



Legislation Details (With Text)

File #: 20-0557 **Version:** 0 **Name:** Baltimore City Administrative Procedure Act - Regulations

Type: Ordinance **Status:** Enacted

File created: 7/6/2020 **In control:** Mayor

On agenda: **Final action:** 11/16/2020

Enactment date: **Enactment #:** 20-431

Title: Baltimore City Administrative Procedure Act - Regulations
 For the purpose of establishing a uniform procedure for the notice, publication, and adoption of regulations in Baltimore City government; establishing the Code of Baltimore Regulations Annotated (COBRA) and providing for its contents; defining certain terms; requiring that a proposed regulation cite the statutory authority under which it is being proposed and embrace only a single subject; requiring that proposed regulation be approved for form and legal sufficiency by the City Solicitor prior to its publication; requiring that agencies publish notice of the proposed regulation and allow for public comments to be submitted for a certain period of time; setting forth the modes of publication of a proposed regulation; establishing the contents of the notice of proposed regulation; allowing for any Councilmember to refer a proposed regulation for review by the Committee on Legislative Investigations and providing for the procedures for that review; requiring that, after the notice and comment period, an agency re-submit the proposed regulation to the City Solicitor for a determination of whether any material changes have been made to the regulation; requiring that proposed regulation be re-published if a material change has been made; providing for a certain period for which a proposed regulation must be adopted by a regulation before the proposed regulation is deemed withdrawn; providing for temporary regulations during certain emergencies; requiring that adopted regulations be submitted to the Director of Legislative Reference prior to the regulations taking effect; permitting the Director of Legislative Reference to make certain non-substantive changes to a regulation; allowing an agency to remove certain obsolete regulations; providing for the severability of certain regulations; providing for a special effective date; and generally relating to establishing an orderly and transparent administrative procedure for the adoption of regulations in Baltimore City.

Sponsors: Shannon Sneed, Ryan Dorsey, Sharon Green Middleton, Mary Pat Clarke, Bill Henry

Indexes: Administration, Baltimore City, Processors, Regulation

Code sections:

Attachments: 1. 20-0557~1st Reader, 2. DLR 20-0557, 3. Law 20-0557, 4. BCIT 20-0557, 5. Bill Synopsis 20-0557, 6. Hearing Agenda 20-0557, 7. Hearing Notes 20-0557, 8. Hearing Minutes 20-0557, 9. Work Session Agenda 20-0557, 10. Work Session Notes 20-0557, 11. Work Session Minutes 20-0557, 12. 2nd Reader Amendments 20-0557, 13. 20-0557~3rd Reader, 14. Signed Ordinance 20-0557

Date	Ver.	Action By	Action	Result
11/16/2020	0	City Council	Enacted with no signature from Mayor (passage of 3 council meetings)	
10/5/2020	0	City Council	Approved and Sent to the Mayor	
9/21/2020	0	City Council	3rd Reader, for final passage	
9/21/2020	0	Judiciary Committee	Recommended Favorably with Amendment	
9/17/2020	0	Judiciary Committee	Recommended Favorably with Amendment	Pass
9/9/2020	0	Judiciary Committee	Worksession	
8/17/2020	0	Judiciary Committee	Scheduled for a Public Hearing	

7/9/2020	0	The City Council	Refer to Dept. of Legislative Reference
7/9/2020	0	The City Council	Refer to City Solicitor
7/9/2020	0	The City Council	Refer to Office of the Mayor
7/9/2020	0	The City Council	Refer to Dept. of Finance
7/9/2020	0	The City Council	Refer to Mayor's Office of Information Technology
7/6/2020	0	City Council	Introduced
7/6/2020	0	City Council	Assigned

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Sneed and Councilmember Dorsey

A Bill Entitled

An Ordinance concerning

Baltimore City Administrative Procedure Act - Regulations

For the purpose of establishing a uniform procedure for the notice, publication, and adoption of regulations in Baltimore City government; establishing the Code of Baltimore Regulations Annotated (COBRA) and providing for its contents; defining certain terms; requiring that a proposed regulation cite the statutory authority under which it is being proposed and embrace only a single subject; requiring that proposed regulation be approved for form and legal sufficiency by the City Solicitor prior to its publication; requiring that agencies publish notice of the proposed regulation and allow for public comments to be submitted for a certain period of time; setting forth the modes of publication of a proposed regulation; establishing the contents of the notice of proposed regulation; allowing for any Councilmember to refer a proposed regulation for review by the Committee on Legislative Investigations and providing for the procedures for that review; requiring that, after the notice and comment period, an agency re-submit the proposed regulation to the City Solicitor for a determination of whether any material changes have been made to the regulation; requiring that proposed regulation be re-published if a material change has been made; providing for a certain period for which a proposed regulation must be adopted by a regulation before the proposed regulation is deemed withdrawn; providing for temporary regulations during certain emergencies; requiring that adopted regulations be submitted to the Director of Legislative Reference prior to the regulations taking effect; permitting the Director of Legislative Reference to make certain non-substantive changes to a regulation; allowing an agency to remove certain obsolete regulations; providing for the severability of certain regulations; providing for a special effective date; and generally relating to establishing an orderly and transparent administrative procedure for the adoption of regulations in Baltimore City.

By adding

New Revised Article - General Provisions
Baltimore City Revised Code

By adding

Article - General Provisions
Section(s) 4-101 through 4-405, to be under the new title,

“Title 4. Administrative Procedure Act - Regulations”
Baltimore City Revised 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 Revised Code

Article - General Provisions

Title 4. Administrative Procedure Act - Regulations

Subtitle 1. Definitions; General Provisions.

§ 4-101. Definitions

(a) *In general.*

In this title, the following terms have the meanings indicated.

(b) *Agency.*

“Agency” means:

- (1) any department, board, commission, council, authority, committee, office, or other unit of City government; and
- (2) any officer or other individual who exercises authority comparable to that of the head of a unit of City government.

(c) *Code; COBRA.*

“Code” or “COBRA” means the Code of Baltimore Regulations Annotated.

(d) *Director.*

“Director” means the Director of Legislative Reference or the Director’s designee.

(e) *“Includes”; “including”.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(f) *Regulation.*

(1) *In general.*

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

- (i) has general application;
- (ii) has future effect;
- (iii) details or carries out the law that the City or an agency of the City administers; and

(iv) is in any form, including:

- (A) a guideline;
- (B) an executive order;
- (C) a requirement;
- (D) a standard;
- (E) a statement of interpretation; or
- (F) a statement of policy.

(2) *Exclusions.*

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

- (i) does not affect directly the rights of the public or the procedures available to the public; and
- (ii) either:
 - (A) concerns only internal management of City government; or
 - (B) requires compliance by City employees with provisions limited to attendance, conduct, training, discipline, or internal procedure.

§ 4-102. Scope.

(a) *In general.*

This title applies only to regulations adopted by an agency that is authorized by law to adopt regulations.

(b) *Implied authority.*

If a law authorizes an agency to implement or enforce that law, the agency may adopt a regulation to implement or enforce that law even if the authority to adopt the regulation is not expressly stated in that law.

(c) *Adoption authorized by federal or state law.*

This title does not apply to any regulation adopted under the authority provided by federal or State law, to the extent that the federal or State law requires an adoption procedure that differs from the procedures required under this title.

§§ 4-103 to 4-104. {Reserved}

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

§ 4-201. Citation of statutory authority.

A regulation is not effective unless it contains a citation of the statutory authority for the regulation.

§ 4-202. Form of proposed regulation.

Regulations shall be written in plain English and shall conform to the style set forth in a style manual adopted by the Department of Legislative Reference.

§ 4-203. Single subject.

A proposed regulation may not contain more than one subject matter.

§ 4-204. Submission to Solicitor.

(a) *Initial submission.*

Before publishing notice of a proposed regulation, an agency shall submit the proposed regulation to the City Solicitor for approval as to the form described in this subtitle and legal sufficiency.

(b) *Modification.*

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

(c) *Effect of noncompliance.*

If an agency fails to comply with this section or if the City Solicitor fails to approve the regulation as specified in subsection (a):

- (1) the proposed regulation may not be adopted; and
- (2) if adopted, is not effective.

§§ 4-205 to 4-206. {Reserved}

Subtitle 3. Notice and Comment Period; Adoption.

§ 4-301. Notice of proposed regulation.

(a) *In general.*

After a proposed regulation has been approved by the City Solicitor, as described in § 4-204 of this title, the agency shall publish notice of the proposed regulation and seek public comment for at least 30 days.

(b) *Method of publication.*

- (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 shall maintain an online register of all proposed regulations pending throughout City government.

(c) *Contents of notice.*

The notice required by this section shall include:

- (1) a brief description of the proposed regulation;
- (2) a online link to the full text of the proposed regulation;
- (3) the mailing address and, if available, email address to which a person may send written comments; and
- (4) if the agency proposes or is otherwise required to hold a public hearing on the proposed regulation, the date, time, and location of that hearing.

§ 4-302. Effect of notice.

Publication of the notice required under this section:

- (1) creates a rebuttable presumption that the proposed regulation was adopted properly; and
- (2) is deemed to give a person who is subject to or affected by the proposed regulation notice of the contents of the proposed regulation.

§ 4-303. Review by Committee.

(a) *“Committee” defined.*

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

(b) *Initiation of review.*

- (1) Within 15 days from receipt of the notice described in § 4-301 {“Notice of proposed regulation”} of this subtitle, any councilmember may refer a proposed regulation to the Committee for review.
- (2) The referral described in paragraph (1) of this subsection shall be in writing to the Chair of the Committee and to the Council President.
- (3) Referral to the Committee shall suspend the 30-day notice and comment period while the Committee completes its review.

(c) *Committee review and hearing.*

(1) *In general.*

On receipt of a referral described in subsection (b)(1) of this section, the Chair of the Committee shall schedule a public hearing on the proposed regulation as soon as practicable.

(2) *Considerations.*

In its review of a proposed regulation pursuant to this section, the factors the Committee shall consider shall include whether the regulation:

- (i) is in conformity with the statutory authority of the agency; and
- (ii) reasonably complies with the legislative intent of the statute under which the regulation was proposed.

(3) *Action by Committee.*

(i) After a hearing, the Committee shall by majority vote of a quorum of its members either:

- (A) approve the regulation; or
- (B) reject the regulation.

(ii) A vote under this paragraph shall occur no later than 60 days from the date of the referral.

(d) *Effect of approval.*

If the Committee votes to approve the proposed regulation, the 30-day notice and comment period is reinstated and the agency shall follow the process set forth in § 4-304 {"Adoption or re-publication"} of this subtitle.

(e) *Rejection.*

(1) *Notice to Mayor and agency.*

If the Committee votes to reject the proposed regulation under subsection (c)(3) of this section, the Committee shall, within 5 working days after the Committee votes to reject the adoption of a proposed regulation, provide written notice to the Mayor and the agency of its action and the underlying reasons for its action.

(2) *Post-rejection agency action.*

On receipt of the notice described in paragraph (1) of this subsection, and with written notice to the Committee, the agency may:

- (i) withdraw the regulation; or
- (ii) modify the regulation, but only as a newly proposed regulation in accordance with this title.

§ 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.

(d) *Failure to adopt.*

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

§ 4-305. Emergency regulations.

(a) *“State of emergency” defined.*

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

- (1) a proclamation has been issued by the Governor declaring a state of emergency under Title 14, Subtitle 3 of the State Public Safety Article {“Governor’s Emergency Powers”};
- (2) a proclamation has been issued by the Governor declaring a catastrophic health emergency under Title 14, Subtitle 3A of the State Public Safety Article {“Governor’s Health Emergency Powers”}; or
- (3) an order or proclamation has been issued by the Mayor declaring a state of emergency under § 14-111 {“Local state of emergency”} of the State Public Safety Article.

(b) *Temporary regulations.*

(1) *In general.*

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

- (i) the underlying cause of the state of emergency requires its adoption; and
- (ii) the public interest will be materially harmed if the regulation does not take effect immediately.

(2) *Effective date.*

Any temporary regulation adopted under this section is effective on:

(1) approval by the City Solicitor for form and legal sufficiency; and

(2) filing with the Director.

(3) *Expiration.*

Any temporary regulation adopted under this section expires and no longer has legal effect on the 90th day after the state of emergency has been lifted.

§§ 4-306 to 4-307. {Reserved}

Subtitle 4. Codification.

§ 4-401. Submission to Director.

A regulation is not effective unless it has been submitted to the Director for COBRA codification.

§ 4-402. Code of Baltimore Regulations Annotated.

(a) *In general.*

The Code of Baltimore Regulations Annotated is established.

(b) *Contents.*

The Director shall publish a Code of Baltimore Regulations Annotated (COBRA) that includes:

- (1) each then-current regulation adopted by an agency;
- (2) any other document that the Director determines should be included;
- (3) any explanatory annotation the Director deems necessary; and
- (4) an index by agency and subject matter.

(c) *Mode of publication.*

The Code shall be published on the Department of Legislative Reference's website.

§ 4-403. Correction of errors.

After providing notice to, and in consultation with, the City Solicitor and the relevant agency, the Director may correct non-substantive drafting, style, or typographical errors within the Code.

§ 4-404. Removal of obsolete provisions.

(a) *In general.*

With the approval of the City Solicitor, an agency may request that the Director remove from the Code:

- (1) a part of a regulation that has been held unconstitutional by a court of competent final jurisdiction; or
- (2) a regulation adopted by an agency that has since been abolished.

(b) *Reason for removal.*

The requesting agency shall state with particularity the reason for why the regulation is obsolete and, if approved for removal by the City Solicitor, the Director shall include that reason as an annotation within the Code.

§ 4-405. Severability.

If a section, paragraph, sentence, clause, phrase, or word of a regulation is declared unconstitutional or invalid by a court of competent jurisdiction, the unconstitutionality or invalidity may not affect any of any remaining sections, paragraphs, sentences, clauses, phrases, or words unless:

- (1) the regulation is subject to a provision that prohibits severability; or
- (2) the court finds that the remaining valid provisions alone are incomplete and incapable of being carried out in accordance with the regulation's purpose.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance, as it relates to new agency regulations that are not current and effective on the date of enactment, takes effect on the 180th day after it is enacted.

Section 4. And be it further ordained, That, notwithstanding Section 1 and Section 3 of this Ordinance, any regulation that is current and effective on the date this Ordinance is effective need not be re-proposed, re-publicized, or re-adopted in accordance with the procedures set forth in Section 1, provided that any regulation that is current and effective on the date that this Ordinance is effective:

- (1) has been reviewed by the agency, in consultation with the Law Department, to ensure that the regulation conforms to the style set forth in the style manual adopted by the Department of Legislative Reference; and
- (2) is submitted to the Director of Legislative Reference for codification into the Code of Baltimore Regulations Annotated no later than 1 year from the date that this Ordinance has been enacted.

Section 5. And be it further ordained, That the Director of Legislative Reference may correct and conform, with no further action required by the Mayor and City Council, cross-references and terminology rendered obsolete or incorrect by this Ordinance. The Director shall adequately describe any correction or conforming change that is made in an editor's note following the section affected.