

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 23-0354

Introduced by: The Council President
At the request of: The Administration (Department of Legislative Reference)
Introduced and read first time: February 6, 2023
Assigned to: Rules and Legislative Oversight Committee
Committee Report: Favorable, with amendments
Council action: Adopted
Read second time: July 20, 2023

AN ORDINANCE CONCERNING

Administrative Procedure Act - Revisions

FOR the purpose of clarifying the role of the City Administrator, the Department of Law, and the Department of Legislative Reference in reviewing proposed regulations prior to public notice and comment; revising certain provisions regarding the initial submission period for a proposed regulation; revising certain provisions regarding Agency noncompliance with the Administrative Procedure Act; providing for a special effective date; and generally relating to the role of the City Administrator, the Department of Law, and the Department of Legislative Reference in the review and approval of proposed regulations.

BY repealing and re-ordaining, with amendments
Article - General Provisions
Sections 4-101(f), 4-201, 4-202, 4-205, 4-301, and old sections 4-304 to 4-305
Baltimore City Code
(Edition 2000)

BY adding
Article - General Provisions
Section 4-401(e) to (h) and new section 4-303
Baltimore City Code
(Edition 2000)

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

Baltimore City Code

Article – General Provisions

Title 4. Administrative Procedure Act – Regulations

Subtitle 1. Definitions; General Provisions

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 **§ 4-101. Definitions**

2 (E) *NOTICE OF PROPOSED ACTION.*

3 “NOTICE OF PROPOSED ACTION” MEANS THE FORM REQUIRED FOR THE SUBMISSION OF A
4 PROPOSED REGULATION TO THE COBRA REGISTER AS REQUIRED BY § 4-301(B) OF THIS
5 TITLE.

6 (F) *NOTICE OF REGULATION DEVELOPMENT.*

7 “NOTICE OF REGULATION DEVELOPMENT” MEANS THE FORM CREATED BY THE
8 DEPARTMENT OF LEGISLATIVE REFERENCE TO INITIATE THE REGULATION PROMULGATION
9 PROCESS AS REQUIRED BY § 4-205(A)(1) OF THIS TITLE.

10 (G) *PROMULGATION.*

11 “PROMULGATION” MEANS THE PROCESS OF FORMALLY PUTTING A REGULATION INTO
12 EFFECT.

13 (H) *REGISTER; COBRA REGISTER.*

14 “REGISTER” OR “COBRA REGISTER” MEANS THE DOCUMENT PUBLISHED BY THE
15 DEPARTMENT OF LEGISLATIVE REFERENCE CONTAINING REGULATIONS PROPOSED BY
16 UNITS OF CITY GOVERNMENT THAT PROVIDES PUBLIC NOTICE OF THE PROPOSED
17 REGULATIONS FOR 30 DAYS.

18 (I) [(f)] *Regulation.*

19 (1) *In general.*

20 “Regulation” means a statement or an amendment of a statement that:

21 (i) has general application;

22 (ii) has future effect;

23 (iii) details or carries out the law that the City or an agency of the City
24 administers; and

25 (iv) is in any form, including:

26 (A) a guideline;

27 (B) an executive order;

28 (C) a requirement;

29 (D) a standard;

30 (E) a statement of interpretation; or

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1 (F) a statement of policy.

2 (2) *Exclusions.*

3 “Regulation” does not include a statement, policy, directive, or operating procedure of
4 City government that:

5 (i) does not affect directly the rights of the public or the procedures available to
6 the public; and

7 (ii) either:

8 (A) concerns only internal management of City government; or

9 (B) requires compliance by City employees with provisions limited
10 to attendance, conduct, training, discipline, or internal procedure.

11 ***Subtitle 2. Form of Regulations; Submission [To City Solicitor] BEFORE PUBLICATION***

12 **§ 4-201. Citation of [statutory] LEGAL authority.**

13 A regulation is not effective unless it contains a citation of the [statutory] LEGAL authority for
14 the regulation.

15 **§ 4-202. Form of proposed regulation.**

16 Except as otherwise provided in § 4-203 of this subtitle, regulations shall be written in plain
17 [English] LANGUAGE and shall conform to the style set forth in a style manual adopted by the
18 Department of Legislative Reference.

19 **§ 4-205. Submission [to Solicitor] BEFORE PUBLICATION.**

20 (a) *Initial Submission.*

21 (1) *DEPARTMENT OF LEGISLATIVE REFERENCE.*

22 (I) Before [publishing notice of] SUBMITTING a proposed regulation FOR INCLUSION IN
23 THE REGISTER, an agency shall submit the [regulation to the City Solicitor]
24 FOLLOWING TO THE DEPARTMENT OF LEGISLATIVE REFERENCE for REVISION AND
25 approval OF CONTENT STYLE AND FORMAT: [as to the form described in this
26 subtitle and legal sufficiency.]

27 (A) (I) THE TEXT OF A PROPOSED REGULATION; AND

28 (B) (II) A NOTICE OF REGULATION DEVELOPMENT IN THE FORM AND WITH THE
29 CONTENT REQUIRED BY THE DIRECTOR.

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1 (II) UPON RECEIPT OF THE MATERIALS DESCRIBED IN PARAGRAPH (1) OF THIS
2 SUBSECTION, THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL FORWARD
3 THE NOTICE OF REGULATION DEVELOPMENT TO THE CITY SOLICITOR FOR INITIAL
4 APPROVAL AS TO THE LEGAL AUTHORITY TO PROMULGATE REGULATIONS.

5 (2) *CITY ADMINISTRATOR; CITY SOLICITOR.*

6 AFTER A PROPOSED REGULATION IS APPROVED BY THE DEPARTMENT OF LEGISLATIVE
7 REFERENCE AS REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION, AN AGENCY SHALL
8 THEN SUBMIT THE PROPOSED REGULATION TO:

9 (I) THE CITY SOLICITOR FOR APPROVAL AS TO FORM AND LEGAL SUFFICIENCY;
10 AND

11 (II) THE CITY ADMINISTRATOR FOR APPROVAL.

12 [(b) *Modification.*]

13 [If, after publication of notice, the agency makes changes in the text of the proposed
14 regulation, the agency shall submit the changes to the City Solicitor for approval as to
15 form and legal sufficiency.]

16 (B) [(c)] *Effect of noncompliance.*

17 If an agency fails to comply with this section or if the DEPARTMENT OF LEGISLATIVE
18 REFERENCE OR THE City Solicitor fails to approve the regulation as specified in
19 subsection (a):

20 (1) the proposed regulation may not be adopted; and

21 (2) if adopted, is not effective.

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Subtitle 3. Notice and Comment Period; PUBLICATION IN REGISTER; Adoption

§ 4-301. Notice of Proposed Regulation.

(a) *In general.*

After a proposed regulation has been approved by the DEPARTMENT OF LEGISLATIVE REFERENCE, THE City Solicitor, AND THE CITY ADMINISTRATOR, as described in § 4-205 of this title, the agency shall [publish] SUBMIT the proposed regulation TO THE DEPARTMENT OF LEGISLATIVE REFERENCE FOR PUBLICATION IN THE REGISTER TO SOLICIT [and seek] public comment for at least 30 days.

(b) *[Method of publication]* PUBLICATION OF PROPOSED REGULATION IN REGISTER.

[(1) An agency shall publish notice of a proposed regulation by:]

[(i) posting the notice in a conspicuous place on its website;]

[(ii) posting a copy of the notice in a public and conspicuous place at its agency offices;]

[(iii) providing a copy of the notice to each public library in the City;]

[(iv) providing a copy of the notice to each councilmember; and]

[(v) providing a copy of the notice to the Department of Legislative Reference.]

[(2) In addition, the City Solicitor with assistance from Baltimore City Information and Technology shall maintain an online register of all proposed regulations pending throughout City government.]

TO HAVE A PROPOSED REGULATION PUBLISHED IN THE REGISTER, AN AGENCY SHALL SUBMIT TO THE DEPARTMENT OF LEGISLATIVE REFERENCE:

(1) THE PROPOSED REGULATION; AND

(2) A NOTICE OF PROPOSED ACTION IN THE FORM AND CONTAINING THE INFORMATION REQUIRED BY THE DEPARTMENT OF LEGISLATIVE REFERENCE.

(c) *Contents of notice.*

[The notice required by this section shall include:]

[(1) a brief description of the proposed regulation;]

[(2) an online link to the full text of the proposed regulation;]

[(3) the mailing address and email address to which a person may send written comments; and]

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1 [(4) if the agency proposes or is otherwise required to hold a public hearing on
2 the proposed regulation, the date, time, and location of that hearing.]

3 (C) [(D)] *PUBLICATION ON WEBSITE.*

4 AN AGENCY SHALL PUBLISH THE TEXT OF A PROPOSED REGULATION ON THE AGENCY'S
5 WEBSITE NO LATER THAN 3 BUSINESS DAYS AFTER THE DATE THAT THE PROPOSED
6 REGULATION IS PUBLISHED IN THE REGISTER.

7 **§ 4-303. COBRA REGISTER.**

8 (A) *IN GENERAL.*

9 THERE IS A COBRA REGISTER THAT CONTAINS REGULATIONS PROPOSED BY UNITS OF
10 CITY GOVERNMENT.

11 (B) *PUBLICATION AND DISTRIBUTION.*

12 (1) THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL PUBLISH THE REGISTER ONCE
13 PER CALENDAR MONTH.

14 (2) THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL DISTRIBUTE THE REGISTER
15 EACH MONTH BY:

16 (I) POSTING A COPY OF THE REGISTER ON THE DEPARTMENT OF LEGISLATIVE
17 REFERENCE'S WEBSITE; AND

18 (II) PROVIDING A COPY OF THE REGISTER TO:

19 (A) EACH CITY COUNCILMEMBER;

20 (B) EACH PUBLIC LIBRARY IN THE CITY;

21 (C) THE CITY SOLICITOR; AND

22 (D) THE CITY ADMINISTRATOR.

23 (C) *CONTENTS.*

24 (1) *IN GENERAL.*

25 EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE REGISTER SHALL
26 CONTAIN:

27 (I) A PUBLICATION DATE;

28 (II) THE PROPOSED REGULATION OR REGULATIONS; AND

29 (III) A NOTICE OF PROPOSED ACTION FOR EACH PROPOSED REGULATION.

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1 (2) *EXCEPTIONS.*

2 IF THERE ARE NO PROPOSED REGULATIONS DURING A CALENDAR MONTH, THE
3 DEPARTMENT OF LEGISLATIVE REFERENCE SHALL DISTRIBUTE A COPY OF THE
4 REGISTER IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION THAT CONTAINS:

5 (I) A PUBLICATION DATE; AND

6 (II) A MEMORANDUM STATING THAT NO REGULATIONS WERE PROPOSED DURING
7 THE RESPECTIVE CALENDAR MONTH.

8 (D) *PROCEDURES.*

9 THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL DETERMINE PROCEDURES
10 REGARDING THE CREATION, PUBLICATION, AND DISTRIBUTION OF THE REGISTER.

11 **§ 4-304 [4-303]. Review by Committee.**

12 (a) *“Committee” defined.*

13 In this section, “Committee” means the Committee on Legislative Investigations,
14 established by City Code Article 1, § 1-4 {“Committee on Legislative Investigations”}.

15 (b) *In general.*

16 (1) On receipt of written notification or notifications by the Chair of the Committee from
17 at least 3 councilmembers within 15 days from the receipt of the [notice] REGISTER
18 described in [§ 4-301 {“Notice of proposed regulation”}] § 4-303 {“COBRA
19 REGISTER”}, a 60-day period of review of the proposed regulation shall commence
20 before the Committee.

21 (2) A review under this section may include holding a public hearing before the
22 Committee.

23 (c) *Scope of review.*

24 In its review under this section, the Committee shall consider whether the proposed
25 regulation:

26 (1) conforms with the [statutory] LEGAL authority of the agency; and

27 (2) reasonably complies with the legislative intent of the [statute] LAW under which
28 the regulation was proposed.

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1 (d) *Effect of review period.*

2 (1) During the Committee’s 60-day review period, the proposed regulation may not be
3 adopted nor may it become effective.

4 (2) On the expiration of the 60-day period, the agency may proceed with the formal
5 adoption of the proposed regulation as provided in this title.

6 **§ 4-305 [4-304]. Adoption or re-publication.**

7 (a) [*Submittal*] *SUBMISSION to City Solicitor.*

8 (1) After the notice and comment period described in § 4-301 {“Notice of proposed
9 regulation”} of this subtitle has expired, if an agency makes changes to the text of the
10 proposed regulation, the agency shall submit the changed proposed regulation to the
11 City Solicitor.

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

14 (b) *Determination of material change.*

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

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

20 If, after the notice and comment period, the agency has not made a change in the
21 proposed regulation or if the City Solicitor determines that a change in the proposed
22 regulation is not material, the agency may adopt and implement the proposed regulation
23 only after:

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

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

26 (d) *Failure to adopt.*

27 If an agency fails to adopt a proposed regulation within 180 days after the date [it initially
28 published notice of the proposed regulation] THE PROPOSED REGULATION WAS INITIALLY
29 PUBLISHED IN THE REGISTER, the regulation shall be deemed withdrawn and may not be
30 adopted unless proposed anew and adopted in accordance with the requirements of this
31 subtitle.

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1 **§ 4-306 [4-305]. Emergency regulations.**

2 (a) *“State of emergency” defined.*

3 In this section, “state of emergency” means a period of time in which:

4 (1) a proclamation has been issued by the Governor declaring a state of emergency
5 under Title 14, Subtitle 3 of the State Public Safety Article {“Governor's
6 Emergency Powers”};

7 (2) a proclamation has been issued by the Governor declaring a catastrophic health
8 emergency under Title 14, Subtitle 3A of the State Public Safety Article
9 {“Governor's Health Emergency Powers”}; or

10 (3) an order or proclamation has been issued by the Mayor declaring a state of
11 emergency under § 14-111 {“Local state of emergency”} of the State Public
12 Safety Article.

13 (b) *Temporary regulations.*

14 (1) *In general.*

15 During a state of emergency, an agency may suspend the provisions of this [subtitle]
16 TITLE and adopt temporary regulations if:

17 (i) the underlying cause of the state of emergency requires its adoption; and

18 (ii) the public interest will be materially harmed if the regulation does not take
19 effect immediately.

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1 (2) *Effective date.*

2 Any temporary regulation adopted under this section is effective on:

3 (I) [(1)] approval by the City Solicitor for form and legal sufficiency; [and]

4 [(2) filing with the Director.]

5 (II) [(2)] APPROVAL BY THE DEPARTMENT OF LEGISLATIVE REFERENCE. FOR FORM
6 AND USE OF PLAIN LANGUAGE;

7 (III) SIGNATURE BY THE AGENCY; AND

8 (IV) FILING WITH THE DIRECTOR.

9 (3) *Expiration.*

10 (i) Except as provided in subparagraph (ii) of this paragraph, any temporary
11 regulation adopted under this section expires and no longer has legal effect on
12 the 90th day after the state of emergency has been lifted.

13 (ii) If, within the 90 days after a state of emergency has been lifted, an agency
14 submits a temporary regulation to the City Solicitor AND THE DEPARTMENT OF
15 LEGISLATIVE REFERENCE as set forth in § 4-205 {"Submission [to Solicitor]
16 BEFORE PUBLICATION"} AND § 4-301 {"NOTICE OF PROPOSED REGULATION"}
17 of this title and otherwise follows the notice and publication procedures set
18 forth in this title to adopt that regulation as permanent, the regulation does not
19 expire as stated in subparagraph (i) of this paragraph.

20 ***Subtitle 4. Codification***

21 **§ 4-401. [Submission to DLR Director] EFFECTIVE DATE OF REGULATIONS.**

22 EXCEPT AS PROVIDED IN § 4-306 {"EMERGENCY REGULATIONS"} OF THIS TITLE, IF THE
23 AGENCY PROPOSING A REGULATION HAS FULFILLED THE REQUIREMENTS SET FORTH IN § 4-205
24 {"SUBMISSION BEFORE PUBLICATION"} AND § 4-301 {"NOTICE OF PROPOSED REGULATION"}
25 OF THIS TITLE, [A] A regulation is effective on submission to the Director for COBRA
26 codification, unless a later effective date is specified by law or in the adopted regulation.

27 **SECTION 2. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
28 enacted.

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Certified as duly passed this 18 day of September, 2023



President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this 18 day of September, 2023



Chief Clerk

Approved this _____ day of _____, 20____

Mayor, Baltimore City