



Legislation Text

File #: 21-0155, **Version:** 0

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 Dorsey

A Bill Entitled

An Ordinance concerning
Administrative Procedure Act - Revisions

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

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 2. Form of Regulations; Submission to City Solicitor.

§ 4-202. Form of proposed regulation.

Except as otherwise provided in § 4-203 of this subtitle, regulations [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. Incorporation by reference.

(a) *“Incorporate by reference” defined.*

In this section, “incorporate by reference” means the method by which a regulation makes provisions of another document part of the regulation by reference to the other document.

(b) *In general.*

An agency may incorporate by reference another document within a regulation if:

- (1) both the Director and the agency find that restating the text or graphics of the document within the regulation would be unduly cumbersome, expensive, or otherwise inexpedient;
- (2) the reference within the regulation fully identifies the:
 - (i) incorporated document by title and date of publication or issuance; and
 - (ii) the page or pages of the incorporated document the regulation comprises; and
- (3) the reference clearly states which part or parts of the document are being incorporated, if the agency intends to incorporate only a portion of a document; and
- (4) the agency maintains a copy of the incorporated document that is:
 - (i) available for public inspection on the agency’s website; and
 - (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.

(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.

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

Subtitle 4. Codification

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

A regulation is [not] effective [unless it has been submitted] on submission to the Director for COBRA codification, unless a later effective date is specified by law or in the adopted regulation.

Section 2. And be it further ordained, That the laws of Baltimore City read as follows:

Ordinance 20-0557

Section 4. And be it further ordained, That [notwithstanding]:

- (a) 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 this Ordinance is effective] as of January 15, 2021, shall remain effective if:
- [(1) has been reviewed by the agency, in consultation with the Law Department, to ensure the regulation conforms to the style set forth in the style manual adopted by the Department of Legislative Reference; and
 - (1) [(2)] the regulation is submitted, in digital form, to the Director of Legislative Reference [for codification into the Code of Baltimore Regulations Annotated] by January 15, 2022, for COBRA codification [no later than 1 year from that date that this Ordinance has been enacted.];
 - (2) the regulation is not abrogated by:
 - (i) the agency that adopted it; or
 - (ii) a court of competent jurisdiction; and
 - (3) no part of the text of the regulation is materially changed, which the City Solicitor shall determine and, if the City Solicitor does determine a material change has been made, the City Solicitor shall deem the revised text to be a proposed regulation, which:
 - (i) is not effective unless adopted in accordance with the requirements of General Provisions Article, Title 4; and
 - (ii) does not affect the lawfulness of the existing regulation until the proposed regulation becomes effective pursuant to General Provisions Article, Title 4.
- (b) Any regulation that may be affected by the provisions of this Ordinance and that was current and effective as of January 15, 2021, and not filed with the Director of Legislative Reference by January 15, 2022, shall terminate and no longer have legal effect.
- (c) Any regulation that may be affected by the provisions of this Ordinance and that was current and effective as of January 15, 2021, and filed with the Director of Legislative Reference by January 15, 2022:
- (1) shall be placed in a special section of the COBRA entitled “Regulations Existing as of

January 15, 2021”;

- (2) need not conform to a style set forth in the style manual adopted by the Department of Legislative Reference pursuant to General Provisions Article, § 4-202; and
- (3) the Department of Legislative Reference shall:
 - (i) revise each regulation in accordance with the adopted style manual;
 - (ii) remove the regulation from the COBRA special section; and
 - (iii) recodify the revised regulation in a format consistent with the remaining sections of the COBRA.

Section 3. And be it further ordained, That this Ordinance takes effect on the date it is enacted.