



## STAFF REPORT ON PROPOSED LEGISLATION

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To: Mayor Gavin Buckley  
From: David Jarrell, City Manager  
Date: February 7, 2021  
Subject: O-6-21: Agency Regulations

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The intent of this legislation is to establish a transparent process for the making of regulations. It establishes a new procedure for adoption of regulations by a City of Annapolis department, board, or commission, including public notice requirements and an appeal process.

Currently, the Code requirements for the adoption of a regulation are simple and straightforward. A regulation may be adopted if (1) the Code expressly authorizes the adoption and (2) the proposed regulation has been posted on the City's website for at least two weeks for public comment.

This legislation continues to require that the Code expressly authorizes the regulation, and modifies the public notice requirements as follows:

- A. The proposed legislation shall be posted on the City's website for not less than 30 days for public comment, with all submitted comments available for review by the public.
- B. Simultaneously, the proposed legislation shall be submitted to the City Council Rules and City Government standing committee.
- C. At the end of the period for public comment, a public hearing shall be held by the relevant department, board or commission, with public testimony allowed and public deliberations on the adoption of the proposed regulation by the department, board or commission.
- D. Prior to the regulation going into effect, the department, board or commission shall report the adoption of the regulation to the City Council

After completing the above four requirements, a regulation does not become final until two legislative meetings of the City Council have been held.

The legislation also prescribes an appeal process for the adoption of regulations. Any person

aggrieved or any City taxpayer may challenge an adopted regulation by appealing it to the Circuit Court of Anne Arundel County for any basis recognized by law.

Finally, the legislation requires that each department, board or commission shall review all of its regulations beginning five years after July 1, 2021 and every five years thereafter, and report to the City Council as to plans to retain, repeal or amend the regulations.

The City's Law Office expressed the following concerns about the proposed legislation:

1. The legislation is unclear about when a regulation becomes effective. There is no express language about when adoption occurs. Proposed Paragraph C of the legislation implies that the "adopted" regulation does not become "final" until two legislative meetings of the City Council meetings have been held. Legally, ordinances and regulations are final if adopted, so it is unclear what is the difference between "adoption" and "final", and when adoption actually occurs.
2. For the new appeal process (proposed Paragraph E), the City cannot legally provide every taxpayer with standing for an appeal. Aggrievement is a critical factor for a Court to grant standing. If this language remains in the legislation, the City cannot require a Court to grant standing. The City also cannot establish the basis of appeal for a Court to consider, as that is in the Court's discretion.

This legislation will significantly increase the time and effort required for departments, boards and regulations to implement new regulations. I'm concerned that most City departments, along with boards and commissions, simply won't have the bandwidth or capacity to perform and manage the new requirements for regulations.

*Prepared by David Jarrell, City Manager*