

**CITY OF BALTIMORE
COUNCIL BILL 21-0155
(First Reader)**

Introduced by: Councilmember Dorsey

Introduced and read first time: September 20, 2021

Assigned to: Public Safety and Government Operations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Administrative Procedure Act – Revisions**

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

11 BY repealing and reordaining, with amendments

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

16 BY adding

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

21 BY re-numbering current

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

26 BY repealing and reordaining, with amendments

27 Ordinance 20-0557
28 Section 4

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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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.