

1 Amend 2 Cal. Code Regs. Section 18438.2 as follows:

2 **§ 18438.2. Proceedings Under Government Code Section 84308.**

3 (a) ~~For purposes of Government Code Section 84308, a~~ A “proceeding involving a  
4 license, permit or other entitlement for use” ~~includes~~ means any proceeding to grant, deny,  
5 revoke, restrict, or modify a license, permit or other entitlement for use, that does not solely  
6 involve purely ministerial decisions and is:

7 (1) Applied for by the party;

8 (2) Formally or informally requested by the party; or

9 (3) A contract between the agency and the party or a franchise granted by the agency to  
10 the party, other than a contract that is competitively bid, a labor contract, or a personal  
11 employment contract. For purposes of this provision:

12 (A) “Competitively bid contract” means a contract awarded to the lowest responsible  
13 bidder with a responsive bid, or, if the successful bidder refuses or fails to execute the contract,  
14 to the next lowest bidder with a responsive bid. “Responsible bidder” means a bidder who has  
15 demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience  
16 to satisfactorily perform the contract. “Responsive bid” means a bid that indicates compliance  
17 without material deviation from the requirements of the solicitation and the terms and conditions  
18 of the proposed contract.

19 (B) A “labor contract ” is a contract or agreement reached through collective bargaining  
20 or with a representative group regarding the salary, benefits, or terms and conditions under an  
21 employment or retirement policy for employees or retirees, including a project labor agreement  
22 entered under Public Contract Code Section 2500.

23 (C) A “personal employment contract” is a contract for employment, including the terms  
24 and conditions of employment, between the agency and an agency employee.

1 (D) Except as provided in subdivision (a)(3)(A), a contract between the agency and an  
2 independent contractor is neither a labor agreement nor personal employment contract.

3 (b) A proceeding involving a license, permit or other entitlement for use is “pending  
4 before” an agency:

5 ~~(1) When the application has been filed, the proceeding has been commenced, or the issue~~  
6 ~~has otherwise been submitted to the jurisdiction of an agency for its determination or other~~  
7 ~~action;~~

8 ~~(2) It is the type of proceeding where the officers of the agency are required by law to~~  
9 ~~make a decision, or the matter has been otherwise submitted to the officers of the agency for their~~  
10 ~~decision; and~~

11 ~~(3) The decision of the officer or officers with respect to the proceeding will not be purely~~  
12 ~~ministerial.~~

13 [OPTION 1] (b) “Pending.” A proceeding involving a license, permit, or other  
14 entitlement for use has commenced and is pending only when:

15 (1) The decision is before the officer for the officer’s consideration. If the officer is a  
16 member of a governing body, this includes any item placed on the agenda for discussion or  
17 decision at a public meeting of the body; or

18 (2) It is reasonably foreseeable the decision will come before the officer in the officer’s  
19 decisionmaking capacity and the officer knows or has reason to know a proceeding involving a  
20 license, permit or other entitlement for use is before the agency for its decision or other action.

21 [OPTION 2] (b) “Pending.” A proceeding involving a license, permit, or other  
22 entitlement for use has commenced and is pending only when it is before the agency for its  
23 decision or other action.

24 [OPTION 3] (b) “Pending.” A proceeding involving a license, permit, or other

1 entitlement for use has commenced and is considered pending only under the following  
2 circumstances:

3 (1) For an officer, a proceeding involving a license, permit, or other entitlement for use is  
4 pending when:

5 (A) The decision is before the officer for the officer's consideration. If the officer is a  
6 member of a governing body, this includes any item placed on the agenda for discussion or  
7 decision at a public meeting of the body; or

8 (B) The officer knows or has reason to know a proceeding involving a license, permit or  
9 other entitlement for use is before the jurisdiction of the agency for its decision or other action,  
10 and it is reasonably foreseeable the decision will come before the officer in the officer's  
11 decisionmaking capacity.

12 (2) For a party or party's agent, or a participant or participant's agent, a proceeding  
13 involving a license, permit or other entitlement for use is pending when it is before the  
14 jurisdiction of the agency for its decision or other action.

15 Note: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government  
16 Code.