

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