

## Informal Communications Failed to Meet Requirement to “Petition” City Officials for Appeal

A project challenger failed to exhaust administrative remedies because an email exchange and dinner meeting with city officials expressing general concerns about a recent permit approval did not satisfy the burden to "petition" a city official in order to appeal. *Muskan Food & Fuel, Inc. v. City of Fresno*, 69 Cal. App. 5th 372 (2021). In 2017, the City of Fresno approved a conditional use permit for development of a shopping center,

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Under the

Fresno Municipal Code, planning commission decisions may be appealed to the city council by either a councilmember or the mayor, "either on their own initiative or upon receiving a petition from any person." Muskan Food & Fuel argued they properly petitioned city officials on two occasions. First, the president of Muskan Food & Fuel emailed the president of the Fresno Chapter of the American Petroleum and Convenience Store Association (APCA) expressing concerns about over-saturation of alcohol licenses in the project area. The APCA president forwarded this email to the mayor. Second, principals of Muskan Food & Fuel participated in an informal dinner with city councilmembers to discuss the planning commission's decision. Because the Fresno Municipal Code does not define "petition," or otherwise clarify how a petition must be made, the court held a petition may be oral, written, or a combination of the two. However, regardless of the mode, it must be clear that the challenger is petitioning as part of the formal appeal process and not simply expressing general concerns.

Here, Muskan Food & Fuel's efforts fell short. The email was a general request for the mayor to investigate an issue (oversaturation of alcohol licenses), not a petition to appeal. Despite Muskan Food & Fuel's intentions, nothing in the original email or the response from the mayor could be objectively viewed as a petition. The dinner with city councilmembers also did not satisfy the petition requirement. Although discussion at dinner included the planning commission's recent decision, the court could not find this impliedly included a petition or request for appeal because there was no substantial evidence to support such a finding. Therefore, there was no proper petition and Muskan Food & Fuel failed to exhaust administrative remedies. Allowing general statements of concern to fulfill the "petition" requirement would "encourage end-runs, undermine judicial efficiency, and undermine the city council's autonomy as the elected body with the ultimate authority over land use decisions."

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