


Chairman Phil Mendelson

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8 A PROPOSED RESOLUTION
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16 To declare the existence of an emergency with respect to the need to amend the District of
17 Columbia Administrative Procedure Act to codify agency deference and clarify that a
18 reviewing court or tribunal shall defer to an agency’s interpretation of a statute or
19 regulation it administers so long as that interpretation is not plainly wrong, inconsistent
20 with the statutory or regulatory language or legislature’s intent.

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22 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
23 resolution may be cited as the “Review of Agency Action Clarification Emergency Declaration
24 Resolution of 2024”.

25 Sec. 2. (a) The District’s Administrative Procedure Act authorizes the District of
26 Columbia Court of Appeals to review orders and decisions of administrative agencies in
27 contested cases. In exercising that review, the Court has the power, “[s]o far as necessary to
28 decision and where presented, to decide all relevant questions of law, to interpret constitutional
29 and statutory provisions, and to determine the meaning or applicability of the terms of any
30 action” (D.C. Official Code § 2-510(a)(1)). The Court is authorized, among other things, to “hold
31 unlawful and set aside any action or findings and conclusions found to be” (A) “Arbitrary,
32 capricious, an abuse of discretion, or otherwise not in accordance with law;” (B) “Contrary to
33 constitutional right, power, privilege, or immunity;” (C) “In excess of statutory jurisdiction,

34 authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of
35 statutory rights;” (D) “Without observance of procedure required by law, including any
36 applicable procedure provided by this subchapter;” or (E) “Unsupported by substantial evidence
37 in the record of the proceedings before the Court” (D.C. Official Code § 2-510(a)(3)).

38 (c) For decades, the Court of Appeals has deferred to agency interpretations of
39 ambiguous statutes and regulations unless the agency’s reading was unreasonable. *See, e.g.,*
40 *Nunnally v. D.C. Metro. Police Dep’t*, 80 A.3d 1004, 1010 (D.C. 2013) (“Where we determine
41 that a statutory term is ambiguous, . . . we must defer to an agency’s interpretation of that
42 ambiguity that is reasonable and not plainly wrong or inconsistent with the legislature’s intent.”);
43 *Eldridge v. D.C. Dep’t of Hum. Servs.*, 248 A.3d 146, 155 (D.C. 2021) (similar). This standard of
44 review is substantially similar to the approach adopted by the United States Supreme Court in
45 *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984),
46 and its progeny. This doctrine also traces back to judicial decisions predating the adoption of the
47 District’s Administrative Procedure Act. *See Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 381-82
48 (1969); *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *Unemployment Comp. Comm’n of Alaska v.*
49 *Aragon*, 329 U.S. 143, 153-54 (1946).

50 (d) The Court of Appeals has additionally made clear that this deference extends to an
51 agency’s interpretation of its own regulations and should also be applied by other tribunals
52 reviewing the work of the administrative agency, like the Office of Administrative Hearings. *See*
53 *D.C. Dep’t of Env’t v. E. Capitol Exxon*, 64 A.3d 878, 879 (D.C. 2013).

54 (e) Deference has become an important background principle for ensuring stability in the
55 law. Individuals can rely on agency interpretations as authoritative unless a clear conflict exists
56 between the agency’s interpretation and the statute or regulation being interpreted. The Council

57 has also legislated for decades with this background principle and the assumption that an
58 agency's reasonable construction of a statute it is charged with administering will be sustained
59 on judicial review. This principle is consistent with the Council's understanding of the current
60 judicial review provision of the District's Administrative Procedure Act.

61 (f) In June 2024, in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024),
62 however, the United States Supreme Court overruled *Chevron* and held that the federal
63 Administrative Procedure Act prohibits courts from deferring to agencies when they offer
64 reasonable interpretations of ambiguous federal statutes.

65 (g) Notwithstanding the Council's understanding of the District's Administrative
66 Procedure Act, the textual similarities between the scope of review provision in the federal
67 Administrative Procedure Act, which the Supreme Court interpreted in *Loper Bright*, and the
68 judicial review provision of the District's Administrative Procedure Act may create confusion
69 and uncertainty as to what standard of review applies when reviewing District agency action.

70 (h) Therefore, there exists an immediate need to amend the District of Columbia
71 Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code §
72 2-510), to clarify that in reviewing an order or decision of the Mayor or an agency, a reviewing
73 court or tribunal shall defer to the Mayor or agency's reasonable interpretation of a statute or
74 regulation it administers so long as that interpretation is not plainly wrong, or inconsistent with
75 the statutory or regulatory language or legislature's intent.

76 Sec. 3. The Council of the District of Columbia determines that the circumstances
77 enumerated in section 2 constitute emergency circumstances making it necessary that the Review
78 of Agency Action Clarification Emergency Amendment Act of 2024 be adopted after a single
79 reading.

Sec. 4. This resolution shall take effect immediately.