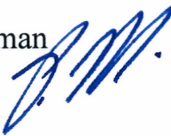


COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

MEMORANDUM

---

TO: Nyasha Smith, Secretary to the Council

FROM: Phil Mendelson, Chairman 

DATE: November 6, 2024

RE: **Request to Agendize for the November 12, 2024 Legislative Meeting**

---

This memorandum is to request that the following measures be placed on the agenda for the November 12, 2024 Legislative Meeting:

- **Review of Agency Action Clarification Emergency Declaration Resolution of 2024**
- **Review of Agency Action Clarification Emergency Amendment Act of 2024**
- **Review of Agency Action Clarification Temporary Amendment Act of 2024**

The District's Administrative Procedure Act authorizes the District of Columbia Court of Appeals to review orders and decisions of administrative agencies in contested cases. In exercising that review, the Court has the power "[s]o far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action" (D.C. Official Code § 2-510(a)(1)). The Court is authorized, among other things, to hold unlawful or set aside any actions or findings and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights" (D.C. Official Code § 2-510(a)(3)).

For decades, the Court of Appeals has deferred to agency interpretations of ambiguous statutes and regulations unless the agency's reading was unreasonable. See, e.g., *Nunnally v. D.C. Metro. Police Dep't*, 80 A.3d 1004, 1010 (D.C. 2013) ("Where we determine that a statutory term is ambiguous, . . . we must defer to an agency's interpretation of that ambiguity that is reasonable and not plainly wrong or inconsistent with the legislature's intent."). The Court of Appeals has additionally made clear that this deference extends to an agency's interpretation of its own regulations and should also be applied by other tribunals reviewing the work of the administrative agency, like the Office of Administrative Hearings. See *D.C. Dep't of Env't v. E. Capitol Exxon*, 64 A.3d 878, 879 (D.C. 2013). This standard of review is substantially similar to the approach adopted by the United States Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984), and its progeny. Deference has become an important background principle for ensuring stability in the law. Individuals can rely on agency interpretations as authoritative unless a clear conflict exists between the agency's interpretation and the statute or regulation being interpreted.

In June 2024, the United States Supreme Court overruled *Chevron* in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) and held that the federal Administrative Procedure Act prohibits courts from deferring to agencies when they offer reasonable interpretations of ambiguous federal statutes. Notwithstanding the Council's understanding of the District's Administrative Procedure Act, the textual similarities between the scope of review provision in the federal Administrative Procedure Act and the judicial review provision of the District's Administrative Procedure Act may create confusion and uncertainty as to what standard of review applies when reviewing District agency actions or regulations. Therefore, emergency action is necessary to clarify that, under the District's Administrative Procedure Act, in reviewing an order or decision of the Mayor or an agency, a reviewing court or tribunal shall defer to the Mayor or agency's reasonable interpretation of a statute or regulation it administers so long as that interpretation is not plainly wrong, inconsistent with the statutory or regulatory language or legislature's intent, or otherwise arbitrary or capricious.

The draft measures are attached. Please call me or Blaine Stum if you have any questions at (202) 724-8092.

cc: All Councilmembers  
Council Officers