing takes place. Individual

⁸⁵ See Council Rule 502.

⁸⁶ See Council Rule 422. The Council or a committee may recess a hearing and reconvene without providing public notice. See Council Rule 422(c).

⁸⁷ See Council Rule 424. The rules do not specify the means for providing abbreviated notice. The requirement that a statement containing good cause be published with the notice could imply one of two things. First, it may be read to require publication in the *D.C. Register*. Alternatively, the notice requirement may invoke Rule 425 which provides that, unless otherwise required, notice of hearings may be given by "(1) Publication in the District of Columbia Register; (2) Publication in one or more newspapers of general circulation; (3) Mailing notices to a mailing list of organizations and individuals established and maintained by the Secretary; (4) Use of other news media; (5) Posting notice in a prominent place in the John A. Wilson Building and other public buildings or posting places; (6) Facsimile; (7) E-mail; or (8) In any other manner directed by the Council."

⁸⁸ See Council Rule 421.

⁸⁹ The Council Calendar is prepared weekly (and occasionally bi-weekly) by the Office of the Council Secretary. The Calendar includes a listing of all scheduled Council and committee meetings for that week, the agenda for the legislative session if one is to be held that week, and a legislative summary that includes introductions, bills, and resolutions passed by the Council, and Council acts which became law during the prior week. The calendar is available for free via U.S. mail to anyone who subscribes.

mailings are not a reliable source for many members of the public because each committee maintains its own mailing list, and the breadth of distribution varies substantially among committees.

D. Documents Available Before the Hearing

The Council rarely provides enough information prior to a public hearing to enable the public to understand the subject matter of a bill, let alone its impact. The title of bill provided in the notice does not always reflect the intent of the bill. Descriptions and analyses are rarely provided at the time of notice, and, if provided, are generally inadequate.

Copies of the bill to be considered at a hearing may be obtained in advance from the Office of Legislative Services (“OLS”) in the Council Secretary’s office. Although, in our interviews, OLS was often complimented as courteous and helpful, it was noted that OLS sometimes does not have a copy of the bill—either because the bill has not been provided to OLS by the staff of Council members or because OLS has run out of copies. OLS does not have the capacity to make additional copies of legislation at the time requested by members of the public.

Even if one can obtain a copy of the bill to be discussed at a hearing, the bill may be difficult to interpret. Amendments to existing law simply show the additions and deletions to (but do not include a copy of) the original act proposed to be amended. Absent a copy of the referenced act, or an explanation of the proposed changes, such a bill is inscrutable.

It is especially difficult to obtain copies of the budget before a budget hearing. We understand that even some Council members have had difficulty obtaining copies in the past.

E. The Conduct of Public Hearings

The Council and committees typically commence hearings and roundtables during normal business hours at the Council’s offices, presently located at Judiciary Square. Hearings held in the main Council chamber are televised on District cable television, while hearings in other rooms are not televised.

The Council’s rules provide that any member of the public who contacts the relevant committee before the deadline set in the public notice shall be given the opportunity to testify at the committee’s hearing.⁹⁰ Under the rules, witnesses at hearings have the right to submit an opening statement for the record; the presiding member may permit the witness to read his or her opening statement at the hearing.⁹¹ Although witnesses must confine their testimony to the

⁹⁰ See Council Rule 504.

⁹¹ See Council Rule 522.

question under discussion,⁹² there is no germaneness requirement for questions or statements by Council members.

The Rules provide that each Council member receives up to ten minutes to question each witness until each member present has had an opportunity to ask questions, after which as many subsequent rounds of questioning as necessary can occur.⁹³ In practice, the time for questioning by Council members generally is not limited. The tendency for Council members to make long statements or engage in lengthy dialogues with witnesses during questioning appears to be greater for hearings that are televised on District cable television, according to those interviewed by DC Appleseed's Project Team. Since there is no germaneness constraint, Council members sometimes stray from the subject matter of a hearing. For example, during a legislative hearing, members may ask agency witnesses questions that are proper for an oversight hearing, but do not relate to the legislation at issue.

At some hearings, no time limits are imposed on witnesses. More commonly, Council members announce time limits only at the beginning of a hearing. A constant theme among the interviewees and focus group participants, however, is that the time limits are not uniformly enforced.

There is no mechanical system of lights or bells to keep time and to notify witnesses and Council members when time has expired. When time limits are kept, the limits are monitored and enforced by the presiding officer of the meeting, generally the committee chair.

Executive-branch witnesses typically testify at the beginning of a hearing and, in some cases, their testimony lasts for hours. Some interviewees surmise that this is caused by the failure of government witnesses to prepare adequately. Similarly, proponents of a bill favored by the chair are often permitted to speak for a long time. Later in the hearing, when members of the general public are speaking, time limits are more routinely enforced.

F. Preservation of a Hearing Record

The Council's summaries of public hearings found in legislative reports are of uneven quality. Accordingly, members of the public must often rely on audio recordings to research a public hearing record. Those recordings often fail to capture certain voices and frequently do not reflect the identity of the parties speaking. The Council does not prepare transcripts or detailed minutes of the hearings, although committee reports generally contain an abbreviated description of what was said at legislative hearings.⁹⁴ Moreover, because the Council does not

⁹² See Council Rule 512(b).

⁹³ See Council Rule 503.

⁹⁴ For example, minutes typically include only a few sentences regarding what each witness said, and generally fail to record such information as how long the hearing lasted and how many members of the public attended the hearing.

aggregate information concerning its hearings, DC Appleseed has been unable to determine the number of hearings held during any recent Council Period.

III. RECOMMENDATIONS

DC Appleseed offers below a series of recommendations that, together, provide a coherent plan for improving public hearings held by the Council and its committees. While each recommendation stands on its own and will independently have a beneficial effect, the recommendations have synergistic effects, as well. The adoption of one recommendation may make it easier to adopt another, and may enhance the favorable impact of the other as well. For example, the various reforms to streamline and shorten hearings will make increasing the quorum requirement less onerous. Each change is important and stands on its own merits, but collectively they make even more sense. These recommendations cover six main issues: (1) hearing requirements; (2) notice of hearings; (3) materials available at the time of notice; (4) dialogue between Council members and witnesses; (5) the length and organization of hearings; and (6) the ability of those not present at a hearing to understand the proceedings.

A. **Hearings—Not “Roundtables”— Should Be Held Before Enactment of Standard Legislation**

1. **Hold a Hearing Prior to Enacting Standard Legislation**

As noted earlier, hearings are not required for most legislation enacted under the standard legislative process. While Council members face time pressures and cannot attend an unlimited number of hearings, the public should have an opportunity to be heard before a bill is enacted into law. Accordingly, we recommend that the Council adopt a rule that standard legislation will not be enacted unless the public has had an opportunity to address proposed legislation at a public hearing.⁹⁵ It is, of course, important that the D.C. Council provide an opportunity for a hearing on standard legislation if a bill was first enacted on an emergency basis, because the bill likely did not receive sufficient consideration when enacted under the pressure of emergency circumstances.

DC Appleseed’s recommendation may increase modestly the number of hearings held by the Council and its committees. To reduce the time burden on Council members, groups of hearings for which no witnesses sign up to testify by close of business the day before the hearing should be consolidated and conducted at a *pro forma* hearing by a hearing officer. Thus, for each enacted bill, the Council need not *hold* a formal hearing but need only provide the

⁹⁵ We do not propose that a hearing be required before the enactment of emergency legislation. Although we believe that such hearings would be useful and should be held, if possible, we understand that the exigency that justified the emergency legislation may also justify a decision not to hold a hearing. We note, however, that two of the 11 other city councils we surveyed require that a public hearing be held before emergency legislation is enacted.

opportunity for a hearing.⁹⁶ This will require planning in advance of setting and publishing a notice of hearing.

Because there will nonetheless likely be a greater number of hearings, it is even more important for the Council to adopt the measures recommended later in this section to streamline the hearing process and to ensure that the time utilized is as productive as possible. If these measures are adopted, the total amount of time dedicated to the public hearing process may actually decrease.

2. Abolish Roundtables

As noted above, the only apparent difference between a roundtable and a public hearing is that no public notice is required for roundtables. DC Appleseed recommends abolishing the use of roundtables.⁹⁷ The commentary regarding roundtables in the DC Appleseed Project Team's interviews and focus group was negative. Virtually every interviewee expressed the opinion that roundtables are generally used by the Council when it has run behind schedule and, thus, has no time to provide the notice required for a public hearing. Many interviewees stated that the option of holding roundtables encourages the Council to be less disciplined in providing notice to the public and less organized in its preparation for public hearings. Because of shortened notice, roundtables preclude much of the public from participating meaningfully, if at all.

The Council need not rely on roundtables to expedite legislation. If there is a legitimate need for unusual speed, the Council should hold a hearing with as little as two working days' notice, using the procedures proposed on the next page of this report. If there is such exigency that two working days' notice is not possible, the Council could pass the bill on an emergency basis, in which case DC Appleseed's proposed requirement for a hearing would not apply. Moreover, while roundtables tend to be less formal than public hearings, nothing prevents hearings from being structured in a similar way. Indeed, in the proper circumstances, a less formal public hearing may be beneficial.

⁹⁶ More over, for those bills about which only a few witnesses will testify, the Council should try to group several together into a single hearing at which related bills can be considered. This will also reduce the number of days on which hearings are held.

⁹⁷ Of course, the Council could hold informal sessions similar to current roundtables to gather information and viewpoints in developing legislation. These sessions should not, however, substitute for public hearings, as roundtables now do.

B. Notice to the Public Should Be Timely and Provided Through Additional Means

1. Strengthen and Comply with Notice Requirements

The requirement of 15 days' notice found in the Council's Rules should be strictly observed. By occasionally providing less notice than is required by the Rules and by using roundtables to avoid providing any notice at all, the Council sends a message to the public that it does not value public participation. Further, short notice prevents the Council from receiving the depth and quality of information that it otherwise would receive at public hearings, as witnesses may be unable to prepare comprehensive testimony during an abbreviated notice period.

The other 11 jurisdictions surveyed by DC Appleseed's Project Team tend to require shorter periods of notice than does the D.C. Council: four require one to three days' notice while five others require 10 to 14 days. The DC Appleseed Project Team seriously considered whether the D.C. Council's current 15 calendar day requirement could safely be reduced in line with the practices of these jurisdictions, but concluded that 15 days is not excessive. Indeed, the current notice period has the advantage of allowing time for notice to percolate through a community; no matter how accessible notice is to the public, some citizens will miss it and find out about the hearing only from neighbors or community groups. In addition, adequate time must be available between the receipt of notice and the hearing date for the individuals and organizations to study the matter being considered, develop a position, and prepare testimony—a tall order even for 15 days.

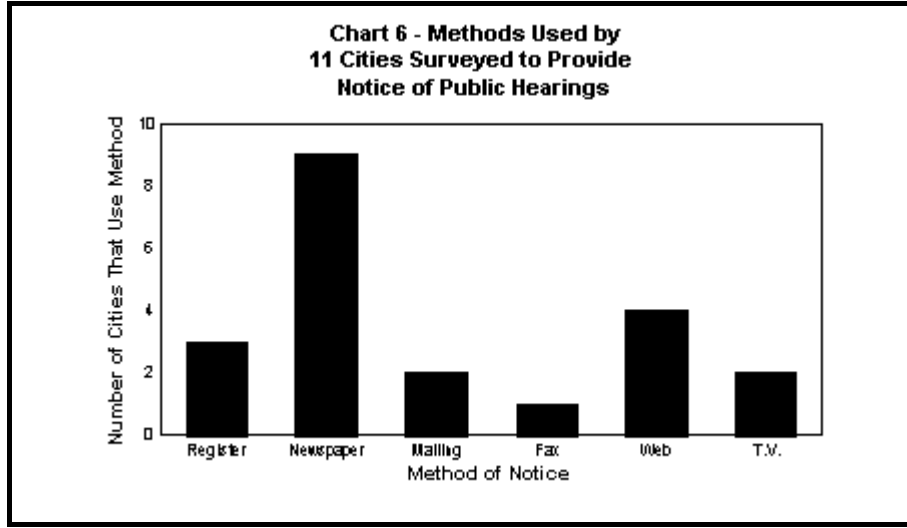
The Council should also strengthen its rules for holding hearings with less than the required 15 days' notice. Specifically, in addition to the provision in Council Rule 424 which provides that hearings held with less than 15 days' notice must be accompanied by a statement of good cause for shortening the notice, the Council should establish a requirement that no less than two working days' notice be provided before any public hearing. The requirement that good cause be articulated with the notice is a good one: it should provide a discipline to committee chairs, discouraging them from shortening the notice period.

Given the time needed for the public to prepare, hearings should not be held less than two working days after notice is provided.⁹⁸ We recognize that if only two working days are available, some forms of notice, described above—such as inclusion in the Council Calendar—may not be practicable. In these cases, at a minimum, the notice should be provided on the web site, at a standard place at the Council Chambers, via e-mail, and via fax to Advisory Neighborhood Commissioners. All required materials should be placed at the Council's information office for the full period of the notice.

⁹⁸ Again, this does not preclude the Council or its committees from holding informal meetings with less or no notice. Indeed, informal meetings can be quite informative and are encouraged in addition to public hearings. However, the Council should not use these meetings as a substitute for public hearings.

2. Improve Methods for Providing Notice

The Council currently relies on the *D.C. Register*, ordinary mailings, and the Council Calendar as the primary source of notice of hearings. The *Register* is not readily accessible, and many citizens, including most members of the focus group, are unaware of its existence. Moreover, while the Council Calendar and mailings have some value, they are not useful to many citizens. As indicated in the chart below, other cities surveyed by the DC Applesseed Project Team use several additional methods to provide public notice.



The Council should establish a comprehensive citizen outreach strategy that not only improves methods for providing notice of hearings, but considers additional ways of increasing public awareness of, and involvement in, Council activities. By establishing a larger central public information staff as recommended in Chapter 1, the Council will have the resources to develop such a strategy. As part of its strategy, the Council's public information office should establish the following four additional methods of providing public notice of scheduled hearings.

a) Newspapers and District Cable Television

The Council should provide notice of public hearings in newspapers of general circulation to permit all citizens to receive notice and have the opportunity to participate in the hearing process. The two major newspapers in the District already provide notice of Congressional activities. In fact, nine of the 11 other jurisdictions surveyed for this report provide notice of public hearings in local newspapers.⁹⁹

⁹⁹ DC Applesseed hopes that the District's local newspapers would provide notice of D.C. Council hearings as a public service, free-of-charge.

Similar consideration suggests that notice of every hearing should be provided regularly on District cable television. Although many District residents do not subscribe to cable, among those who do and are interested in District affairs, many watch District cable television. All six focus group members who subscribe watch Council activities on District cable television.

b) Web Site

All hearing notices should be placed on the Council's web site. Web site notice is perhaps the ideal method of notice for those who have access because the web (1) is virtually instantaneous (unlike the *D.C. Register* and Council Calendar that must travel through the mail), (2) permits the low cost dissemination of extra information—such as the full text of the bill—that previously could be obtained (if at all) only from OLS or Council staff, and (3) reduces Council costs and time because citizens who want a copy of a bill or other information may simply print it from their computers. Such notice received a ringing endorsement from the focus group and a number of the other interviewees. Notice of public hearings is provided on the web by four of the 11 other councils surveyed by the DC Appleseed Project Team.

The web site should also contain the full text of all proposed legislation, including relevant sections that are to be amended or otherwise referenced therein. The full text of the D.C. Code should also be placed on the web and links should be provided from the text of proposed legislation to the relevant sections of the code. Because not all District residents have access to a computer, web-based notice should be used as a supplement to, not a substitute for, other forms of notice.

c) E-mail

Arguments similar to those made above for web site notice regarding efficiency and increased public access also support the idea that the Council should provide notice via e-mail.¹⁰⁰ Because many committees already keep lists of people to whom they send notice by regular mail, keeping a list of e-mail addresses should not add a substantial burden.

d) Recorded Telephone Message

The Council should establish a user-friendly telephone information line that the public can call to access a schedule of upcoming hearings and meetings. The existence of this information line should be widely publicized.

¹⁰⁰ E-mail notice avoids the problems of paper mailings. Although a database must be maintained, the cost of a large "e-mailing" is much less than that of a traditional paper mailing. Mailings to defunct e-mail addresses are also less of a problem because they entail virtually no marginal cost.

C. Materials Available at the Time of Notice Should Include Better Information to Allow the Public to Participate Meaningfully

A constant theme that emerged in interviews and discussions with the focus group is that, even if the notice of a hearing complies with the Council Rules, information available at the time of notice often is inadequate. At the outset, witnesses are not provided information orally or in written form concerning how to prepare for a hearing, what to expect when they arrive at the hearing, or how to get more information about the subject matter to be addressed. Indeed, many members of the focus group—all of whom have testified before the Council—were unaware that OLS exists. Moreover, the topic of the hearing and the nature of the legislation to be discussed are not sufficiently clear and detailed in the notice itself to permit witnesses to prepare well-considered statements. As a result, testimony is often limited to broad themes, rather than to the substance of the bill under examination.

Information about the hearing process should be made generally available. For example, usual procedures could be described in a pamphlet, which would be distributed to witnesses at each hearing and would be available at public libraries, at the Council’s public information office, and on the Council’s web site. This pamphlet would not have to be modified for individual hearings.

The Council could also take several steps toward fostering greater public understanding of proposed legislation and, thereby, reduce confusion during debate at public hearings and legislative sessions. First, the content of the notice should be improved by requiring that the title of the hearing clearly state the topic of the legislation to be discussed. Additionally, the full text of each bill should uniformly be available and accessible at the time notice of a hearing is first given. In some cases, however, even the full text is not enough for the public to discern the impact of the legislation. Because few pieces of legislation create an entirely new law, bills frequently cite a section or subsection of existing law and state that it is either repealed or “amended to read as follows.” The result is that legislative amendments, on their own, are difficult to follow. To resolve this problem, the Council should include with the bill copies of each section of existing law that will be amended by the bill.¹⁰¹ With this information, Council members and the public alike would be better able to assess the impact of proposed amendments because they could immediately compare the current law with the proposed revision.

Moreover, to provide members of the general public adequate information to participate meaningfully, we recommend that, when notice is first provided, a “plain language” summary of the bill be made publicly available indicating the problem that gave rise to the bill and how the

¹⁰¹ Attaching the existing law provisions should not place an onerous burden on the Council. Compliance with this recommendation should be simple and straight-forward—a photocopy of the existing law provision should suffice. Indeed, attaching the law to be amended would be even simpler if, as urged above, the D.C. Code were enacted into law.

bill aims to resolve that problem.¹⁰² When proposed legislation is particularly complex, providing only the text of existing sections of law affected by a proposal will not adequately describe a bill. In those circumstances, a plain language summary is critical. Additionally, by adopting DC Appleseed's recommendation in Chapter 3 that the Council prepare and make publicly available before a hearing a fiscal impact statement for all legislative proposals, the public will receive additional information central to understanding each proposal.

D. The Opportunity for Constructive Dialogue Between Council Members and the Public Should Be Increased

1. Require a Quorum of Two Council Members to Commence a Hearing and a Quorum of One for a Hearing to Continue

Many of those interviewed by the DC Appleseed Project Team and members of the focus group stated that the lack of attendance by Council members is one of the most important problems with public hearings, noting that it is disheartening to testify to a single Council member or, even worse, to video cameras with not even one Council member present. The lack of attendance at hearings reinforces the current public perception that public testimony does not matter and that committee hearings are simply an empty exercise. The interviewees noted that it is especially disturbing to see Council members walk out at the conclusion of executive-branch testimony, demonstrating a lack of interest in public testimony. Focus group members mentioned that the Council members rarely appear to be in an information-gathering mode at hearings, having made up their minds before the start of the hearing. Indeed, the information-sharing function of public hearings can hardly succeed if the Council is not present and interested in receiving the information.

Uneven attendance at hearings may also result in members being less informed. Although the practice of leaving staff at the hearings may allow some information to be conveyed to members, that practice cannot replace the lost dialogue between Council members and the public. If Council members are simply receiving reports of the hearing and not questioning witnesses, then written testimony would suffice, and the public's time should not be wasted with an often inconvenient and time-consuming public meeting.

The attendance problem at the Council has a simple solution suggested by the practices of other jurisdictions: a more rigorous quorum requirement. In the ideal world, the full committee would be present throughout every hearing. DC Appleseed recognizes that the pressures on Council members' time do not permit attendance at all hearings, nor can Council members remain for the duration of every hearing they attend. Indeed, if the Council adopts DC Appleseed's recommendation that an opportunity for hearing be required for all standard legislation, the number of hearings will likely increase. As a result, we recommend only a

¹⁰² In response to the DC Appleseed Project Team's questionnaire, the Council indicated that it currently includes a plain language description with each bill. We have been told by the interviewees and focus group that these descriptions appear sporadically, and, when they do, are seldom useful.

modest increase in the quorum requirement from one to two of five committee members to begin a hearing. Considering that four jurisdictions surveyed by DC Applesseed require that a majority of the body be present, we believe that the two-person requirement is modest and appropriate.¹⁰³

We also recommend that the quorum requirement apply only to hearings for which witnesses have signed up in advance. Other hearings may be conducted by a hearing officer, who can be a member of the Council's staff. This should reduce the burden associated with an increased quorum requirement.

The attendance problems discussed above will *not* be solved if two Council members attend initially and then leave before most citizens testify. To ensure that citizens never feel they are testifying solely "to cameras," we recommend that the Council explicitly clarify that at least one Council member be present throughout the hearing.

2. Lower The Dais to Promote Dialogue

Citizens sometimes feel intimidated by the high dais in the Council chambers. The physical removal of members from the public sends the wrong message about the relative importance of the Council and its constituents. DC Applesseed recommends that the dais be lowered to the same level as (or a lower level than) the public. This recommendation is consistent with suggestions made by scholars who have examined the configuration of council chambers nationally. Specifically, scholars concur that formal meeting chambers should be configured so that there is "a balancing between eye levels of the public and council members" to give the impression that the Council works with (and for) the public rather than having power over the public.¹⁰⁴ By lowering the dais, the Council would promote freer dialogue between members and witnesses.

E. Hearings Should Be Streamlined So that They Move More Rapidly, Are Less Confusing to the Public, and Are More Effective Tools for Discussion

1. Commence Hearings on Time

As described above, interviewees and focus group participants stated that committee hearings and the Council's legislative sessions often begin late, and no indication is given to those in attendance of why the meeting has been delayed or when it is expected to begin. As a result, members of the public may leave a hearing room before they have a chance to testify, and may choose not to testify at subsequent hearings. In order to encourage participation by

¹⁰³ In Indianapolis, attendance by Council members at public hearings is so valued that one-third of the members' pay is based upon attendance.

¹⁰⁴ Proposal to DC Applesseed Center: *Designing City Council Facilities for Effective Governance*, James E. Kunde, Coalition to Improve Management in State and Local Government, University of Texas (June 8, 1998) at 2. See also, *Norms for Benchmark Councils*, John Krauss, Center for Urban Policy and the Environment, Indiana University (1994).

members of the public—many of whom have taken off from work or otherwise disrupted their day to testify—the presiding officer of a hearing must make every attempt to begin on time, and, if there is a delay or interruption, to keep everyone informed of the reason and provide an estimate of when the hearing will begin or resume.

2. Manage Witness Testimony More Effectively

The lack of discipline sometimes exhibited at Council hearings results in lengthy delays, unfocused proceedings, and a poor public image of the Council as an organization.¹⁰⁵ By instituting practices that foster better witness management and shorter hearing sessions, the Council can better fulfill the highest goals of a public hearing: meaningful public participation and enhanced understanding of issues by the Council.¹⁰⁶

a) Time Limits

Time limits provide an ideal means of streamlining hearings. They also force witnesses and Council members to focus on the issues at hand and to avoid grandstanding and diverging from the topic. When employed properly, time limits prevent a few speakers from dominating the hearing and, thereby, foster meaningful participation by a greater number of witnesses. Time limits also permit Council staff and members of the public to estimate reliably how long a hearing will run and when a witness might speak. Not surprisingly, eight of the 11 other jurisdictions we surveyed use time limits of some sort, and four report that the limits are always strictly enforced.

As previously noted, we have been told that many Council committee chairs use time limits, but that limits are rarely applied uniformly. A number of interviewees expressed concern that time limits are currently used only to limit the speaking time of opponents of a measure, but that speakers who favor the measure are granted unlimited time to speak. This is seen to denigrate the public and the value of its contribution. Thus, the Council must ensure that time limits are uniformly applied to all witnesses, regardless of their position on an issue or place on the witness list.¹⁰⁷

Limiting the time taken by executive witnesses offers a separate challenge. A number of interviewees and members of the focus group noted that, while executive testimony is valuable, it is invariably too lengthy and may consist of no more than a self-serving political statement rather than an informative response to the issue being addressed at the hearing. We propose that

¹⁰⁵ No member of the focus group had ever waited less than an hour, and most waited far longer, to testify at a hearing.

¹⁰⁶ DC Appleseed does not suggest that strict rules regarding time limits and relevancy should apply to every meeting held by the Council. While such rules foster effective formal hearings, the Council should continue to hold meetings in addition to public hearings that are less formal and, thus, not governed by strict rules.

¹⁰⁷ If a witness has a disability that prevents delivery of a statement in the usual time allotted, additional time should be provided.

the time for executive testimony be limited and that executive testimony be provided to all committee members in written form at least one work day prior to public hearings. There is simply no reason the public should wait many hours to testify; requiring written statements should allow committee members to prepare well enough to impose greater discipline on themselves when questioning executive branch witnesses.

To ensure the uniform enforcement of time limits, a mechanical system of enforcement should be developed. For example, an audible but low level chime and light signal could indicate to a witness when one minute is remaining and when time is up.¹⁰⁸ To ensure that time limits are uniformly applied, timekeeping should be done by a central staff member not under the direct control of the chair.

The Council should also strengthen and strictly enforce its rule that limits the time period in which each Council member can question a witness before another Council member is given an opportunity to do so. Thus, for example, a Council member could be given only five minutes to ask questions and receive answers from a single witness before another Council member would be provided the same opportunity. While such limits currently exist on paper, they are not uniformly enforced. Enforcing this rule would encourage Council members to manage witnesses and ask focused questions.

DC Appleseed understands from its conversation with Denver's Council President in March 1998, that time limits are strictly enforced by Denver Council members who preside over public hearings. While members resisted the time limits when first enforced, they now generally comply, and, according to the Council President, appreciate the fact that hearings have been significantly streamlined.

b) Germaneness Requirements

To shorten hearings and to keep them focused on their purpose, Council members should limit their questions to issues that are germane to the subject matter of the hearing. Some interviewees pointed to the fact that, all too often, Council members questioning an executive-branch witness in a legislative hearing will take the opportunity to ask questions about general agency performance. These questions are appropriate for an oversight hearing, but, unless directly related to the legislation being considered, are not appropriate for a legislative hearing. Indeed, raising non-germane topics can distract attention from a hearing's purpose, and may lead the public to be misinformed because witnesses will be questioned about topics on which they are unprepared or unqualified to speak. It is unfair to force participants assembled to discuss a particular bill to endure and participate in an unrelated and unscheduled oversight function.

3. Avoid Excessively Long Hearings; Hearings that Extend for Longer than Four Hours

¹⁰⁸ We recommend that an audible signal be used, together with a set of lights, to ensure that the time limit does not pass without notice.

Should Generally be Continued on Another Day

It is no secret that Council hearings sometimes become marathons lasting long into the night. Such hearings are invariably grueling experiences for all participants and cannot be conducive to a lucid and thoughtful exchange of views. Such long hearings are anomalous in other jurisdictions. Only about 10% of the hearings conducted in the other 11 cities we studied lasted even over three hours, and only 3% over six hours. The Council should work to ensure that the District has no more than a correspondingly small percentage of long hearings.

The Council should try to limit each public hearing session to no more than four hours. Carefully managing witnesses, strictly observing time limits, and imposing germaneness requirements will allow the Council to streamline the hearing process. If it nonetheless appears that a hearing is likely to take substantially longer than four hours, the Council should plan to hold it over to another day. If a hearing unexpectedly is taking much more than four hours, it can be continued to another day.¹⁰⁹

The Council should not limit the number of witnesses who may testify at a hearing. The goal of shortening hearings is important, but the DC Appleseed Project Team's research indicates that members of the public who want to participate in government and may be able to contribute important information are rarely excluded. Not a single jurisdiction surveyed limits the number of witnesses that may testify at a hearing. And those interviewed by the Project Team and members of the focus group overwhelmingly agreed that limiting the number of witnesses would be inappropriate. However, when it has a large number of witnesses and, thus, plans a multi-day hearing, the Council may wish to limit the number of witnesses that testify on a given day.

¹⁰⁹ The four hours should not be taken as a strict time limit. There are times when a hearing cannot be continued to a second day without unduly delaying legislation under consideration. If debate is vigorous and fruitful at a hearing, it may be best to let it continue. Indeed, witnesses expecting to testify may resent having to return for a second day, but these instances can often be anticipated, and the Council should avoid holding hearings that exceed four hours whenever possible.

F. The Council Should Improve the Ability of Members of the Public Not Present at a Hearing to Understand the Proceedings

1. Improve the Selection and Presentation of Hearings Broadcast on District Cable Television

At present, only the main Council chamber at Judiciary Square is equipped to allow events to be taped and televised on District cable television. As the Council renovates the Wilson Building, it should consider expanding the number of rooms with videotaping capabilities. Thus, simultaneous hearings could be broadcast at different times.

Until that capacity is created, when two or more hearings are scheduled at the same time, the Council should have a reasoned way to determine which hearing should be held in the main chambers and, therefore, televised. Currently, rooms are scheduled on a first-come-first served basis, and several interviewees stated that, particularly during the election season, Council members reserve the main chamber with an eye towards increasing their exposure through television. For example, a Council member who is especially eager to have a hearing televised, but does not know when it will be held, may reserve the Council chamber for many days in a row to ensure access. This practice deprives the public of seeing other hearings that otherwise would have been held in the empty Council chambers.

Moreover, the Council should improve the presentation of, and information provided during, the broadcast of hearings on District cable television. Interviewees and members of the focus group noted the poor sound quality of broadcasts and the lack of information that would allow the public to identify the date and subject matter of hearings and the identity of witnesses. The Council should correct these shortcomings promptly.

2. Better Preserve the Hearing Record

Audio recordings are currently the primary method used to preserve records of hearings. Unfortunately, the devices now used to record testimony (particularly for hearings and roundtables not in the main Council chamber) do not capture much of what is said. It is imperative that the Council improve the quality of audio recordings by adding or repositioning microphones in hearing rooms to improve the quality of recordings. Even with such improvements, audio recordings will remain inadequate because a member of the public must still track and recognize voices in order to understand who is speaking. Accordingly, the Council should consider other methods of augmenting and preserving the hearing record.

Ideally, the Council would preserve a full written transcript of all hearings and make those transcripts available to the public. The availability of transcripts would avoid the need for minutes and audiovisual recordings, possibly saving substantial amounts of money. Whether transcripts are prepared should turn upon whether the cost of hiring a court reporter and storing the transcripts is prohibitive in light of these savings.

In addition, the Council should video-tape hearings if doing so is cost-effective. Video-tapes of hearings would be much more useful than the current audio tapes, because they would permit speakers to be identified more easily. The Council should especially consider this option if creating and maintaining written transcripts proves too costly.

Of course, creating and storing a video library may also be costly. However, given the advent of digital technology, the Council now has a number of options for video-recording that would substantially reduce storage costs from previously available analog taping options. The Council should explore the possibilities, and consider implementing any available cost-effective method of creating and preserving better hearing records.

CONCLUSION

With its new members and Chair, the District of Columbia Council has an opportunity to enhance the effectiveness, not only of the District government generally, but of its own work. By improving its internal operations, the Council can better fulfill its legislative role. Without improvement, the Council will not only have trouble doing its job, but will lack the credibility to reform operations elsewhere in the government.