

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 21-0155

Introduced by: Councilmember Dorsey
Introduced and read first time: September 20, 2021
Assigned to: Public Safety and Government Operations Committee

Committee Report: Favorable
Council action: Adopted
Read second time: October 4, 2021

AN ORDINANCE CONCERNING

Administrative Procedure Act – Revisions

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FOR the purpose of clarifying that an agency may, subject to certain requirements, incorporate certain documents into a regulation by reference; clarifying certain provisions regarding the notice and comment period; clarifying when a regulation is effective; re-numbering certain sections; amending the date that relevant and current regulations must be submitted in digital form to the Director of Legislative Reference for codification into the Code of Baltimore Regulations Annotated; revising uncodified text to allow for an initial adoption of certain existing regulations and the later revision of those regulations to meet style and formatting requirements; and providing for a special effective date.

BY repealing and reordaining, with amendments

Article - General Provisions
Sections 4-202, 4-304, and 4-401
Baltimore City Revised Code
(Edition 2000)

BY adding

Article - General Provisions
New Section 4-203
Baltimore City Revised Code
(Edition 2000)

BY re-numbering current

Article - General Provisions
Current Sections 4-203 and 4-204, respectively, to be Sections 4-204 and 4-205, respectively
Baltimore City Revised Code
(Edition 2000)

BY repealing and reordaining, with amendments

Ordinance 20-0557
Section 4

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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1 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
2 Laws of Baltimore City read as follows:

3 **Baltimore City Revised Code**

4 **Article – General Provisions**

5 **Title 4. Administrative Procedure Act – Regulations**

6 ***Subtitle 2. Form of Regulations; Submission to City Solicitor.***

7 **§ 4-202. Form of proposed regulation.**

8 EXCEPT AS OTHERWISE PROVIDED IN § 4-203 OF THIS SUBTITLE, REGULATIONS
9 [Regulations] shall be written in plain English and shall conform to the style set forth in a
10 style manual adopted by the Department of Legislative Reference.

11 **§ 4-203. INCORPORATION BY REFERENCE.**

12 (A) *“INCORPORATE BY REFERENCE” DEFINED.*

13 IN THIS SECTION, “INCORPORATE BY REFERENCE” MEANS THE METHOD BY WHICH A
14 REGULATION MAKES PROVISIONS OF ANOTHER DOCUMENT PART OF THE REGULATION BY
15 REFERENCE TO THE OTHER DOCUMENT.

16 (B) *IN GENERAL.*

17 AN AGENCY MAY INCORPORATE BY REFERENCE ANOTHER DOCUMENT WITHIN A
18 REGULATION IF:

19 (1) BOTH THE DIRECTOR AND THE AGENCY FIND THAT RESTATING THE TEXT OR
20 GRAPHICS OF THE DOCUMENT WITHIN THE REGULATION WOULD BE UNDULY
21 CUMBERSOME, EXPENSIVE, OR OTHERWISE INEXPEDIENT;

22 (2) THE REFERENCE WITHIN THE REGULATION FULLY IDENTIFIES THE:

23 (I) INCORPORATED DOCUMENT BY TITLE AND DATE OF PUBLICATION OR
24 ISSUANCE; AND

25 (II) THE PAGE OR PAGES OF THE INCORPORATED DOCUMENT THE REGULATION
26 COMPRISES; AND

27 (3) THE REFERENCE CLEARLY STATES WHICH PART OR PARTS OF THE DOCUMENT ARE
28 BEING INCORPORATED, IF THE AGENCY INTENDS TO INCORPORATE ONLY A PORTION
29 OF A DOCUMENT; AND

30 (4) THE AGENCY MAINTAINS A COPY OF THE INCORPORATED DOCUMENT THAT IS:

31 (I) AVAILABLE FOR PUBLIC INSPECTION ON THE AGENCY’S WEBSITE; AND

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(II) INDEXED IN PLAIN LANGUAGE SO THAT THE PUBLIC MAY EASILY SEARCH FOR THE LOCATION OF DIFFERENT TOPICS CONTAINED IN THE REGULATION.

(C) *SUBSEQUENT AMENDMENTS TO INCORPORATED MATERIAL.*

AN AGENCY MAY INCORPORATE LATER AMENDMENTS OR EDITIONS OF A DOCUMENT PREVIOUSLY INCORPORATED BY REFERENCE WITHIN A REGULATION ONLY AFTER COMPLIANCE WITH THE PROPOSAL, NOTICE AND PUBLICATION, AND ADOPTION PROCEDURES SET FORTH IN THIS TITLE.

§ 4-204. [§ 4-203.] Single subject.

...

§ 4-205. [§ 4-204.] Submission to Solicitor.

...

Subtitle 3. Notice and Comment Period; Adoption

§ 4-304. Adoption or re-publication.

(a) *Submittal to City Solicitor.*

(1) After the [30-day] notice and comment period described in § 4-301 {"Notice of proposed regulation"} of this subtitle has expired, if an agency makes changes to the text of the proposed regulation, the agency shall submit the changed proposed regulation to the City Solicitor.

(2) The City Solicitor shall determine whether the change in the proposed regulation is a material change.

(b) *Determination of material change.*

If the City Solicitor determines that an agency has made a material change to the text of a proposed regulation, the agency may not adopt the proposed regulation unless it is proposed anew, re-published, and adopted in accordance with the requirements of this title.

(c) *No change or determination of non-material change.*

If, after the [30-day] notice and comment period, the agency has not made a change in the proposed regulation or if the City Solicitor determines that a change in the proposed regulation is not material, the agency may adopt and implement the proposed regulation only after:

(1) securing the written approval of the agency head; and

(2) filing the regulation with the Director for COBRA codification.

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1 (d) *Failure to adopt.*

2 If an agency fails to adopt a proposed regulation within 180 days after the date it initially
3 published notice of the proposed regulation, the regulation shall be deemed withdrawn
4 and may not be adopted unless proposed anew and adopted in accordance with the
5 requirements of this subtitle.

6 COMMENT: The proposed change to this section is to recognize that General Provisions Article, §
7 4-301 {"Notice of proposed regulation"} establishes "at least" a 30-day notice and comment period for
8 proposed regulations and that agencies may elect, or a statute may require, a longer period.

9 ***Subtitle 4. Codification***

10 **§4-401. Submission to DLR Director.**

11 A regulation is [not] effective [unless it has been submitted] ON SUBMISSION to the Director
12 for COBRA codification, UNLESS A LATER EFFECTIVE DATE IS SPECIFIED BY LAW OR IN THE
13 ADOPTED REGULATION.

14 SECTION 2. AND BE IT FURTHER ORDAINED, That the laws of Baltimore City read as
15 follows:

16 **Ordinance 20-0557**

17 SECTION 4. AND BE IT FURTHER ORDAINED, That [notwithstanding]:

18 (A) NOTWITHSTANDING Section 1 and Section 3 of this Ordinance, any
19 regulation that is current and effective [on the date this Ordinance is
20 effective need not be re-proposed, re-publicized, or re-adopted in
21 accordance with the procedures set forth in Section 1, provided that any
22 regulation that is current and effective on the date this Ordinance is
23 effective] AS OF JANUARY 15, 2021, SHALL REMAIN EFFECTIVE IF:

24 [(1) has been reviewed by the agency, in consultation with the Law
25 Department, to ensure the regulation conforms to the style set
26 forth in the style manual adopted by the Department of
27 Legislative Reference; and]

28 (1) [(2)] THE REGULATION is submitted, IN DIGITAL FORM, to the Director of
29 Legislative Reference [for codification into the Code of Baltimore
30 Regulations Annotated] BY JANUARY 15, 2022, FOR COBRA
31 CODIFICATION [no later than 1 year from that date that this Ordinance has
32 been enacted.];

33 (2) THE REGULATION IS NOT ABROGATED BY:

34 (I) THE AGENCY THAT ADOPTED IT; OR

35 (II) A COURT OF COMPETENT JURISDICTION; AND

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1 (3) NO PART OF THE TEXT OF THE REGULATION IS MATERIALLY CHANGED,
2 WHICH THE CITY SOLICITOR SHALL DETERMINE AND, IF THE CITY
3 SOLICITOR DOES DETERMINE A MATERIAL CHANGE HAS BEEN MADE, THE
4 CITY SOLICITOR SHALL DEEM THE REVISED TEXT TO BE A PROPOSED
5 REGULATION, WHICH:

6 (I) IS NOT EFFECTIVE UNLESS ADOPTED IN ACCORDANCE WITH THE
7 REQUIREMENTS OF GENERAL PROVISIONS ARTICLE, TITLE 4; AND

8 (II) DOES NOT AFFECT THE LAWFULNESS OF THE EXISTING REGULATION
9 UNTIL THE PROPOSED REGULATION BECOMES EFFECTIVE PURSUANT
10 TO GENERAL PROVISIONS ARTICLE, TITLE 4.

11 (B) ANY REGULATION THAT MAY BE AFFECTED BY THE PROVISIONS OF THIS
12 ORDINANCE AND THAT WAS CURRENT AND EFFECTIVE AS OF JANUARY 15,
13 2021, AND NOT FILED WITH THE DIRECTOR OF LEGISLATIVE REFERENCE BY
14 JANUARY 15, 2022, SHALL TERMINATE AND NO LONGER HAVE LEGAL
15 EFFECT.

16 (C) ANY REGULATION THAT MAY BE AFFECTED BY THE PROVISIONS OF THIS
17 ORDINANCE AND THAT WAS CURRENT AND EFFECTIVE AS OF JANUARY 15,
18 2021, AND FILED WITH THE DIRECTOR OF LEGISLATIVE REFERENCE BY
19 JANUARY 15, 2022:

20 (1) SHALL BE PLACED IN A SPECIAL SECTION OF THE COBRA ENTITLED
21 "REGULATIONS EXISTING AS OF JANUARY 15, 2021";

22 (2) NEED NOT CONFORM TO A STYLE SET FORTH IN THE STYLE MANUAL
23 ADOPTED BY THE DEPARTMENT OF LEGISLATIVE REFERENCE PURSUANT
24 TO GENERAL PROVISIONS ARTICLE, § 4-202; AND

25 (3) THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL:

26 (I) REVISE EACH REGULATION IN ACCORDANCE WITH THE ADOPTED
27 STYLE MANUAL;

28 (II) REMOVE THE REGULATION FROM THE COBRA SPECIAL SECTION;
29 AND

30 (III) RECODIFY THE REVISED REGULATION IN A FORMAT CONSISTENT
31 WITH THE REMAINING SECTIONS OF THE COBRA.

32 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
33 enacted.

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Certified as duly passed this 4 day of October, 2021



President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this 4 day of October, 2021

Katarina B. Austin

Chief Clerk

Approved this 10 day of October, 2021



Mayor, Baltimore City

Approved for Form and Legal Sufficiency
This 5th Day of October, 2021.

Elena R DiPietro
