
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

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September 24, 2021

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 21-0155 - Administrative Procedure Act – Revisions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0155 for form and legal sufficiency. The bill clarifies that under the Administrative Procedure Act (“APA”) an agency may incorporate certain documents into a regulation by reference. It clarifies the notice and comment period under the APA and when a regulation is effective. It amends 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 (“COBRA”) and revises 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. The provides for an immediate effective date.

The APA requires City regulations to be process in a particular manner. If a regulation meets the APA’s definition of a “regulation,” it must be formatted in accordance with the APA style guidelines, reviewed by the Law Department for form and legal sufficiency, and filed with Legislative Reference before it can be deemed legally effective. Regulations that arise after the effective date of the APA, January 15, 2021, must also be published on various websites before they can be deemed effective. Of particular relevance to Council Bill 21-0155 is the fact that regulations that pre-existed the APA’s effective date are required to be processed by November 16, 2021 if they are to retain their legal effectiveness. This burden on City agencies, however, has proven difficult to shoulder, given the quick timeline for processing.

Given the looming deadline, this bill will make it to easier for existing regulations to remain effective. Specifically, under the proposed legislation, a regulation will remain effective if an agency files with the Department of Legislative Reference by January 15, 2022, an electronic copy of the regulation with its content unchanged. Pursuant to Council Bill 21-0155, the Department will then publish the regulation in a special section of the COBRA. Thereafter, the Department

will be responsible for revising and reformatting the regulation in the style consistent with the remaining sections of the COBRA.

Another proposed change is to allow certain material in City regulations to be adopted into the COBRA by reference. Experience with the APA has shown that some regulatory content includes necessary graphics and designs. If this type of content proves difficult to incorporate into the COBRA given the APA style guidelines, the proposed amendment will allow the material to be adopted by reference, meaning the content will be made part of the COBRA by reference to a document posted on the agency website for public viewing.

A final proposed change relates to the effective date of regulations. Experience with the APA has shown that some ambiguity exists in when a regulation is effective. To eliminate the ambiguity, the bill proposes to amend the APA to provide that a regulation is effective when it is submitted to the Department, unless a later effective date is required by law or by the regulation itself.

The Law Department see no legal obstacles to approving the bill for form and legal sufficiency.

Sincerely,

Victor K. Tervala

Victor K. Tervala
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Nikki Thompson, Director of Legislative Affairs
Matthew Stegman, Director of Fiscal and Legislative Services
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