

Sriracha Shutdown: Hot Sauce Lessons on Local Privilege and Race

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ABSTRACT

In 2013, Huy Fong Foods, maker of the trendy hot sauce sriracha, fought in court to stay open. The Los Angeles suburb of Irwindale tried to enjoin all sauce production, arguing that “offensive chili odors” created a public nuisance. This was an unexpected development because Huy Fong was recently invited to relocate to Irwindale and air quality regulators found no problems. Sauce lovers and the media closely watched this spicy legal drama, dubbed the “sriracha-apocalypse.” Originally created for Vietnamese ph• soup, sriracha is extremely popular worldwide.

This conflict points to a suburban racialized exclusion, sourced in municipal legal powers. With a population that is over ninety percent Latino, Irwindale was incorporated to capitalize on racial divisions. Mining companies sought these divisions in order to benefit from low taxes. Incorporation created a legal privilege in municipal powers to exclude outsiders. Irwindale’s public nuisance lawsuit to shutdown sriracha exemplifies such a tactic. Eyeing this food conflict, this Article uses critical approaches to race and geography to illustrate the influence local government law has on race relations in the suburban United States. This Article also illustrates how municipal legal powers result in racialized exclusion, despite race neutral legal positions and a lack of racist animus.

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INTRODUCTION

In October of 2013, the Los Angeles suburb of Irwindale went to court to enjoin all operations of Huy Fong Foods, maker of the popular hot sauce sriracha (pronounced like *see-ra-cha*).¹ Irwindale argued that odors and fumes, from grinding chile peppers to make the sauce, created a public nuisance for nearby residents.² The previous year, Huy Fong had moved to a new \$40 million plant in this city of less than

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¹ See Frank Shyong, *Sriracha Sauce Factory Odor Causing Headaches, Burning Eyes, City Sues*, L.A. TIMES (Oct. 28, 2013), <http://articles.latimes.com/2013/oct/28/local/la-me-ln-irwindale-sues-sriracha-20131028>.

² See Harry Bradford, *Possible Sriracha Shortage? Possible Sriracha Shortage!*, HUFFINGTON POST (Oct. 30, 2013, 11:05 AM), http://www.huffingtonpost.com/2013/10/30/sriracha-shortage_n_4175604.html; Mark Memmott, *Sriracha Factory Under Fire for Fumes; City Sues*, NPR (Oct. 29, 2013, 9:23 AM), <http://www.npr.org/blogs/thetwo-way/2013/10/29/241587163/sriracha-factory-under-fire-for-fumes-city-sues>.

1500 residents.³ The latest census lists over ninety percent of Irwindale's population as Hispanic or Latino.⁴ Irwindale's City Council had courted the company with redevelopment funds to convert an empty mining pit into state-of-the-art facilities.⁵ It was strange that Irwindale would soon complain about smells, after eagerly inviting Huy Fong. The city knew whom it had lured; Huy Fong makes chile-based condiments and nothing else. Even more suspicious was that California's air quality regulators found no problem.⁶ For months, this legal drama boiled with a public fear that sauce production would end. This "sriracha-apocalypse" only ended when Irwindale dropped the suit half a year later.⁷

Word of this legal controversy spread, like a spicy kick, through newspapers, television, food blogs, Facebook, Twitter, and myriad social media outlets.⁸ With sriracha fans on all continents, this news fueled an increased demand for the sauce worldwide.⁹ Much of this

³ Irwindale is comprised of 9.5 square miles with a population of 1466. *Demographics*, CITY OF IRWINDALE, <http://www.ci.irwindale.ca.us/Index.aspx?NID=262> (last visited Feb. 6, 2015).

⁴ Based on data from the 2010 U.S. Census, 90.6% of Irwindale's population is Hispanic or Latino. Hispanic or Latino population in Irwindale City, California in 2010 from U.S. Census Bureau, AMERICAN FACTFINDER, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml (search "Irwindale City, California," then select "Race and Hispanic of Latino Origin").

⁵ See Joe Matthews, *What Makes Sriracha Stink: Not the Sauce. It's Cities Like Irwindale*, ZÓCALO PUBLIC SQUARE: CONNECTING CALIFORNIA (Dec. 5, 2013), <http://www.zocalopublicsquare.org/2013/12/05/what-makes-sriracha-stink/inquiries/connecting-california/> (describing that redevelopment funds brought Huy Fong to Irwindale and the funds' role in other local controversies in California).

⁶ See Sharon McNary, *Update: Your Sriracha's Safe. Judge Denies Attempt to Close Hot Sauce Plant*, 89.3 KPCC (Oct. 31, 2013, 9:45 AM), <http://www.scpr.org/news/2013/10/31/40126/sriracha-hot-sauce-high-tech-odor-cops-follow-thei/> (describing South Coast Air Quality Management District (SCAQMD) procedures and their results).

⁷ Matthew Bramlett, *Srirachapocalypse, Now: California Stops Shipments of Hot Sauce [UPDATE]*, LAIST (Dec. 11, 2013, 3:21 PM), http://laist.com/2013/12/11/sriracha_shipping_halted_until_mid-.php. See Frank Shyong, *Sriracha Lawsuit Dropped; Irwindale Tables Public Nuisance Resolution*, L.A. TIMES (May 29, 2014, 12:43 PM), <http://www.latimes.com/local/lanow/la-me-ln-sriracha-lawsuit-dropped-20140529-story.html>.

⁸ See Sarah Favot, *How Sriracha Became a Social Media Star After Neighborhood Battle*, MERCURY NEWS (Sept. 26, 2014, 12:28 PM), http://www.mercurynews.com/business/ci_26612688/how-sriracha-became-social-media-star-after-neighborhood.

⁹ See Homa Khaleeli, *Hot Right Now: How Sriracha has Become a Must-Have Sauce*, GUARDIAN (Oct. 2, 2014, 2:48 PM), <http://www.theguardian.com/lifeandstyle/2014/oct/02/sriracha-ketchup-kick-must-have-sauce>; Lauren Gold, *Famous Sriracha 'Rooster Sauce' Finally Makes the Move to New Irwindale*, DAILY BREEZE, (July 22, 2013, 12:01 AM), <http://www.dailybreeze.com/general-news/20130722/famous-sriracha-rooster-sauce-finally-makes-the-move-to-new-irwindale-factory>.

hysteria is explained by the extreme popularity of sriracha.¹⁰ Obsessive fans tout their love for this sauce originally crafted for Vietnamese *pho* soup but now used to spice any edible item.¹¹ Sriracha's rooster logo, fire-engine red, and green cap adorn t-shirts, cellphone covers, baby onesies, costumes, and much more. *Bon Appétit* named it *Ingredient of the Year for 2010* and *Cook's Illustrated* rated it the best-tasting hot sauce in 2012.¹² A fear that sriracha supplies would end fired up frenzies.

Food studies scholars explain that food controversies like this involve complex issues and are never just about food. James Watson and Melissa Caldwell in *Cultural Politics of Food and Eating* describe food as "implicated in a complex field of relationships, expectations, and choices that are contested, negotiated, and often unequal."¹³ Economic, historic, and political determinations shape food's consumption and production. Watson and Caldwell aver that "[f]ood everywhere is not just about eating, and eating (at least among humans) is never simply a biological process."¹⁴

Food can be the main course produced by debates about racial identity. Robert Ji-Song Ku, Martin Manalansan, and Anita Mannur argue that for Asian Americans, food is a perpetual reminder of inequalities. These memories refer to discriminatory immigration law, prohibition on land ownership, indentured agricultural labor, and work in restaurants and food processing.¹⁵ Emphasizing a social perspective on race, they argue that "most matters related to food" are loaded with racial meanings and racialization.¹⁶ Accordingly, Asian

¹⁰ See, e.g., Caleb Hannan, *Sriracha Hot Sauce Catches Fire, Yet 'There's Only One Rooster'*, BLOOMBERG BUSINESS WEEK, (Feb. 21, 2013), <http://www.businessweek.com/articles/2013-02-21/sriracha-hot-sauce-catches-fire-with-only-one-rooster>.

¹¹ See John T. Edge, *A Chili Sauce to Crow About*, N.Y. TIMES, May 20, 2009, at D1, available at http://www.nytimes.com/2009/05/20/dining/20united.html?PageWanted=all&_r=0.

¹² Roberto A. Ferdman, *The Highly Unusual Company Behind Sriracha, the World's Coolest Hot Sauce*, QUARTZ (Oct. 21, 2013), <http://qz.com/132738/the-highly-unusual-company-behind-sriracha-the-worlds-coolest-hot-sauce/>. See Huy Fong's *Sriracha Hot Sauce*, BON APPÉTIT (Mar. 6, 2013, 4:45 PM), <http://www.bonappetit.com/trends/article/huy-fong-s-sriracha-hot-sauce>.

¹³ THE CULTURAL POLITICS OF FOOD AND EATING 1 (James I. Watson & Melissa I. Caldwell eds., 2007).

¹⁴ *Id.*

¹⁵ EATING ASIAN AMERICA: A FOOD STUDIES READER 1 (Robert Ji-Song Ku et al. eds., 2013).

¹⁶ *Id.* Looking to Asian American identity and food, this adapts Michael Omi and Howard Winant's focus on racial formation. Omi and Winant define racial formation as "the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed." See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION

American histories are inscribed with foods representing ethnicity, race, class, gender, and the transnational movement of peoples and ideas. Examining Asian American literature, Wenying Xu argues that food structures “people’s identities and their concept of others,” evident in the racialization of Asian Americans in the United States and the appropriation of Asian foodways.¹⁷ Focused on producing, cooking, or eating food, these narratives show food is symbolic of adversity, survival, adaption, ingenuity, and hybridization. Seen in this light, Irwindale’s gripes about sriracha odor point to larger tensions.

Food has an equally hearty role in other racial American histories. For African Americans this includes the powerful role food played in the Middle Atlantic passage and in civil rights movements,¹⁸ and the complex shared history of simple food items like chicken.¹⁹ Similarly, Mexican food in the United States reflects hybridization, cultural appropriation, and a means for self-identification for both Mexican Americans and Mexicans.²⁰ Chiles, beans, and corn have cooked up changing foodways since before México or the United States existed. In California, debates continue regarding the foodways of immigrants. Some municipalities outlaw taco trucks, and the state has banned shark fin soup, a celebratory Chinese dish.²¹

The racial dynamics of the sriracha-apocalypse brewed beneath the headlines. In various historic examples, Ku, Manalansan, and Mannur show how food has become an index to follow anti-Asian sentiments in the United States.²² Huy Fong is owned by David Tran, a refugee from Vietnam of Chinese descent.²³ Sriracha’s popularity

IN THE UNITED STATES 55 (1994).

¹⁷ WENYING XU, EATING IDENTITIES: READING FOOD IN ASIAN AMERICAN LITERATURE 2 (2007).

¹⁸ JESSICA B. HARRIS, HIGH ON THE HOG: A CULINARY JOURNEY FROM AFRICA TO AMERICA 31 (2011) (describing the significance of rice, yams, and corn brought by slaves and how restaurants, as locations to protest or places to organize, were vital to the civil rights movement).

¹⁹ See generally PSYCHE A. WILLIAMS-FORSON, BUILDING HOUSES OUT OF CHICKEN LEGS: BLACK WOMEN, FOOD, AND POWER (2006) (illustrating class and racial identities in how African American women prepared, served, and ate chicken).

²⁰ See generally GUSTAVO ARELLAÑO, TACO USA: HOW MEXICAN FOOD CONQUERED AMERICA (2012); Mario Montaña, *Appropriation and Counterhegemony in South Texas: Food Slurs, Offal Meats, and Blood*, in USABLE PASTS: TRADITIONS AND GROUP EXPRESSIONS IN NORTH AMERICA 50 (Tad Tuleja ed., 1997).

²¹ See Ernesto Hernández-López, *LA’s Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER-AM. L. REV. 233 (2011). See, e.g., Paul Rogers, *Shark Fin Soup Ban Takes Effect Monday*, SAN JOSE MERCURY NEWS, http://www.mercurynews.com/ci_23567375/shark-fin-soup-ban-takes-effect-monday (last visited Sept. 19, 2015).

²² See EATING ASIAN AMERICA, *supra* note 15, at 7, 125–227.

²³ For basic details about sauce production, David Tran, Huy Fong history, and

grew from its use in Vietnamese cuisine and was later used for other Asian dishes. In the United States, Asian foodways are an important part of a “‘trope’ of the smelly and unwashed immigrant.”²⁴ Anita Mannur and Martin Manalansan suggest that complaints about sriracha odor reflect xenophobia and historic categorizations of Asians.²⁵ At one level for the sriracha-apocalypse, it could appear that the production of Asian food and a business owned by an Asian migrant were the most recent subjects of local discrimination.

This explanation overlooks too much. Huy Fong argued that its closure would threaten local jobs, which are held mostly by Latinos and migrants. Politicians and business organizations representing the San Gabriel Valley, which includes Irwindale, raised this critique.²⁶ Furthermore, sriracha is not just used in Asian food, but used in all types of cuisine far beyond *pho*, including pizza, tacos, and eggs. Sriracha bottles often sit as American table standbys with salt, black pepper, and ketchup, as with other hot sauces like Tabasco.

An examination of the dispute’s location, in particular the influence of municipal legal powers, unveils race’s role in this spicy legal drama. This law-and-food conflict is an outgrowth of economic and demographic changes in suburban Los Angeles. Local government law is forced to address these changes. The San Gabriel

business growth, see Frank Shyong, *Sriracha Hot Sauce Purveyor Turns Up the Heat*, L.A. TIMES (Apr. 12, 2013), <http://articles.latimes.com/2013/apr/12/business/la-fi-himi-tran-20130414>; BON APPÉTIT, *supra* note 12.

²⁴ See EATING ASIAN AMERICA, *supra* note 15, at 3.

²⁵ Anita Mannur & Martin Manalansan, *Dude, What’s That Smell? The Sriracha Shutdown and Immigrant Excess*, FROM THE SQUARE: NYU PRESS BLOG (Jan. 16, 2014), <http://www.fromthesquare.org/?p=5903>.

²⁶ These perspectives were raised at public hearings at the City Council meetings, mostly on February 26, 2014 and some on April 9, 2014. For the Agenda for the February 26 meeting, see CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL NO. 4A, 55–91 (Feb. 26, 2014), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/02262014-165> [hereinafter *Feb. 26 Agenda*]. An abbreviated version of public comments at this hearing, taken by the city, is available online in the City Council’s Agenda when it approves activity from prior sessions. For minutes of the February 26th public hearing, see CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL NO. 1A2, 17–31 (Apr. 9, 2014), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/04092014-173> [hereinafter *Apr. 9 Agenda*]. For the April 9th meeting, the Agenda is available at CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL (Apr. 9, 2014), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/04092014-173?html=true>. For minutes of the April 9th public hearing, see CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL NO. 1A, 12–20 (July 23, 2014), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/07232014-197?html=true>. Additionally, the author took notes at these hearings, which are on file with the author.

Valley's regional history secured that Latinos overwhelmingly populated Irwindale. Social scientists describe the area's local politics as perpetually shaped by race and migration.²⁷ Because of Irwindale's small size, its residents are highly influential in how city powers are exerted. This influence includes the city attorney's ability to initiate lawsuits on behalf of the city.²⁸ Sourced in municipal legal authority, cities possess powers to bring and respond to lawsuits.²⁹ As a result, Irwindale initiated a public nuisance lawsuit and conducted public nuisance proceedings.³⁰ From this, Irwindale had the capacity to shut down a factory and forcibly occupy it to stop the alleged odors.³¹ City governments use public nuisance claims as part of a local government's authority to regulate businesses and land use.³² In Irwindale, this local setting mixed with municipal legal powers fueled the hot sauce

²⁷ See generally WENDY CHENG, *THE CHANGS NEXT DOOR TO THE DÍAZES: REMAPPING RACE IN SUBURBAN CALIFORNIA* (2013) (presenting how the notion of space is currently racialized in the San Gabriel Valley); JAMES S. LAI, *ASIAN AMERICAN POLITICAL ACTION: SUBURBAN TRANSFORMATION* (2011) (describing local context as a significant influence in the rise of Asian American political leaders in suburbs nationwide); LELAND SAITO, *RACE AND POLITICS: ASIAN AMERICANS, LATINOS, AND WHITES IN A LOS ANGELES SUBURB* (1998) (illustrating that issues of race were implicit in the entry of Asians and Asian Americans and other populations of color into San Gabriel Valley politics in the 1990s).

²⁸ For Irwindale, the city attorney is "directly responsible to the City Council for the performance of his duties," which includes "to appear and defend the City in all matters in civil litigation involving the City." IRWINDALE, CAL., CHARTER art. 7, §§ 704, 705(b) (Apr. 10, 2015), available at <http://www.ci.irwindale.ca.us/index.aspx?NID=273>.

²⁹ In California, the duty of the city attorney is to advise officials in all legal matters pertaining to city affairs and to frame ordinances and resolutions for the legislative body. The city attorney has no authority until the legislative body authorizes it. See 27B CAL. JUR. 3D *District and Municipal Attorneys* § 10 (2015). In general, these powers are inferred from the power to manage city affairs. The modern trend is to view the power as "necessarily incidental" to the capacity to sue and be sued and "should be found unless expressly forbidden." See OSBORNE M. REYNOLDS, JR., *HANDBOOK OF LOCAL GOVERNMENT LAW* § 50 (2d ed. 2001).

³⁰ See REYNOLDS, *supra* note 29, at § 115 (describing the public nuisance tort action as a means of land use regulation as it leads to abatement or injunction); *id.* § 115 n.1 (summarizing examples of how courts normally accept determinations of a public nuisance made by municipal legislative bodies, unless they are "clearly arbitrary or unreasonable"); *id.* § 115 n.3 (describing how public nuisance statutes provide governments "broad powers to shutdown" public nuisances).

³¹ IRWINDALE, CAL., CODE OF ORDINANCES, § 8.08.020 (Apr. 10, 2015), available at <http://www.ci.irwindale.ca.us/index.aspx?NID=273> (stating if the City Council finds a public nuisance, abatement can be achieved by "rehabilitation, demolition, or repair"); *id.* § 8.08.110 (requiring costs of abatement by the city to become a lien against the property).

³² See JOHN MARTINEZ, 3 *LOCAL GOVERNMENT LAW* § 14.3 (2015) (describing the doctrine as formed by a "complex linkage" between the equity power of courts to define common law offenses and grants of power belonging to local governments).

courtroom drama.

This Article makes one basic argument: that the sriracha-apocalypse, given Irwindale's history and its public ability to pursue legal action against businesses, reflects a racialized exclusion.³³ Once incorporated as a city, Irwindale attained this power from local government law. Irwindale was incorporated in 1957 to capitalize on Latino residents for the benefit of private mining interests.³⁴ Incorporation provided Irwindale with municipal legal powers. Irwindale was one of many Southern California cities incorporated after World War II as a result of political efforts to geographically exclude Asian, Latino, and African American communities.³⁵ The result was to keep the population of various cities exclusive in race-based and socio-economic terms. The San Gabriel Valley is now fragmented into multiple city jurisdictions, many of which are mostly populated by Asian, Latino, and recent migrant and second-generation migrant communities.³⁶ Issues of race and migration color local politics in the region.³⁷ Wendy Cheng argues that notions of homeownership, immigration, and geography fuel how these suburban residents form racialized identities.³⁸ Geography, in the form of city and neighborhood borders, shapes these identities. This Article examines race in this localized setting and how municipal law facilitates exclusion.

³³ This argument is focused on the legal powers a city has and how they can be directed at outsiders, non-residents, or persons or businesses new to the city. This Article does not claim that residents or city officials from Irwindale are racist or prejudicial. Instead, this Article argues that given the city's history and the legal powers provided to cities, Irwindale's actions, like those of any municipality, may benefit from racial exclusion. Given Irwindale's history and its demographics, city policies incentivize exclusion. This Article does not overlook race's role in creating and maintaining Irwindale. Examples of this include discriminatory motivation to incorporate Irwindale historically and how residents as Latinos are subject to discrimination and exclusion themselves. For descriptions of race exclusion creating Irwindale, see *infra* Part III.B. For descriptions of Latinos and discrimination in cities, see *infra* notes 231–235 and accompanying text.

³⁴ See GARY J. MILLER, CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION 57 (1981) (charting the political and economic motivations behind the city's incorporation).

³⁵ See *id.* at 34–62.

³⁶ See generally CHENG, *supra* note 27 (presenting how diverse communities developed in the San Gabriel Valley and how this geography and past shapes how residents view notions of race, space, and property); WEI LI, ETHNOBURB: THE NEW ETHNIC COMMUNITY IN URBAN AMERICA (2011) (describing the growth of majority immigrant communities).

³⁷ See Mannur & Manalansan, *supra* note 25.

³⁸ See CHENG, *supra* note 27, at 13.

This local context explains how a chile-based food controversy reflects a racialized exclusion, despite the application of race-neutral laws and no expressed racist animus. This Article does not claim that a Latino population acted on or expressed any racial animosity. Instead, this Article argues that geography and local privilege demonstrate race's role in the sriracha conflict. Geography pertains to Irwindale's location and the notion of a racially-identified space, while local privilege refers to how municipal legal powers are used to exclude outsiders.

Geography and critical race perspectives, with the insight of legal scholars Richard Thompson Ford and Elise Boddie, motivate this Article's approach. Ford defines a "racially identified space" as a "physical space primarily associated with and occupied by a particular racial group," created by public policy choices and protected by law.³⁹ Ford shows how, at these spaces and by capitalizing on local government law, local power adapts and continues to exclude outsiders.⁴⁰ Exclusion persists despite courts and legislative measures outlawing racial discrimination.⁴¹ Ford's perspective helps identify a geographic location (Irwindale, in this case) where racialized exclusion operates and show its evolution over time. Next, Boddie explains how "racial territoriality" operates when a government excludes persons of color from racialized spaces "that have a racially exclusive history, practice, and/or reputation."⁴² Racial territoriality illuminates that racial harms are associated with a particular geographic place, produced by institutional efforts, and not only attributed to the efforts of individuals.⁴³ Importantly, Boddie presents how this transpires without racist intent, in subtle manners, and at a specific location.⁴⁴

These insights from Ford and Boddie help identify how, in the sriracha-Irwindale dispute, exclusion operated inconspicuously and without racist animus. Ford and Boddie suggest how exclusion functions spatially, with law vital to creating divisions and to maintaining these partitions for decades. In Irwindale, exclusion began over fifty years ago with municipal incorporation. Initially, city borders focused on limiting Irwindale to a Latino population. Since

³⁹ Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1845 (1994).

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² Elise Boddie, *Racial Territoriality*, 58 UCLA L. REV. 401, 406 (2001).

⁴³ *See id.*

⁴⁴ *See id.* at 408–09.

then, a racially-identified space has persisted.

Applying these suggestions, this Article focuses on the San Gabriel Valley's racial history. This methodology analyzes court documents, doctrine from local government law, scholarship on food and race and race and geography, and news on sriracha. This analysis develops a critical lens on local authority. This Article also isolates reasons why a city government would attempt to exclude, if not shut down, a business owned by an outsider, which it eagerly courted and supported. Irwindale did this to protect perceived local interests, in particular the living conditions of nearby residents. It was expected that these living conditions would have an impact on voter sentiment in local elections.

Local government law has played a significant role in establishing and governing Irwindale. Given Irwindale's small size, with a population below 1500 and less than 1000 voters, its residents are highly influential in determining municipal legal powers.⁴⁵ Irwindale residents elect their city leaders, and residents are the constituents whom the local government and its leaders represent. Similarly, residents serve on the city government via elected positions, leading the city.⁴⁶ With a small electorate, Irwindale's politics look like family infighting.⁴⁷ A constant theme in Irwindale history is the story of a Latino population living in the area for over a century, establishing a city, and remaining extremely influential in its government.⁴⁸ The city was incorporated for two reasons. The first was so mining companies could avoid regulations, especially taxes, from another city.⁴⁹ The second was so these companies could securely count on Irwindale's

⁴⁵ See generally Robert Moran, *Family Ties Link City's Voters to Campaigners—Except Mayor*, L.A. TIMES (Apr. 5, 1992), http://articles.latimes.com/1992-04-05/news/ga-641_1_city-manager. For decades, city politics have been dominated by the Barbosa, Miranda, Breceda, and Diaz families, who can trace roots in Irwindale to the beginning of the twentieth century. See Lee Romney, *Irwindale's Family Values: The City's Close-Knit Residents Have Carved Out a Bit of Paradise Amid the Rock Quarries—and They're Keeping It to Themselves*, L.A. TIMES (Jan. 20, 1994), http://articles.latimes.com/1994-01-20/news/ga-13432_1_irwindale-residents.

⁴⁶ The Charter of the City of Irwindale requires that a person be a "bona fide resident" of Irwindale to hold elective office in the city. IRWINDALE, CAL., CHARTER art. 5, § 502(b) (Apr. 10, 2015), available at <http://www.ci.irwindale.ca.us/index.aspx?NID=273>.

⁴⁷ See Moran, *supra* note 45; Romney, *supra* note 45.

⁴⁸ See MICHAEL BROGGIE, *THE HISTORY OF IRWINDALE: JARDÍN DE ROCA 15* (2009) (noting how many city residents trace their roots to seven generations in Irwindale); *id.* at 17 (stating that most family histories originate in México); *id.* at 69 (describing how the community was bilingual, Spanish and English, and the education challenges for this community between 1910 and 1962).

⁴⁹ See MILLER, *supra* note 34, at 56.

overwhelmingly Latino resident and voting population. City boundaries were drawn, with the objective of limiting the number of residents inside Irwindale.⁵⁰ After incorporation, elected leaders and city staff devised the local rules regulating mining companies and the business climate.⁵¹ Because of this, Irwindale was established as a place to capitalize on Latino constituents for the benefit of private enterprise.

Local government law has similarly established that race has a role in city politics. Vital to Irwindale's incorporation was the public intent to divide inhabitants along racial terms, effectively limiting the city's constituency to Latino residents. Over fifty-five years later, race continues to color law and politics in Irwindale, which remains over ninety percent Latino and has essentially the same population size as at its founding.⁵² Local powers to exclude outsiders have adapted. Initial objectives were to limit city residents to the existing Mexican and Mexican Americans, which was cemented in local government law at the city's founding.⁵³ Later, with municipal legal powers, the city could exclude outsiders and protect residents. Sriracha's spicy drama suggests that this capacity, cloaked in a city's legal authority and produced by past exclusion, enflames tensions between residents, local government, recent migrants, and new businesses.

Next, this Article refers to a perspective on privilege to show how racialized exclusion currently operates. Cheryl Harris's insights in "Whiteness as Property"⁵⁴ motivate this approach. Harris analyzes how law supports racial discrimination with status privilege belonging to whites. This privilege operates like property, is inherited, and adapts over time.⁵⁵ These legally protected entitlements have been influential throughout American history. They also provided a conceptual basis to legally justify the taking of Native American lands, the perpetuation of slavery, and racial exclusions in *de jure* and *de facto* forms since the

⁵⁰ See *id.*

⁵¹ Irwindale residents did not vote for city leaders who were necessarily pro-industry. The leaders increased the regulation of mining companies. See MILLER, *supra* note 34, at 56.

⁵² The city's current population is 1466. See *Demographics*, *supra* note 3. It is over ninety percent Latino. See AMERICAN FACTFINDER, *supra* note 4. These demographics are nearly identical to when Irwindale was incorporated. See MILLER, *supra* note 34, at 56.

⁵³ See MILLER, *supra* note 34, at 56 (describing how incorporation had the objective to limit the size of the city's population to the existing residents). Once incorporated, the city would look to local government law to govern. *Id.*

⁵⁴ See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1710–91 (1993).

⁵⁵ See *id.* at 1714.

end of slavery and the civil rights era.

Harris's suggestions have fueled analysis of property and privilege in other settings. Commenting on current relations between Latino and Asian communities in the San Gabriel Valley, Wendy Cheng argues that notions regarding property, in particular homeownership, shape popular race-based sentiments.⁵⁶ This influence between property and race is similar to patterns of privilege and entitlement in suburbia held by white populations throughout American history. As Cheng shows in current suburban Los Angeles, this privilege shapes the impressions of non-white and immigrant communities. The sriracha-apocalypse shows how Irwindale residents possess the privilege to influence city government and how the city used its legal powers as a privilege to attempt to exclude a new business.

Cheng's perspective on race and geography in the San Gabriel Valley points to race's role in the hot sauce controversy. It helps explain how municipal law protects a privilege when a group controls city government and historic racial divisions persist. Most Irwindale residents and city leaders are Latino. The city is located in a historically Latino region, neighboring Azusa, Baldwin Park, and other Mexican American and recent Latino migrant communities. These Latino communities are a legacy of Latino labor for ranching, citrus groves, mining, and light industry.⁵⁷ Before World War II, the citrus industry employed communities that were spatially and racially divided in their living and work arrangements.⁵⁸ These partitions became the political and geographic basis to eventually incorporate cities in the region. These dynamics were especially pronounced in the San Gabriel Valley. After World War II, the region attracted non-white populations with industrial jobs and with housing covenants that were less restrictive than in Los Angeles and other municipalities.⁵⁹ This trend has evolved with recent Asian and Latino migrants, from locations as diverse as mainland China, Taiwan, Hong Kong, South Korea, Vietnam, the Philippines and other Southeast Asian countries, along with México and Central American nations.⁶⁰ In these inland suburbs, first- and

⁵⁶ CHENG, *supra* note 27, at 17.

⁵⁷ BROGGIE, *supra* note 48, at 49–52 (describing ranching and farming); *id.* at 61–65 (describing mining); *id.* at 74 (describing braceros as labor for fruit farms).

⁵⁸ See generally MATT GARCIA, *A WORLD OF ITS OWN: RACE, LABOR, AND CITRUS IN THE MAKING OF GREATER LOS ANGELES, 1900-1970* (2002) (providing cultural and spatial description of how labor communities used in citrus farming became the basis for suburbs in the San Gabriel Valley).

⁵⁹ See generally CHENG, *supra* note 27; LAI, *supra* note 27.

⁶⁰ For descriptions of the history of this diverse migration, see CHENG, *supra* note

second-generation Asian and Latino communities live together.⁶¹ Inside this critical suburban space, the sriracha-apocalypse erupted. As described below, the enduring legacy of a racially identified space and the privilege of city powers made this public nuisance controversy a racialized exclusion.

To expand on this idea, this Article is organized into three sections. Section I describes Huy Fong's history, its business operations, and sriracha's appeal. All of these depend on local control and local support. This provides a culinary backdrop to understand what motivates Irwindale's public nuisance controversy, eventually implicating local municipal law, public nuisance litigation, and global attention. Focusing on public legal positions, Section II describes the legal contest between Irwindale and Huy Fong. The dispute lacked any expressed racial animosity. This drama expanded into courts and City Council hearings, taking on new themes, as the city and company both refused to give in. Section III provides a critical race explanation for the hot sauce fight, even though the city's arguments lacked racist animus and presented race neutral legal positions. Critical geography and social histories explain why different communities are spatially separated. Law creates and nurtures these landscapes with the ability to exclude. Local legal doctrine maintains racially identified spaces like Irwindale. Similarly, privileges intrinsic to local legal rules, such as public nuisance claims, are used to exclude outsiders. The Article concludes with three lessons about this food conflict. These lessons regard the implicit tensions for a food item that depends on local control, the critical role local histories exert on racial exclusion, and the influence of city borders in this exclusion. These lessons illuminate how suburbs may exclude communities of color in subtle manners.

I. SRIRACHA BECOMES A LOCALLY-SOURCED AND GLOBALLY-ADMIRRED HOT SAUCE

A. *Sriracha's Local to Global Growth*

Sriracha's long-term recipe for success depends on Huy Fong's local control of pepper supply and sauce production. As described in Sections II and III, the sriracha-apocalypse exposed how this local dependence made Huy Fong vulnerable to Irwindale's regulation. Named after a coastal town in Thailand, sriracha has been made by

27, at 5–9. For demographics of this migration, see Merlin Chowkwanyun & Jordan Segall, *The Rise of the Majority-Asian Suburb*, ATLANTIC CITYLAB (Aug. 24, 2012), <http://www.citylab.com/politics/2012/08/rise-majority-asian-suburb/3044/>.

⁶¹ See generally CHENG, *supra* note 27; LAI, *supra* note 27.

David Tran, Huy Fong's owner, since he came to California over thirty years ago.⁶² Tran started in Los Angeles's Chinatown, but soon moved to a plant in Rosemead in the San Gabriel Valley, just a few miles from Irwindale. The name Huy Fong refers to the boat Tran took as a refugee fleeing from communist Vietnam. Like many members of California's Vietnamese community, the Tran family history includes powerful experiences of escaping their home country, overseas dislocation in refugee camps and at sea, and the struggle to establish a life in the United States.⁶³ The *Sriracha* documentary explains that the communist government pressured many ethnic Chinese, like thirty-year-old Tran, to leave Vietnam.⁶⁴ For Tran, the journey included five days at sea on a boat with 3300 refugees; they waited in the waters close to Hong Kong for a month before British authorities allowed them to disembark.⁶⁵

At first, sriracha was crafted to be served in Vietnamese restaurants offering *pho*, a soup usually made with beef bone stock, beef, and noodles.⁶⁶ *Pho* is originally from Hanoi, in the northern part of Vietnam, but is popularly eaten in southern Vietnam with chile sauces.⁶⁷ Tran tried to recreate a popular condiment he made in Vietnam. Chile peppers, and sauces and pastes made from them, have a long history in Vietnamese and Southeast Asian cuisine. Ironically, chiles were originally brought to Asia from the Western Hemisphere by Portuguese traders in the sixteenth century, most likely from México or Central America.⁶⁸ Seen in a historic and global light, the sriracha recipe points to much larger journey for food. The recipe brought chile peppers back to where they were originally sourced, after

⁶² For basic company history and information, see HUY FONG FOODS, INC., <http://www.huyfong.com/> (last visited Feb. 10, 2015). See also BON APPÉTIT, *supra* note 12; Shyong, *supra* note 23.

⁶³ See John T. Edge, *A Chili Sauce to Crow About*, N.Y. TIMES, May 20, 2009, at D1, available at <http://www.nytimes.com/2009/05/20/dining/20united.html?PageWanted=all&r=0>.

⁶⁴ SRIRACHA (Griffin Hammond 2013), available at <http://srirachamovie.com>.

⁶⁵ *Id.*

⁶⁶ For a description of the sauce's cross-over appeal, see Edge, *supra* note 63.

⁶⁷ See Alexandra Greeley, *Pho: The Vietnamese Addiction*, 2 GASTRONOMICA 80 (2002); Andrea Nguyen Talks Vietnamese: Fish Lemongrass and the Best Pho in San Francisco, SPICELINES (May 14, 2008), <http://spicelines.com/2008/05/14/andrea-nguyen-talks-vietnamese-fish-sauce-lemongrass-and-the-best-pho-in-san-francisco/>.

⁶⁸ See PENNY VAN ESTERIK, FOOD CULTURE IN SOUTHEAST ASIA 34 (2008); Christine S. Wilson, *History and Culture of Food and Drink in Asia: Southeast Asia*, in 2 THE CAMBRIDGE WORLD HISTORY OF FOOD 1163 (Kenneth F. Kiple & Kriemhild Coneè Ornelas eds., 2000).

trans-continental trade and empire brought Spain to California and Portugal to Asia over five centuries ago.

Tran set out to make “a rich man’s sauce at a poor man’s price.”⁶⁹ For decades, Huy Fong evaded public attention, never using advertising or publicists to increase sales. Despite its secretive nature, often avoiding interviews, the sauce’s appeal has only grown.⁷⁰ Recently reported figures include sales between thirty-five and sixty million dollars per year and over twenty million bottles produced annually.⁷¹

Sriracha demand expanded as celebrity and home chefs praised its direct spicy heat, lacking any lingering vinegar or smoky tastes.⁷² This enthusiasm has crossed over to Mexican and American hot sauce markets, with Tabasco and Heinz trying to compete and make similar versions.⁷³ Huy Fong cannot trademark the name sriracha, since it refers to a town in Thailand. As a result, the company does not charge royalties when licensing the sauce to other producers nor sues companies like Heinz, Frito-Lay, Tabasco, Kikkoman, Lee Kum Kee, and Pizza Hut that make sriracha-tasting products. In the past, there were legal trademark suits when sauce producers used bottles with rooster, graphics, and other design elements similar to Huy Fong’s iconic green-cap, white lettering, and clear bottle.⁷⁴ Huy Fong also makes sambal oelek and chili garlic, similarly based in ground chiles. Sriracha, though, is its most popular and recognizable product.

The company’s small and often secretive nature, mixed with its retro bottle design, only adds to its consumer appeal, a sort of counter to big brand food. Hipster, foodie, and cross-cultural demographics fuel recent sriracha obsession, adding to a solid base of Asian food

⁶⁹ See Shyong, *supra* note 23.

⁷⁰ See Ferdman, *supra* note 12.

⁷¹ See Shyong, *supra* note 23; BON APPÉTIT, *supra* note 12.

⁷² See generally Tina Nguyen, *WATCH: Andrew Zimmern and David Chang Get in Gentleman’s Feud over Sriracha*, THE BRAISER (Jan. 10, 2015), <http://www.thebraiser.com/watch-andrew-zimmern-david-chang-sriracha-feud/> (suggesting that celebrity chef David Chang introduced the sauce into the mainstream). This description of sriracha’s taste qualities, however, belongs to this Article’s author.

⁷³ See Alexander C. Kaufman, *Huy Fong CEO Fears New Sriracha Rivals*, HUFF. POST BUSINESS (Feb. 13, 2015, 4:59 PM), http://www.huffingtonpost.com/2015/02/14/sriracha-competition_n_6684132.html.

⁷⁴ See *Huy Fong Foods, Inc. v. Szeto*, 30 TRIALS DIGEST 10th 11, available at 2005 WL 5613975 (describing a settlement entered between Huy Fong and alleged infringer); Ferdman, *supra* note 12; David Pierson, *With No Trademark, Sriracha Name Is Showing Up Everywhere*, L.A. TIMES (Feb. 10, 2015), <http://www.latimes.com/business/la-fi-sriracha-trademark-20150211-story.html#page=1>.

loyalists. Examples of this appeal include sriracha festivals, two sriracha cookbooks, a sriracha documentary, numerous sriracha-themed YouTube videos with raps, songs, and ads created by fans, and snack companies like Lays and restaurant chains like Subway and Jack-in-the-Box offering sriracha flavored items.⁷⁵ This popularity has only grown in recent years, with estimates of about twenty percent growth in sales per year, expanding overseas and especially to markets in Asia.⁷⁶ Sriracha has gone global, with the small company profiting from a worldwide demand.

Sauce production, though, is a local operation, a sort of nod to locavore gastronomy and artisan details. Sriracha's recipe is simple: it uses high-quality jalapeño chile peppers, picked when spiciest, ground with garlic, sugar, salt, vinegar, and a few other ingredients.⁷⁷ The trick is to use fresh chiles; if the chiles are not ground soon after harvest, then they become unusable. This delicate aspect of sriracha makes it difficult for large hot sauce manufacturers to use freshly picked peppers. Most hot sauce brands are made with dried chile peppers.⁷⁸

Instead, Huy Fong uses chiles sourced locally. This ensures quality, freshness, and most importantly, access to chiles.⁷⁹ Huy Fong works solely with Underwood Ranches in nearby Ventura and Kern counties, just north of Los Angeles and less than a two-hour drive from Irwindale.⁸⁰ Together, the Underwood and Tran families examine planting progress, soil and weather conditions, when and where to

⁷⁵ For sriracha cookbooks, see RANDY CLEMENS, *SRIRACHA COOKBOOK* (2011) and RANDY CLEMENS, *VEGGIE LOVERS SRIRACHA COOKBOOK* (2013). For descriptions of sriracha-flavored items, see Pierson, *supra* note 74. For an example of videos made by sriracha fans, see HUY FONG FOODS, *Video Wall*, <http://www.huyfong.com/video-wall/> (last visited Sept. 28, 2015). See Beshia Rodell, *Upcoming Sriracha Festivals: Yes, There are a Lot of Them*, *LA WEEKLY: SQUID INK* (Aug. 21, 2014), <http://www.laweekly.com/squidink/2014/08/21/upcoming-sriracha-festivals-yes-there-are-a-lot-of-them> (describing various sriracha festivals).

⁷⁶ See Lauren Gold, *Famous Sriracha 'Rooster Sauce' Finally Makes the Move to New Irwindale Factory*, *DAILY BREEZE* (July 22, 2013, 12:01 AM), <http://www.dailybreeze.com/general-news/20130722/famous-sriracha-rooster-sauce-finally-makes-the-move-to-new-irwindale-factory>.

⁷⁷ See Willy Blackmore, *When Sriracha Is Made, a Different Kind of Fire Season Comes to L.A.*, *TAKE PART* (Oct. 29, 2013), <http://www.takepart.com/article/2013/10/29/sriracha-public-nuisance>.

⁷⁸ See *Sriracha: From the Farm to Your Table*, *FARM TO TABLE* (Oct. 14, 2014), <http://farmtotablela.com/sriracha-from-the-farm-to-your-table/>.

⁷⁹ See Ferdman, *supra* note 12.

⁸⁰ See Craig Underwood, *Huy Fong Sriracha: How Vision, Trust and Loyalty Combine to Make One of the World's Best-Loved Sauces*, *EDIBLE OJAI & VENTURE COMPANY* (May 1, 2013), <http://edibleojai.com/online-magazine/huy-fong-sriracha/>.

plant, and Huy Fong's pepper demand. Huy Fong uses only the spiciest jalapeños, which have to be as fresh as possible, undamaged, and without stems, dirt, or leaves.⁸¹

Chile pepper farming takes a whole year of attention and effort. The planting starts in the spring in greenhouses and then chile plants are transplanted to the ground in April.⁸² From late August to November, they are harvested north of Los Angeles and ground in Irwindale.⁸³ For this, truckloads of jalapeños are unloaded, arriving in a steady-flow during the grinding season.⁸⁴ This annual process blends over 100 million pounds of chiles unloaded from trucks, each carrying 20 tons of chiles.⁸⁵

B. *Sriracha Moves to Irwindale*

With locally focused production and a simple recipe, Huy Fong's business has grown dramatically. In 2013, Huy Fong moved into a new \$40 million dollar plant, spanning over 655,000 square feet, in Irwindale.⁸⁶ The site includes production, storage, and corporate space. Irwindale and Huy Fong worked together on this redevelopment project, with the city purchasing the property and the company constructing the facilities. This project was touted as a success for redevelopment and for Irwindale. Some reports state that the city provided Huy Fong a ten-year interest-only loan for \$15 million and a balloon payment at the end to cover the land, while the company would pay the city \$2.5 million a year for ten years in lieu of sales tax.⁸⁷ City records suggest that Huy Fong's initial loan with the city would provide the city with payments of over \$600,000 a year for the loan.⁸⁸

⁸¹ *Id.*

⁸² *Id.*

⁸³ See generally, SRIRACHA, *supra* note 64.

⁸⁴ See *id.*

⁸⁵ See Blackmore, *supra* note 77.

⁸⁶ See Roger Vincent, *Spicing Up an Irwindale Lot*, L.A. TIMES, Oct. 9, 2010, at B1, available at 2010 WLNR 20190148.

⁸⁷ See Keely Webster, *City That Sued Chili Sauce Plant Had Portrayed It as Redevelopment Success*, THE BOND BUYER (Dec. 19, 2013, 2:29 PM), http://www.bondbuyer.com/issues/122_243/city-that-sued-chili-sauce-plant-had-portrayed-it-as-redevelopment-success-1058394-1.html. Other reports say the company's annual payment to the city was \$1.5 million per year. See Randy Drummer, *Hot Sauce Maker Adds Zip to 23-Acre Site in L.A. County*, COSTAR NEWS (Oct. 12, 2010), <http://www.costar.com/News/Article/Hot-Sauce-Maker-Adds-Zip-to-23-Acre-Site-in-LA-County/123588>.

⁸⁸ Full redevelopment and loan agreements were not attained but various Irwindale reports provide details about these payments. See *2010-2014 Five-Year Redevelopment Implementation Plan*, CITY OF IRWINDALE, CMTY. REDEVELOPMENT AGENCY 44, <http://www.ci.irwindale.ca.us/DocumentCenter/View/77> (last visited Sept. 18, 2015) [hereinafter *Irwindale Redevelopment Plan*] (listing net-income projections from

In 2012, this was the largest commercial real estate project in Los Angeles County.⁸⁹ It won the “Best Industrial Project in Los Angeles” award, from the *Los Angeles Business Journal*, and was noted for green design elements such as recycling runoff water.⁹⁰ Food industry, real estate, and local news followed Huy Fong’s move closely since 2009.⁹¹ The city planned to earn \$250,000 a year from Huy Fong as in-lieu payments for 10 years.⁹² Huy Fong invested heavily in sriracha and Irwindale.

The city also profited from Huy Fong’s move from Rosemead. Its redevelopment agency secured funding to purchase the property for ultra-modern facilities.⁹³ In 2007, the city bought the property that had belonged to CalMat mining and had been empty for over a decade.⁹⁴ The city’s redevelopment agency described the CalMat property as “previously vacant and underutilized constituting a physical and economic burden on the City.”⁹⁵ Huy Fong’s entry was presented as serving “to eliminate existing physical and economic blight” and

the Huy Fong installment payments to the city’s redevelopment agency of \$677,070 for years 2010 and 2011 and \$674,268 in years 2013 and 2014); *Comprehensive Annual Fin. Report for the Fiscal Year Ended June 30, 2010*, CITY OF IRWINDALE, CAL. 56 (June 30, 2010), <http://www.ci.irwindale.ca.us/Archive/ViewFile/Item/49> (describing the city’s redevelopment agency sale of the property to Huy Fong for \$15,046,000, with Huy Fong’s down payment of \$677,070, and a loan from the agency to Huy Fong for \$14,363,930 for “a term of ten years bearing annual interest at a rate of 4.5%”); *City Council Budget Workshop FY 2012/13*, CITY OF IRWINDALE 25 (May 23, 2012), <http://www.ci.irwindale.ca.us/Archive/ViewFile/Item/54> (listing anticipated revenues of \$250,000 from Huy Fong’s in-lieu payment for each fiscal year for 2011/12 and 2012/13).

⁸⁹ See *Project Profile, Huy Fong Foods, Inc. Headquarters*, KPRS, <http://www.kprsinc.com/?projectspage=huy-fong-foods-inc-headquarters> (last visited Sept. 18, 2015); *Seventh Street Development Awarded “Best Industrial Project” by Los Angeles Business Journal*, SEVENTH ST. DEV., <http://www.7thsd.com/seventh-street-development-awarded-best-industrial-project-by-los-angeles-business-journal> (last visited Sept. 18, 2015) (explaining the property had been “severely blighted, vacant, and contaminated” and was developed into “environmentally sustainable facility” and model for “future mining reclamation/redevelopment projects”).

⁹⁰ See KPRS, *supra* note 89; SEVENTH ST. DEV., *supra* note 89.

⁹¹ See, e.g., *Plant Openings & Expansions, Huy Fong Foods*, FOOD ENG’G, Feb. 2010, at 13, available at <http://www.foodengineeringmag.com/articles/87560-plant-openings-expansions-97>.

⁹² Martin Lomeli, Interim City Manager, *City Manager’s Budget Message*, CITY OF IRWINDALE ANNUAL BUDGET 2011/12 2, 7 (June 22, 2011), <http://www.ci.irwindale.ca.us/ArchiveCenter/ViewFile/Item/61>.

⁹³ See Stephen LeDoux, *Commentary: All Stimulus is Local*, DAILY J. COMMERCE, Oct. 27, 2010, available at 2010 WLNR 27776306; Vincent, *supra* note 86.

⁹⁴ See Tania Chatila, *Sriracha Sauce Maker Gets Too Big for Rosemead*, SAN GABRIEL VALLEY TRIB., Oct. 29, 2009, available at 2009 WLNR 21518572.

⁹⁵ *Irwindale Redevelopment Plan*, *supra* note 88, at 36.

“address stagnant property values and issues of vacant properties.”⁹⁶ The project was expected to create 190 new jobs. It also would provide additional annual revenues to the city from Huy Fong, in the form of loan payments and in-lieu of sale tax payments.⁹⁷

Because of its history with gravel mining, Irwindale is one of the few localities in Los Angeles County where large open space is available for purchase that can easily be converted for commercial or manufacturing uses.⁹⁸ Irwindale is characterized by numerous empty gravel mining pits, all close to highways and access to major seaports, airports, and destinations far beyond California. Many of these moon-like craters have been unused for decades, serving as reminders of last century’s boom in road construction.⁹⁹ Because mining companies extracted from these pits, some of the highest quality aggregate, sand, and gravel that are essential for concrete and cement used in California’s mid-century growth come from Irwindale.¹⁰⁰ With this land use, the city has an eerie landscape with large craters, often unused and empty, dotting the city; Irwindale had seventeen such pits but only five were still operating in 2007.¹⁰¹ Recently the city’s main economic task has been finding ways to repurpose unused pits to provide the city a tax base.¹⁰² Without new businesses, the city’s small population may not have a tax base to support municipal services. Ever since a NFL football team, the Los Angeles Raiders, contemplated moving its stadium to an empty Irwindale gravel pit, the city has tried to convert its mining remnants into new enterprises.¹⁰³ The team did not relocate to Irwindale and eventually moved to Oakland.

Memories of the “Raider Crater” haunt Irwindale despite the real economic and geologic challenges posed by an aging mining industry.

⁹⁶ *Id.*

⁹⁷ See Drummer, *supra* note 87. See also *California Cultivates Food Projects*, SITE SELECTION, <http://www.siteselection.com/issues/2010/nov/North-American-Reports.cfm> (last visited Sept. 18, 2015).

⁹⁸ See *Economic Development*, TOWN SQUARE PUBL’NS, <http://www.villageprofile.com/california/irwindale/economic-development.html> (last visited Sept. 18, 2015). See also BROGGIE, *supra* note 48, at 33.

⁹⁹ The increased demand for paved roads for cars and other transportation in the twentieth century greatly benefitted Irwindale’s mining. See BROGGIE, *supra* note 48, at 61, 65. As the gravel pits can no longer be used, the city must find new uses for them. See Bob Pool, *Surroundings/Irwindale*, L.A. TIMES, Mar. 13, 2003, at 2, available at 2003 WLNR 15177070.

¹⁰⁰ See TOWN SQUARE PUBL’NS, *supra* note 98.

¹⁰¹ See BROGGIE, *supra* note 48, at 27 (citing the City of Irwindale Mining and Reclamation Impact Study from 1999).

¹⁰² See Pool, *supra* note 99.

¹⁰³ See *id.*

In 1998, McDonalds named Irwindale the “BigMac Capital,” since it had the highest per capita consumption of Big Macs in the United States, with 337 per person.¹⁰⁴ This came as the restaurant chain celebrated the Big Mac’s thirtieth anniversary. Even though these figures may be a bit inaccurate, with consumption coming from an estimated 30,000 workers in Irwindale and not just its city residents, it ironically signaled a future in commercial food. Currently, Irwindale is home to the largest brewery in the western United States, belonging to Miller-Coors, and to Ready-Pac industries, which creates and sells pre-packaged salads and vegetables. Irwindale’s success in attracting these new industries, along with Huy Fong’s move planned for 2012, pointed to a bright future for this small city. As was true then, the city’s economic future depends on attracting new businesses like Huy Fong to replace mining. Huy Fong’s success in making sriracha depends on its local control of pepper supplies and pepper grinding. The company needs local support. Its business operations depend on Irwindale permitting pepper grinding during the harvest season. Any city action stopping this will risk losing a year’s pepper harvest and most likely a years-worth of sriracha.

II. LOCAL NUISANCE BOILS INTO THE SRIRACHA-APOCALYPSE AND THE WORLD WATCHES

A. *Sriracha Smells in a Small City*

This section describes the sriracha-apocalypse between Irwindale and Huy Fong, during which the city applied race neutral law while its legal arguments lacked any racist animus. The tensions between Huy Fong and Irwindale began stewing in September of 2013 when residents complained about odors caused by grinding chiles at the new plant.¹⁰⁵ At this time, the company had not transferred all of its operations from Rosemead to Irwindale. The move had begun the prior year, gradually shifting to the new larger plant. The legal controversies erupted after the city and company met on various

¹⁰⁴ Martin Miller, *City’s Solution to Its Identity McCrisis Distinction as Voracious Consumer of Big Macs Has Put Irwindale Back on Map*, L.A. TIMES, Sept. 18, 1998, at 1, available at 1998 WLNR 6403613.

¹⁰⁵ See Complaint for Public Nuisance and Injunctive Relief at 3, *People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Oct. 28, 2013) [hereinafter *Complaint*]. A timeline of events is available at *Sriracha Hot Sauce Controversy Timeline of Events*, PASADENA STAR-NEWS (Mar. 12, 2014, 8:04 PM), <http://www.pasadenastarnews.com/environment-and-nature/20140312/sriracha-hot-sauce-controversy-timeline-of-events>.

occasions in October of 2013 to address these issues.¹⁰⁶ These meetings included representatives from the company, the city's business development offices and legal department, and environmental consultants.¹⁰⁷ Quickly, the dispute shifted from direct discussions to adversarial court action, with Irwindale unsatisfied with Huy Fong's responses. Huy Fong argued that it needed to study what was wrong and how to resolve any problems.¹⁰⁸ Huy Fong implemented new filtering systems repeatedly, and air quality regulators found no problems nor issued any citation.¹⁰⁹ Now before a court, legal action made it difficult to reach a negotiated solution, with parties seeking court-ordered remedies and lawyers looking to protect city and business interests.

The company and the city looked to local government law, specifically the Irwindale Municipal Code, and California law to settle the ongoing dispute. Court papers filed by Huy Fong, along with reports from newspapers, trace the initial complaint to the son of a City Council member.¹¹⁰ He complained about the smell and fumes the year before and quickly raised the gripes in 2013, directly with Huy Fong and later with the city.¹¹¹ David Tran explained that Huy Fong installed new filters each year because the Council member's son complained.¹¹² After this gripe and other complaints from a few more

¹⁰⁶ See *Complaint*, *supra* note 105, at 2–3; see also *Feb. 26 Agenda*, *supra* note 26, at 70–71 (noting the Oct. 3, 2013 Letter from John Davidson, City Manager, to Huy Fong Foods, Inc.); *id.* at 72–73 (noting the Notice of Violation dated Oct. 17, 2013, from Gustavo Romo, Cmty. Dev. Dir., to Huy Fong Foods, Inc.).

¹⁰⁷ See *Feb. 26 Agenda*, *supra* note 26, at 70–71 (Oct. 3, 2013 Letter from John Davidson, City Manager, to Huy Fong Foods, Inc.); *id.* at 72–73 (Notice of Violation dated Oct. 17, 2013, from Gustavo Romo, Cmty. Dev. Dir., to Huy Fong Foods, Inc.).

¹⁰⁸ See Declaration of David Tran in Opposition to Application for Temporary Restraining Order at 2–3, *People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Oct. 29, 2013) [hereinafter *Declaration David Tran*].

¹⁰⁹ See *id.* at 2; see also McNary, *supra* note 6.

¹¹⁰ The first complaint is attributed to Manuel H. Ortiz from September 16, 2013. See *Plaintiffs' Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction at Exhibit 2, People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Oct. 31, 2013) [hereinafter *Plaintiffs' Ex Parte*] (supporting declarations). See also Sarah Favot, *Sriracha Hot Sauce Complaints Began with Irwindale Councilman's Son*, SAN GABRIEL VALLEY TRIB. (Oct. 31, 2013, 9:26 AM), <http://www.sgvtribune.com/business/20131031/sriracha-hot-sauce-complaints-began-with-irwindale-councilmans-son>.

¹¹¹ City Council records show that resident complaints about Huy Fong odors had begun as early as November 2012. See CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL NO. 1A1, 28 (Dec. 12, 2012), available at <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/12122012-10>.

¹¹² See *Declaration David Tran*, *supra* note 108, at 2. Ironically, the council member had been reportedly happy with Huy Fong's move to Irwindale. See, J. D. Velasco, *New*

residents, the conflict grew. It fueled repeated city actions in the form of litigation and City Council hearings. As described in the next section, these municipal legal powers and the San Gabriel Valley's cultural history made this nuisance dispute a racialized exclusion.

Said simply, Irwindale used its powers to seek a finding of a public nuisance, to stop sauce production, and to force corrective measures. Starting with its complaint, Irwindale argued that the operation of Huy Fong's plant constituted "a public nuisance due to the emanation of odors and irritants" that caused "physical harm and discomfort for the people of the city of Irwindale."¹¹³ It repeatedly described the odors as "offensive,"¹¹⁴ and argued that they were "injurious to the health, enjoyment and the life and use of property of residents."¹¹⁵ Irwindale argued that these odors were irritating eyes and throats; causing coughs, difficulty breathing, headaches, bloody noses, and heartburn; and forcing residents to limit outdoor activities.¹¹⁶ Because of a small number of residents declaring these harms, Irwindale wanted a court to enjoin all Huy Fong operations in the city until it prevented and ceased "the emanation of the strong, offensive chili odor."¹¹⁷

The city referred to public nuisance definitions in city and state law. The Irwindale Municipal Code defines a public nuisance as something "adverse or detrimental to the public peace, health, safety or general welfare."¹¹⁸ California's Civil Code requires that public nuisances affect "an entire community or neighborhood, or any considerable number of persons."¹¹⁹ Irwindale essentially contended that fumes and odors in a hot sauce factory created something adverse to the health and safety of the city. It raised these claims, even when environmental regulators found no infractions.¹²⁰

Headquarters for 'Rooster Sauce' Company Nearing Completion in Irwindale, SAN GABRIEL VALLEY TRIB. (July 5, 2011, 12:01 AM), <http://www.sgvtribune.com/general-news/20110705/new-headquarters-for-rooster-sauce-company-nearing-completion-in-irwindale>.

¹¹³ *Complaint*, *supra* note 105, at 2–4.

¹¹⁴ *Id.* at 5; *Plaintiffs' Ex Parte*, *supra* note 110, at 2.

¹¹⁵ *Plaintiffs' Ex Parte*, *supra* note 110, at 3.

¹¹⁶ *Id.* at 2; Motion for Preliminary Injunction at 4, *People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Nov. 22, 2013).

¹¹⁷ *Complaint*, *supra* note 105, at 5; *see also Plaintiffs' Ex Parte*, *supra* note 110, at 2.

¹¹⁸ IRWINDALE, CAL., CODE OF ORDINANCES, § 8.08.010 (Apr. 10, 2015), *available at* <http://www.ci.irwindale.ca.us/index.aspx?NID=273>.

¹¹⁹ CAL. CIV. CODE § 3480 (West 2015).

¹²⁰ SCAQMD only found a "mild chili odor detected at close proximity to the exhaust hoods but that odor dissipated at further distances." *Declaration David Tran*, *supra* note 108, at 2.

Meanwhile, Huy Fong doubted there was such a problem and argued that it needed time to study how to prevent odors and fumes at its new plant. It had been in Rosemead for nearly thirty years before relocating to Irwindale and never received any citation from the South Coast Air Quality Management District (SCAQMD).¹²¹ Rosemead has a far larger part of its city space, sixty-four percent, dedicated to residential use, while Irwindale has less than one percent of its city space for residential use.¹²² As such, it seemed odd that Rosemead residents never complained. The SCAQMD had visited the Irwindale plant twice in October, at which time it detected only mild odors and issued no citation.¹²³ In response to complaints made by the City Council member's son over the past two years, Huy Fong had installed new filtration systems.¹²⁴ Responding to the city's request to stop production immediately, Huy Fong argued that the harvest season required chiles to be ground soon to avoid spoilage and financial losses.¹²⁵ In all likelihood, Huy Fong thought that the city would not stop making requests, even after it repeatedly followed the city's demands to install more air filters. There was no guarantee that its efforts would stop Irwindale's constant requests. Huy Fong likely felt it was being intimidated and the city would threaten shutdown no matter what the company did.

B. Protecting Local Interests: Irwindale Takes Sriracha to Court

Irwindale's first legal step was to go to court. The city went to the Superior Court of Los Angeles repeatedly seeking a court order to stop all Huy Fong operations. On October 31, 2013, the city sought a temporary restraining order,¹²⁶ which the court characterized as a "rather edgy" effort from Irwindale and quite late.¹²⁷ Three days later, the court denied the request. Four days after that, Irwindale reappeared before the same court to pursue a preliminary

¹²¹ Declaration David Tran, *supra* note 108, at 1.

¹²² Opposition of Defendant Huy Fong Foods, Inc. to Plaintiff's Motion for Preliminary Injunction at 2, People *ex rel.* City of Irwindale v. Huy Fong Foods, Inc., No. BC525856, (L.A. Super. Ct. Nov. 22, 2013).

¹²³ Declaration David Tran, *supra* note 108, at 2. *Id.* at Exhibit 2 (mentioning the two October visits and reporting no detection of any unusual odors and reporting irritant smells undetectable twenty feet from exhausts).

¹²⁴ *Id.* at 2.

¹²⁵ *Id.* at 3.

¹²⁶ See *Plaintiffs' Ex Parte*, *supra* note 110.

¹²⁷ See Frank Shyong, *Sriracha Fight: Irwindale Officials Not Backing Down After Ruling*, L.A. TIMES (Oct. 31, 2013, 11:56 AM), <http://www.latimes.com/local/lanow/la-me-ln-irwindale-officials-sriracha-20131031-story.html>.

injunction.¹²⁸ All the while, as Huy Fong and Irwindale appeared in court, the press began observing and worrying about sriracha's shutdown.

On November 26, 2013 the court issued its order and ruling.¹²⁹ A preliminary injunction was issued on December 16, 2013.¹³⁰ The city viewed this as a victory over Huy Fong, even though the judge casted serious doubt over the harms Irwindale pointed to in its public nuisance claims.¹³¹ In its order, the court directed Huy Fong to "immediately make changes in its site operation reducing odors" but it declined enjoining plant operation or the use of the property as the city requested.¹³² Specifically, Huy Fong had to "reduce the potential for odors" as was required in Huy Fong's agreement to operate in Irwindale.¹³³ The court added that there was "a lack of credible evidence linking the complained about health problems as being caused by the odors or emissions."¹³⁴ It did not enjoin any of its operation.¹³⁵

On December 16, 2013 the preliminary injunction specifically stated that Huy Fong "is enjoined from emitting anything that either causes noxious, irritating or offensive odors or are noxious, irritating or offensive odors in themselves," and it shall "immediately make changes" to its facilities "to reduce odors and the potential for odors consistent with Air Quality Mitigation Measure 3" of its agreement with the city.¹³⁶ In this light, the city did succeed in having a court take note

¹²⁸ See Frank Shyong, *Sriracha Plant Must Cease Operations That Cause Odors*, *Judge Rules*, L.A. TIMES (Nov. 26, 2013), <http://articles.latimes.com/2013/nov/26/local/lame-judge-rules-no-sriracha-20131126>.

¹²⁹ Order Re: Preliminary Injunction, *People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Nov. 26, 2013).

¹³⁰ Preliminary Injunction, *People ex rel. City of Irwindale v. Huy Fong Foods, Inc.*, No. BC525856 (L.A. Super. Ct. Dec. 16, 2013).

¹³¹ The city attorney presented the ruling as favorable to Irwindale's position. See Rory Carroll, *Sriracha: Judge Orders Partial Shutdown of California Factory*, THE GUARDIAN (Nov. 27, 2013, 4:49 PM), <http://www.theguardian.com/world/2013/nov/27/sriracha-partial-shutdown-california-factory>.

¹³² Preliminary Injunction, *supra* note 130, at 2.

¹³³ *Id.* at 1–2 (citing "Air Quality Mitigation Measure 3" from the Final Conditions of Approval for Site Plan and Design Review Permit); see *Declaration David Tran*, *supra* note 108, Exhibit 1 at 15 (indicating that Huy Fong shall notify Irwindale of "all odor complaints. If strong odors are verified at off-site receptors, [it] shall make changes . . . to reduce the potential for odors. [And such measures include] odor control equipment, removal and disposal odiferous compounds, [and] modifications . . .").

¹³⁴ Order Re: Preliminary Injunction, *supra* note 129, at 1–2.

¹³⁵ *Id.* at 2.

¹³⁶ Preliminary Injunction, *supra* note 130. This measure mentioned in the

of odors produced by Huy Fong's operations. A court told Huy Fong to stop but it effectively discounted all the negative impacts the city raised. Next, the dispute was set to move to trial with a date scheduled for November of the next year.

When these developments became public, media outlets from around the world fixated on the decision of a judge granting an injunction to control sriracha production.¹³⁷ That December, panic only increased when California's Department of Public Health required that all shipments of Huy Fong product be held for thirty days.¹³⁸ The Department did this because of new modifications to how it enforced regulations to control pH levels and to ensure against microorganisms before the food condiments leave production facilities.¹³⁹ This matter was unrelated to the Irwindale public nuisance claims and never really threatened production, but it only added to hot sauce uncertainties, brewing publicly since courtroom news in October. As a result, foodie hysteria began, fearing the end of sriracha.¹⁴⁰

Meanwhile, Huy Fong was grateful that the chile-grinding season had ended before any court-ordered injunction, but the legal uncertainty surrounding its future in Irwindale remained. Importantly, the company had to deviate from its traditional low-key, if not secretive, business approach. Huy Fong would have to appear publicly in court and before the City Council. It would have to contemplate public relations campaigns and become the center of social media and news—all deeply contrary to this small family firm's business culture. The media circus surrounding the contentious legal battle clashed with the Fong family's normally insulated approach to its business.¹⁴¹

Injunction is Condition No. 69 of the Site Plan and Design Review Permit No. 2-09 SP&DR. It is included in *Declaration David Tran*, *supra* note 108, Exhibit 1 at 15.

¹³⁷ See *Editorial: Chilling Treatment of Hot Sauce Maker*, ORANGE CNTY. REG. (Dec. 24, 2013, 5:55 AM), <http://www.ocregister.com/articles/sriracha-594641-california-sauce.html>.

¹³⁸ See Dennis Romero, *Sriracha Hot Sauce Supply Halted*, L.A. WEEKLY (Dec. 11, 2013), <http://www.laweekly.com/informer/2013/12/11/sriracha-hot-sauce-supply-halted>.

¹³⁹ See *id.*

¹⁴⁰ See Carroll, *supra* note 131; Hillary Dixler, *Judge Orders California Sriracha Factory to Halt Odor-Making Operations*, EATER (Nov. 27, 2013, 4:05 AM), <http://www.eater.com/2013/11/27/6322765/judge-orders-california-sriracha-factory-to-halt-odor-making>; Krista Simmons, *Sriracha Factory Ordered to Stop Odor-Causing Operation*, LAIST (Nov. 27, 2013, 8:15 AM), http://laist.com/2013/11/27/sriracha_factory_ordered_to_close.php.

¹⁴¹ See Sarah Favot, *How Sriracha Became a Social Media Star After Neighborhood Battle*,

In 2014, Irwindale's legal efforts moved from California courts to its own City Council, which initiated public hearings. These hearings would determine if Huy Fong was a public nuisance.¹⁴² The city likely thought that a public forum would allow residents to voice their complaints and force city leaders to listen to opinions from air quality experts, city staff, Huy Fong, and the community. These efforts would appear transparent and public. Instead the city's reasoning regarding a public nuisance determination was severely questioned, and doubts arose given the tiny number of complaints and concerns raised by environmental regulators. This brought on media and public scrutiny, reminding observers of Irwindale's "Raider Crater" as the failed attempt to lure the NFL team, from Los Angeles to a new stadium in an old mining pit in 1987.¹⁴³ The sriracha-apocalypse especially drew attention to ongoing corruption scandals, with Irwindale's mayor and a City Council member appearing in court within days of City Council hearings on Huy Fong.¹⁴⁴ It reminded observers of the "spiked enchilada" story from 1972, when an Irwindale City Council member was fed drug-laced enchiladas in order to take compromising pictures of him.¹⁴⁵

On February 26, 2014, Irwindale's City Council held its first public hearing on a public nuisance, with air quality experts, residents, plant workers, San Gabriel Valley politicians, business organizations, and Huy Fong representatives speaking about the alleged problems.¹⁴⁶ This

MERCURY NEWS (Sept. 26, 2014, 12:28 PM), http://www.mercurynews.com/business/ci_26612688/how-sriracha-became-social-media-star-after-neighborhood.

¹⁴² See Feb. 26 Agenda, *supra* note 26.

¹⁴³ See Pool, *supra* note 99.

¹⁴⁴ See Nicki Arnold, *City Council Election in Irwindale Comes Down to Three Votes*, CALIFORNIA CITY NEWS.ORG (Nov. 7, 2013), <https://www.californiacitynews.org/2014/06/city-council-election-irwindale-comes-down-three-votes.html>; Sarah Favot, *Former Irwindale Official Sentenced to 3 Years Probation in Corruption Case*, PASADENA STAR-NEWS (Apr. 7, 2014, 11:37 AM), <http://www.pasadenastarnews.com/general-news/20140407/former-irwindale-official-sentenced-to-3-years-probation-in-corruption-case>; Adam Poulisse, *Arrestment Delayed for 4 Irwindale Officials Suspected of Embezzlement, Conflict of Interest*, SAN GABRIEL VALLEY TRIBUNE (Feb. 27, 2014, 10:21 AM), <http://www.sgvtribune.com/general-news/20140227/arrestment-delayed-for-4-irwindale-officials-suspected-of-embezzlement-conflict-of-interest>.

¹⁴⁵ See Steve López, *Irwindale's a Town Where Something Always Smells Funny*, L.A. TIMES (Apr. 26, 2014), <http://articles.latimes.com/2014/apr/26/local/la-me-0427-lopez-sauce-20140425>; Richard Winton, *The 'Spiked Enchilada Caper' and Other Irwindale Scandals*, L.A. TIMES BLOG (Oct. 27, 2010, 12:15 PM), <http://latimesblogs.latimes.com/lanow/2010/10/the-spiked-enchilada-caper-was-irwindales-last-political-scandal.html>.

¹⁴⁶ Specific to the public nuisance hearings, the City Council's agenda included: the city manager's recommendation; copies of correspondence between Huy Fong

included Huy Fong workers, the owners of Huy Fong, and Underwood ranches.¹⁴⁷ Most of the commentary emphasized that no odor or fumes existed at the Irwindale plant. While a few Irwindale residents complained about Huy Fong, neighbors in Rosemead—including a children’s nursery across the street—never complained. Huy Fong, the city, and the SCAQMD presented divergent opinions from air quality experts. The consultants hired by Irwindale explained what might have caused the odors and weather conditions, but the exact cause and how to remedy the problem was unclear.¹⁴⁸ These inconclusive recommendations came months after the city reacted to resident complaints. Huy Fong argued that the causes and its fixes were unknown, and it had to wait to decide how to fix any alleged problem. It argued that any public nuisance determination was premature.¹⁴⁹ At the hearings, local residents explained that there was no smell or that it was at a minimal level expected for sauce making, and that grinding chiles is a smell that many local Mexican and Mexican American communities were well accustomed to.¹⁵⁰

In April 2014, the council nonetheless determined that the factory was a public nuisance, despite the SCAQMD finding that the factory emitted no harmful effects from any fumes or odors.¹⁵¹ To quell consumer panic, Huy Fong quickly announced it had plenty of sriracha in storage to avoid any shortage.¹⁵² Irwindale was criticized for acting so quickly and not waiting for more evidence from the SCAQMD, which requested additional time to study the problem.¹⁵³

and the city; notice of a public nuisance violation from October 17, 2013; resolution 2014-07-2667 regarding the hearing and potential abatement; and Huy Fong’s letter emphasizing that it was working with SCAQMD and was not ignoring the matter. *Feb. 26 Agenda*, *supra* note 26, at 55–92. An abbreviated version of public comments at the hearing, taken by the city, is available online in the City Council’s Agenda, when it approves activity from prior sessions. For minutes of the February 26 public hearing, see *Apr. 9 Agenda*, *supra* note 26, at 17–31.

¹⁴⁷ For minutes of the February 26 public hearing, including comments by public speakers, see *Apr. 9 Agenda*, *supra* note 26, at 17–31.

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *See id.*

¹⁵¹ *See* Steve Gorman, *California Town Moves Against Sriracha Hot Sauce Plan*, REUTERS (Apr. 10, 2014, 7:08 PM), <http://www.reuters.com/article/2014/04/10/usa-sriracha-california-idUSL2N0N226V20140410>.

¹⁵² *See* Frank Shyong, *Sriracha Shortage Unlikely; Company Has 18-Month Supply*, L.A. TIMES (Apr. 10, 2014), <http://articles.latimes.com/2014/apr/10/local/la-me-ln-sriracha-shortage-unlikely-company-has-18month-supply-20140410>.

¹⁵³ *See* Ernesto Hernández-López, *Save Sriracha!: Save a Beloved Hot Sauce from Smelly Politics*, CHI. TRIBUNE (Mar. 21, 2014), http://articles.chicagotribune.com/2014-03-21/opinion/ct-perspec-sriracha-0321-20140321_1_huy-fong-foods-irwindale-raider-

C. *Irwindale Uses a Public Nuisance (and Race Neutral) Offense*

A quick view of California law suggests why Irwindale may bring public nuisance claims against Huy Fong. Public nuisance doctrine supports bringing these actions to protect a community's interests. Public nuisance claims are included as an important component of local government law.¹⁵⁴ The California Civil Code defines a public nuisance as one that "affects at the same time an entire community or neighborhood, or any considerable number of persons" and that "the extent of the annoyance or damage inflicted upon individuals may be unequal."¹⁵⁵ In this light, the smell and fumes of chile grinding could be presented as affecting one of Irwindale's neighborhoods close to Huy Fong's plant. Individuals could feel the adverse impacts of sauce creation differently. In the case of Huy Fong, this meant that not everyone had to be affected by the odors or fumes of sauce creation.

Further, the odors and fumes created by sauce production could be presented as one of the harms required for a nuisance. A nuisance, according to the California Civil Code, includes anything that is "injurious to health," "indecent or offensive to the senses," or "an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property."¹⁵⁶ Irwindale residents complained of the Huy Fong plant aggravating their nasal passages, giving them headaches, and making it impossible to be outdoors.¹⁵⁷

Irwindale's municipal code includes similar criteria for what harms could be raised as a public nuisance. It characterizes nuisances as when premises are in a condition "adverse or detrimental to public peace, health, safety or general welfare," or the premise is defective such that the nuisance "may cause harm to persons, or which will be materially detrimental to properties . . . located in the immediate vicinity of such premises."¹⁵⁸ Under local law, these legal standards could be even more permissive than state rules. This is because local law allows claims to be raised for negative effects to a broader category of "general welfare."¹⁵⁹ Moreover, this could be raised by smaller groups of people in restricted geographic areas, since the Code refers

crater [hereinafter *Save Sriracha!*].

¹⁵⁴ See *supra* notes 29 & 30 and accompanying text.

¹⁵⁵ CAL. CIV. CODE § 3480 (West 2015).

¹⁵⁶ CAL. CIV. CODE § 3479.

¹⁵⁷ See *Plaintiffs' Ex Parte*, *supra* note 110, at 4.

¹⁵⁸ IRWINDALE, CAL., CODE OF ORDINANCES, § 8.08.010 (Apr. 10, 2015), available at <http://www.ci.irwindale.ca.us/index.aspx?NID=273>.

¹⁵⁹ *Id.*

to the “immediate vicinity.”¹⁶⁰

California’s public nuisance doctrine provides examples that could support the view that Huy Fong created an environmental impact. Courts have found a nuisance: when a business operates in a legal and unobjectionable manner but over time becomes a nuisance to the comfort and health of those nearby;¹⁶¹ when a business operates in a district zoned for industrial activity;¹⁶² and when offensive odors interfere with the comfortable enjoyment of life and property.¹⁶³ Armed with these legal readings, it appeared as if Irwindale could find Huy Fong to be a public nuisance. If a public nuisance was determined and Huy Fong failed to cooperate, Irwindale’s City Council could proceed to abatement. Abatement is an injunctive measure that, in this case, would force Huy Fong to end the odors and fumes by the city installing corrective measures and could result in a shutdown of Huy Fong operations.¹⁶⁴

Irwindale’s claims of a public nuisance were still unlikely to pass judicial scrutiny if the city and Huy Fong ever went to court. The two parties could end up in court, if the City Council determined there was a public nuisance and proceeded with abatement. The residential gripes of smells and fumes would most likely not reflect the community interests needed for a public nuisance. Too few people had complained and only a miniscule number of Irwindale residents ever raised concerns with the city. On October 31, 2013, Irwindale filed papers with the court that referred to only eleven complaining residents.¹⁶⁵ The City Council’s resolution from April 23, 2014 declaring Huy Fong a public nuisance, stated that “approximately thirty residents” have “raised concern about strong odors and other irritating symptoms,” described as “aggressive” and “spicy.”¹⁶⁶ Based on

¹⁶⁰ *Id.*

¹⁶¹ See 47 CAL. JUR. 3D *Nuisances* § 33 (2015) (listing examples of businesses found to be public nuisances); *id.* at n.13 (referring to *Ex parte Hadacheck*, 165 Cal. 416 (Cal. 1913), *aff’d sub nom.* *Hadacheck v. Sebastian*, 239 U.S. 394 (1914)).

¹⁶² See 1 CAL. CIV. PRAC. TORTS § 17:20 (June 2013) (describing how zoning regulations do not justify maintaining a nuisance and public nuisances found in manufacturing zones).

¹⁶³ 47 CAL. JUR. 3D *Nuisances* § 24 (citing *Wilson v. Interlake Steel Co.*, 649 P.2d 922 (Cal. 1982); *Johnson v. V.D. Reduction Co.*, 164 P. 1119 (Cal. 1917); *Ingram v. City of Gridley*, 224 P.2d 798 (Cal. Dist. Ct. App. 1950)).

¹⁶⁴ IRWINDALE, CAL., CODE OF ORDINANCES, § 8.08.020 (Apr. 10, 2015), *available at* <http://www.ci.irwindale.ca.us/index.aspx?NID=273>.

¹⁶⁵ See *Plaintiffs’ Ex Parte*, *supra* note 110, at 6–9.

¹⁶⁶ CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL NO. 1E 26, 29–34 (Apr. 23, 2014), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/04232014-176> (Resolution No. 2014-14-2674)

complaints filed with the SCAQMD between October 2013 and March 2014, the *Pasadena Star News* reported the following: only sixty-one grievances were made, of these only four were traced back to Huy Fong, and the overwhelming number of these came from four households.¹⁶⁷ In a city with less than 1500 residents, these numbers are far from representative of the community's opinion.

Even if smell and fumes could be attributed to Huy Fong, a public nuisance finding under California law requires that the adverse effects be "substantial and unreasonable."¹⁶⁸ This would be difficult and legally problematic down the road for Irwindale. The number of grievances was too small, nearly impossible to be seen as substantial. There were, at most, thirty persons complaining; only two percent of the city's population.¹⁶⁹ Moreover, the city could not argue that these smells were unreasonable. The city invited Huy Fong to relocate to Irwindale. It knew that Huy Fong only produced chile-based condiments. Irwindale officials and city leaders were fully aware of the size and intensity of the operations. After operations began in the new plant in October 2012, Irwindale's Planning Commission reported to the City Council that it was "happy to report the scent of chiles" from Huy Fong.¹⁷⁰ Even as the city pursued legal action against Huy Fong to stop "offensive chili odors," it continued to proudly point to Huy Fong as a shining example of the city's business climate, redevelopment, and modern economy.¹⁷¹

(declaring "the Huy Fong Foods, Inc. facility located at 4800 Azusa Canyon Road to be a public nuisance and declaring a breach of the Declaration of Conditions, Covenants, and Restrictions").

¹⁶⁷ See Sarah Favot, *Majority of Complaints About Sriracha Factory Came from 4 Households*, PASADENA STAR-NEWS (Feb. 25, 2014, 7:20 PM), <http://www.pasadenastarnews.com/business/20140225/majority-of-complaints-about-sriracha-factory-came-from-4-households>; *Sriracha Smell Traced Back to Irwindale Factory 4 Times in 61 Complaints*, PASADENA STAR-NEWS (Mar. 12, 2014, 7:27 PM), <http://www.pasadenastarnews.com/environment-and-nature/20140312/sriracha-smell-traced-back-to-irwindale-factory-4-times-in-61-complaints>.

¹⁶⁸ *People ex rel Gallo v. Acuña*, 929 P.2d 596, 604 (Cal. 1997).

¹⁶⁹ The highest number of resident complaints listed by the city was approximately thirty and the city's population is 1466. See CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL, *supra* note 166; *Demographics*, *supra* note 3.

¹⁷⁰ CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE PLANNING COMMISSION NO. E-1, 4 (Nov. 21, 2012), *available at* <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/11212012-50> (providing commission minutes from the Oct. 17, 2012 meeting). Incidentally, at this same time the Commission also reported strong odors from Breeder Choice, the dog food plant in Irwindale. *Id.* at 8.

¹⁷¹ See, e.g., Lomeli, *supra* note 92 (depicting colorful images of the Huy Fong plant on its cover); *Economic Strategic Plan*, CITY OF IRWINDALE, IRWINDALE CMTY. REDEVELOPMENT AGENCY 10-12, <http://www.ci.irwindale.ca.us/DocumentCenter/>

The requirements on the size and reasonableness of the harms severely weakened the legal claims Irwindale made against Huy Fong. Importantly, California courts interpret public nuisance law as protecting and redressing community interests.¹⁷² The Supreme Court of California, in *Gallo v. Acuña* in 1997, took great conceptual steps to describe the doctrine, to highlight the larger interests needed for a public nuisance finding. The court in *Gallo* explained that “not every interference with a collective social interest” is a public nuisance and that “to qualify, and thus be enjoined, the interference must be both *substantial* and *unreasonable*.”¹⁷³ The Supreme Court of California added that these substantial and unreasonable standards help make sense of when and how individuals in a community must put up with “a certain amount of annoyance, inconvenience, and interference.”¹⁷⁴

The requirements in *Gallo* continue to shape the application of public nuisance law in California.¹⁷⁵ To decide unreasonableness, a court will apply a utility test to compare the social utility of an activity against the impact of harm inflicted by that activity.¹⁷⁶ This inquiry is objective and does not depend on a particular person finding the interference unreasonable.¹⁷⁷ Thus, for Irwindale to state a cause of action for public nuisance, it had to allege: Huy Fong created a condition harmful to health or to the enjoyment of life or property, the condition affected a substantial number of persons, and an ordinary person would be reasonably aggrieved by the condition.

This Article argues that these municipal legal powers, as they were used in the sriracha-apocalypse, actually reflect a racialized exclusion. Historically, nuisance claims have been used as a means for racist exclusion during the Jim Crow era.¹⁷⁸ More recently, these laws have been used in racist exclusions with local anti-gang ordinances targeting

View/37 (describing the success of city redevelopment project with Huy Fong’s relocation, conversion of the mining facility, and the company’s economic benefits to the city).

¹⁷² *Gallo*, 929 P.2d at 603; 1 CAL. CIV. PRAC. TORTS § 17:3 (June 2013) (summarizing the doctrine’s emphasis on community interests and rights of a community at large).

¹⁷³ *Gallo*, 929 P.2d at 604 (emphasis added).

¹⁷⁴ *Id.* at 605 (citing *San Diego Gas & Elec. Co. v. Super. Ct.*, 920 P.2d 669, 696 (Cal. 1996) (quoting RESTATEMENT (SECOND) OF TORTS § 822 (1979))).

¹⁷⁵ See *Redevelopment Agency of the City of Stockton v. BNSF Ry. Co.*, 643 F.3d 668, 673 (9th Cir. 2011).

¹⁷⁶ *Gallo*, 929 P.2d at 605 (citing RESTATEMENT (SECOND) OF TORTS §§ 826–31 (1979); *San Diego Gas & Elec. Co.*, 920 P.2d at 697).

¹⁷⁷ *San Diego Gas & Elec. Co.*, 920 P.2d at 697.

¹⁷⁸ See generally, Rachel D. Godsil, *Race Nuisance: The Politics of Law in the Jim Crow Era*, 105 MICH. L. REV. 505 (2006).

Latino and Black communities.¹⁷⁹ Examining Irwindale's legal position, municipal and California statutes, and relevant jurisprudence, the public nuisance actions against Huy Fong appear race neutral and lack racist animus. Accordingly, this section has analyzed how this doctrine became the legal fuel for the Irwindale and sriracha dispute. As described below in Section III, this doctrine operated as a local privilege to exclude Huy Fong in the form of racialized exclusion.

In the spring of 2014, the city's sriracha dispute quickly went from a local, to a regional, to a state, and eventually, to a national problem. The *Los Angeles Times* Editorial Board pleaded with Irwindale arguing that California will suffer if it did not stop the litigation.¹⁸⁰ Many more newspapers and analysts weighed in, all trying to urge the city to drop its legal attack.¹⁸¹ As this proceeded for months, the political attention widened as more voices chimed in, heating up larger debates. Area California legislators and county business associations urged the city to stop the proceedings because they sent a hostile message to businesses and because Huy Fong provided local jobs.¹⁸² After a public nuisance was declared, Huy Fong announced it contemplated relocation.¹⁸³ The hot sauce spiced up interstate rivalries. Politicians from all over California and from Texas, West Virginia, Ohio, and other states tried to lure Huy Fong. The saga fired up debates about California being

¹⁷⁹ See generally, Matthew Mickle Werdegar, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409 (1999); Max Liboiron, *Twenty-First Century Nuisance Law and the Continued Entanglement of Race, Gender, Property, and Violence*, DISCARD STUDIES (Aug. 19, 2013), <http://discardstudies.com/2013/08/19/twenty-first-century-nuisance-law-and-the-continued-entanglement-of-race-gender-property-and-violence/>.

¹⁸⁰ Editorial, *For California's Sake, Irwindale Needs to Save Its Sriracha Plant*, L.A. TIMES (Apr. 24, 2014, 6:22 PM), <http://www.latimes.com/opinion/editorials/la-ed-sriracha-factory-too-spicy-for-irwindale-20140425-story.html>.

¹⁸¹ See Ernesto Hernández-López, *Fight Over Sriracha Factory Smell Heating Up*, U-T SAN DIEGO (May 1, 2014, 5:30 PM), <http://www.utsandiego.com/news/2014/may/01/sriracha-smell-Irwindale/>; *Save Sriracha!*, *supra* note 153; López, *supra* note 145.

¹⁸² See Sarah Favot, *Sriracha Hot Sauce Factory Smell Deemed a Public Nuisance by Irwindale*, PASADENA STAR-NEWS (Apr. 9, 2014, 3:06 PM), <http://www.pasadenastarnews.com/environment-and-nature/20140409/sriracha-hot-sauce-factory-smell-deemed-a-public-nuisance-by-irwindale>.

¹⁸³ See Emma G. Gallegos, *Sriracha Creator Talks About Moving, Invites Texas Politician for Tour*, LAIST (Apr. 16, 2014, 5:30 PM), http://laist.com/2014/04/16/sriracha_creator_says_hes_thinking.php; Frank Shyong, *Sriracha Considers Moving Factory Amid Smell Complaints*, L.A. TIMES (Apr. 16, 2014, 4:30 PM), <http://www.latimes.com/local/lanow/la-me-sriracha-may-move-in-20140416-story.html#axzz2z5oqgoYW>.

anti-business, with stifling regulations and aggressive local rules. Republican politicians seized this opportunity to court Latino and Asian voters; even Senator Ted Cruz tweeted about the topic.¹⁸⁴ All of this attention from so many diverse observers and far interests, emanating from a small locality, only increased the pressure on Irwindale to stop these proceedings.

Eventually the dispute ended before Irwindale acted on the City Council's public nuisance declaration by occupying Huy Fong, installing filters, or shutting down operations. Forces outside Irwindale had to intervene. The office of the Governor of California mediated a resolution between the city and Huy Fong.¹⁸⁵ On May 28, 2014, Irwindale dropped its legal attack, the lawsuit and the nuisance proceedings, months after sriracha panic had spread worldwide.¹⁸⁶ The City Council unanimously approved a motion to dismiss the matter.¹⁸⁷

D. Politics, Economics, and Law Offer Limited Explanation

The conflict erupted and cooled down, with few obvious changes in stances of Huy Fong or the city, other than the nuisance suit and the dropped declaration of the Council.¹⁸⁸ Overlooking the influence of race and geography, political and legal views have helped explain why the controversy raged on for so long. From a doctrinal legal lens, the dispute could be seen as Irwindale realizing that it could not prove Huy Fong operations produced smells and fumes that were “*substantial and unreasonable*,” as required to find a public nuisance in California. Moreover, in litigation terms, the lack of air quality violations found by

¹⁸⁴ See Ian Lovett, *Sriracha Factory Irritates Some California Noses, but Entices Politicians*, N.Y. TIMES (May 13, 2014), <http://www.nytimes.com/2014/05/14/us/sriracha-factory-irritates-some-california-noses-but-entices-politicians.html>; Stephanie McNeal, *Hot-Button Issue: Calif. Republicans Rally Behind Sriracha in Fight Against City*, FOXNEWS.COM (Apr. 22, 2014), <http://www.foxnews.com/politics/2014/04/22/hot-button-issue-calif-republicans-rally-behind-sriracha-in-fight-against-city/>.

¹⁸⁵ See Reid Wilson, *How Jerry Brown Saved Sriracha for California*, WASHINGTON POST (May 31, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/05/31/how-jerry-brown-saved-sriracha-for-california/>.

¹⁸⁶ See Frank Shyong, *Sriracha Lawsuit Dropped; Irwindale Tables Public Nuisance Resolution*, L.A. TIMES (May 29, 2014, 12:43 PM), <http://www.latimes.com/local/lanow/la-me-ln-sriracha-lawsuit-dropped-20140529-story.html>.

¹⁸⁷ The City Council voted on April 23, 2014. A record of this appears in the City Council's agenda for the August 27, 2014 meeting. CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL No. 1A1, 12 (Aug. 27, 2014), available at <http://www.ci.irwindale.ca.us/AgendaCenter/ViewFile/Agenda/08272014-202>.

¹⁸⁸ D. J. Waldie, *Sriracha and Irwindale: The War May Not Be Over as Questions Remain*, KCET, (June 6, 2014, 2:00 PM), http://www.kcet.org/updaily/socal_focus/commentary/where-we-are/sriracha-and-irwindale-questions-still-loom-the-war-may-not-be-over.html.

the SCAQMD and the limited number of residential complaints cast doubts on the validity of the city's nuisance determination. As the region's air quality regulator, the agency conducted various inspections, sent engineering teams to visit the plant, and presumably monitored and tested air quality around the plant during later grinding seasons.¹⁸⁹

Political and economic perspectives have also provided some clarity to the sriracha-apocalypse. Before the conflict, Huy Fong had paid off the loan principal provided by Irwindale to relocate and build the new plant.¹⁹⁰ Huy Fong also believed that the city lost years of loan payments and interest on the principal.¹⁹¹ This was likely a significant amount of money, which the city counted on, especially given economic difficulties after 2008 and the dissolution of California's local redevelopment agencies in 2012.¹⁹² Because of this, city leaders resented Huy Fong. The sriracha-apocalypse could be viewed as the result of emotions, NIMBYism (referring to "Not-In-My-Backyard") for the city, and distrust on the part of Huy Fong.

David Tran did not like the way the city treated the company. In response to this, he then paid off the loan. He did not trust Irwindale allegations of odors, and he did not want to change plant operations because of alleged odors.¹⁹³ Irwindale leaders, on the City Council or as city staff, acted in the interest of its constituents after residents complained. This was particularly acute with such a small city population, smaller voting constituency, and the close and highly contested politics of Irwindale.

These descriptions illuminate a great deal, but they do not explain why a city would have the authority to act against a business owned by an outsider. To the world outside of Irwindale, its demands, lawsuit, and Council proceedings appeared abusive. Irwindale's incorporation as a city provided these legal powers. These powers are an important

¹⁸⁹ A summary of these efforts is reported in presentation descriptions by Jill Whynot, Assistant Deputy Executive Officer at South Coast AQMD. See Jill Whynot, Assistant Deputy Exec. Officer, Planning, Rule Dev. & Area Sources, South Coast Air Quality Mgmt. Dist., presentation at Governing Board Retreat: Select Case Studies Related to Odors/Public Nuisance (May 15–17, 2014) (presentation slides available at <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/may-specsess-7.pdf?sfvrsn=4>).

¹⁹⁰ See Joe Mathews, *What Makes Sriracha Stink: Not the Sauce. It's Cities Like Irwindale, ZÓCALO PUBLIC SQUARE* (Dec. 5, 2013), <http://www.zocalopublicsquare.org/2013/12/05/what-makes-sriracha-stink/inquiries/connecting-california/>.

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See Waldie, *supra* note 188.

part of local government law. But this Article provides a different explanation for the sriracha-apocalypse by looking to the influence of race on local history. The city's history illustrates how a small population could be incorporated into a city with public incentives to restrict its population size. Race plays a significant role in this. Since its founding, Irwindale has had a significant Latino population.¹⁹⁴ The city was established as part of a larger regional political process to divide Latino, Asian, African-American, and white communities.¹⁹⁵ The Article points to race's role in the sriracha-apocalypse by examining where the conflict transpired and by identifying how local government law provided the city the means to act against a business.

III. HISTORY AND LOCAL PRIVILEGE MAINTAIN RACIAL DIVISIONS AND SPICE CONTROVERSIES

A. *Geographic Space and Legal Privileges Help Exclude*

A critical examination of the Irwindale-Huy Fong dispute unveils how race fueled this law-and-food controversy even when there was no animus and the law was applied in a neutral manner. Two theoretical concepts applied to this local context—"racially identified spaces" and the notion of privilege—illuminate race's influence in how hot sauce smells boiled into a legal conflict.¹⁹⁶ With suggestions from Ford, a "racially identified space" demonstrates race's influence in geographic and spatial terms.¹⁹⁷ While inspired by Harris's views on "whiteness as property," the notion of privilege helps identify how municipal legal powers can be used to exclude outsiders.¹⁹⁸ With these theoretical viewpoints, the significance of race stands out when examining how Irwindale attempted to protect its perceived interests against Huy Fong with public nuisance claims. The city's legal assertions suffered from many problems. They were exaggerated given the minute number of complaints, even in a city with a small population. They were premature; the alleged problems were never exactly identified. Perhaps the city's allegations were just vindictive after the city lost millions in interest payments on its loan to Huy Fong.¹⁹⁹ Importantly, race's role in this conflict begins to emerge after examining where this

¹⁹⁴ See BROGGIE, *supra* note 48, at 17, 59, 69, 74.

¹⁹⁵ See MILLER, *supra* note 34, at 57.

¹⁹⁶ See Ford, *supra* note 39 at 1845.

¹⁹⁷ See *id.*

¹⁹⁸ See Harris, *supra* note 54.

¹⁹⁹ For a description of the potential amount lost as part of the loans, see *supra* note 88.

dispute occurred and who benefitted from efforts to exclude Huy Fong.

For sriracha and Irwindale, racialized exclusion operates through the legal powers of a local municipality. Described below with local history and economics, race exerts a significant geographic influence. Irwindale is a “racially identified space,”²⁰⁰ with nearly all of its residents being Latino.²⁰¹ The city was intentionally created to be such a space.²⁰² These characteristics continued over half a century later. Arguably, Irwindale’s actions against Huy Fong were done to protect the interests of persons living in this space. This transpired even when Irwindale’s position appeared like a simple regulation of a business by a local government. These public-business negotiations were subtly but powerfully colored by race, given Irwindale’s demographics and history.

Irwindale also enjoys a legal privilege to exclude outsiders. This power stems from Irwindale’s incorporation as a city, which gives it the ability to bring lawsuits and conduct nuisance proceedings. This legal authority developed once Irwindale was incorporated as a city. This functioned as a quiet privilege created by local government law, until Irwindale pursued legal action against Huy Fong. At that moment, the city employed its privilege with the specific objective to benefit city residents. Its intent became apparent when Irwindale acted to protect perceived local interests after the alleged sriracha odors began. Irwindale residents stood to benefit from this. With the city’s population being nearly entirely Latino, the beneficiaries of such a privilege were limited by race. Starting in 2012 when sauce production began and local sentiments simmered, this privilege offered the vital spark to enflame this chile-based legal dispute.

Exploring these notions of space and privilege, Section III of this Article presents: how different communities were divided spatially in the San Gabriel Valley, why this division developed, and how it facilitated recent controversies. This begins with micro-level descriptions and expands in terms of the locations and issues. It starts with Irwindale city history and moves to the San Gabriel Valley’s regional cultural history. These histories presently have a legal influence on race, space, and property.

²⁰⁰ Ford, *supra* note 39, at 1845.

²⁰¹ The city is over ninety percent Hispanic. See AMERICAN FACTFINDER, *supra* note 4. This Article argues that this reflects a “racially identified space.” See Ford, *supra* note 39, at 1845 (defining “racially identified space”).

²⁰² See *infra* Part III.B and accompanying notes.

B. Mining, Low Taxes, and Exclusion Establish Irwindale

An initial impression of Irwindale's history points to the economic interests of mining companies and to a Latino community seeking local rule. Many city residents trace family connections to mid-nineteenth century inhabitants in this previously rural sector of Los Angeles County. Irwindale was incorporated into a city in 1957.²⁰³ At this time, many suburbs in Southern California were incorporated to control the racial makeup of residents in a community, guarantee residents access to public services, and lure and protect private businesses.²⁰⁴ With municipal incorporation secured, city government law could shield local businesses from unwanted regulations from another municipality. These choices helped control the cultural and socio-economic makeup of suburban populations.

Before 1957, Irwindale was an unincorporated part of the county lacking many municipal services like a police force, fire fighters, and street paving. The area was known as "Sonora Town," "Spanish Town," "Cactus Town," and "Jackrabbit Town."²⁰⁵ The most common name, "Sonora Town," was due to the large number of Mexican and Mexican American residents, many of whom had migrated from or had family ties to Sonora, México.²⁰⁶ In 1923, when the railroad began running through the area, "Irwindale" became the name referring to this area and the train stop.²⁰⁷ The designation has two possible sources: a man named Irwin, whose first name was not recorded, who lived in the area and in 1899 established a water well close to Sonora Town, or a post office established in 1895 in Sonora Town named after William Irwin, the thirteenth governor of California.²⁰⁸

Since 1957, Irwindale has been a racially identified space. To this day, the city remains overwhelmingly Latino, with more than ninety percent of its residents reported as Hispanic or Latino according to census figures from 2010.²⁰⁹ In 2007, for its fiftieth anniversary, the city commissioned an official book recording Irwindale's history. Titled *History of Irwindale: Jardín de Roca*, this book notes that only one non-Latino has ever been elected to the City Council, which was in 1962.²¹⁰

²⁰³ *History*, CITY OF IRWINDALE, <http://www.ci.irwindale.ca.us/Index.aspx?NID=269>.

²⁰⁴ See MILLER, *supra* note 34 at 8–9.

²⁰⁵ See BROGGIE, *supra* note 48, at 59, 74.

²⁰⁶ See *id.* at 51.

²⁰⁷ See *id.* at 65.

²⁰⁸ See *id.* at 59–60.

²⁰⁹ See AMERICAN FACTFINDER, *supra* note 4.

²¹⁰ See BROGGIE, *supra* note 48, at 103.

In 1994, a *Los Angeles Times* article described the uniqueness of Irwindale, as a primarily Latino and working-class city that provided enviable public benefits for its residents.²¹¹ Redevelopment efforts and taxes on mining companies supported impressive resident benefits. Such benefits included medical prescriptions, childcare, college scholarships, a senior center with free piano lessons and haircuts, and a public pool.²¹² However, a very small number of city residents had access to these benefits.²¹³ Similarly, this small number of persons possessed the right as voters to influence city policies.²¹⁴ The Article reported that Irwindale residents felt that nearby cities looked down on Irwindale and that whites and African Americans were driven out of Irwindale because residents wanted “only Mexicans” living there.²¹⁵

Private business incentives provided the initial push to incorporate Irwindale, establishing the legal means to keep the city a racially identified space. Mining companies were the main impetus behind incorporation. Since the start of the twentieth century, these mining companies extracted gravel and other aggregates in the area, materials necessary to make concrete and cement.²¹⁶ Then annual sales of rock and aggregate from Irwindale were more than fifteen million dollars.²¹⁷ Demand for these materials was high, as the Los Angeles region grew dramatically and expanding car culture after World War II necessitated building of roads and highways.²¹⁸ The city is located at the base of the San Gabriel Mountains, where these mineral deposits are easily accessed. They are of extremely high quality. Since the mountains flatten here, close to the riverbed, the conditions are ideal for mining. Historically this terrain was undesired for human living since it was on a floodplain.²¹⁹ Later as mining operations proliferated, area residents lived with noise and air pollution from this industry.

Since then, Irwindale has been intimately associated with mining. Its nickname is “*Jardin de Roca*,” meaning rock garden in Spanish. The city had seventeen mining pits, covering over 70 percent of its 9.5 square mile area.²²⁰ The largest pit is 275 feet deep. In 2015, only six

²¹¹ See Romney *supra* note 45.

²¹² See *id.*

²¹³ See *id.*

²¹⁴ See generally Moran, *supra* note 45.

²¹⁵ See *id.*

²¹⁶ See BROGGIE, *supra* note 48, at 61, 64.

²¹⁷ See *id.* at 65.

²¹⁸ See *id.* at 61, 65.

²¹⁹ See *id.* at 92.

²²⁰ See *id.* at 27; Pool *supra* note 99.

pits continued to be mined.²²¹ These quarries dot Irwindale's landscape, creating any eerie moon-like crater terrain in the middle of Los Angeles's suburban sprawl. Importantly, even though Irwindale is removed from any urban center, it is now located at the juncture of important highways. Next to where the IH-210, 605, and 10 freeways meet, gravel or hot sauce can easily be taken to any local, regional, national or even overseas destination. In mid-century California, as Irwindale aggregates fed an expanding highway network, these same roads would eventually surround this tiny city.²²²

Limiting tax liability for mining companies became the primary motivation for Irwindale's incorporation.²²³ Residents of the area, who supported incorporation, also wanted local control and public services such as streets, sidewalks, recreational facilities, library, fire and police departments, and public jobs. The nearby cities of Azusa, Baldwin Park, Duarte, Monrovia, and West Covina tried to annex this area, interested in tax revenues from charging mining companies.²²⁴

A new city with residents loyal to mining interests was extremely attractive to the industry. Most obvious was that a city incorporated here would have taxing authority over mining operations. A city incorporated at this location and including the mining pits and little else provided these companies the greatest influence over local business regulations. A small resident population limited the need to provide public services, which a larger city would have to provide and pay for with public funds. A small city also restricted who, as voters and as resident constituents, influenced city policies. Furthermore, the incorporation of Irwindale avoided another city annexing the area and potentially increasing tax rates or having regulatory influence over mining. With Irwindale incorporated, the Los Angeles County government with interests expanding far beyond Irwindale would have less of a role in regulating mining. Before its incorporation, Irwindale only had .005% of the county's population, but provided 2.1% of the county's taxes.²²⁵ Most of this was charged to mining operations.²²⁶ To incorporate as a city, the law firm of Latham & Watkins, which

²²¹ See Courtney Tompkins, *Irwindale Stands by Decision to Reopen Olive Pit Mining Quarry*, PASADENASTAR NEWS (Jan. 29, 2015) <http://www.pasadenastarnews.com/government-and-politics/20150129/irwindale-stands-by-decision-to-reopen-olive-pit-mining-quarry>.

²²² See BROGGIE, *supra* note 48, at 61, 65.

²²³ See *id.* at 72.

²²⁴ See *id.*; MILLER, *supra* note 34, at 54–55.

²²⁵ See BROGGIE, *supra* note 48, at 15–16; MILLER, *supra* note 34, at 55.

²²⁶ See BROGGIE, *supra* note 48, at 15–16.

represented Consolidated Rock Products, approached area residents about this possibility.²²⁷

Gary Miller describes mining companies' political drive to incorporate Irwindale in order to avoid taxation from another municipality and to limit the "benefits of a rich tax base to as small of a population as possible."²²⁸ Miller argues that a series of city incorporations took place in California during this period precisely to limit local taxes and to restrict who resided in a location and who benefitted from city services. In Irwindale, city borders were drawn to eliminate most residential areas. He describes Irwindale's population in 1957 as "only 1,500 people, almost half of whom were in a migrant camp located among gravel pits."²²⁹ Communities like Irwindale found it easier to incorporate as cities after the Bradley-Burns sales tax was passed in 1956, which permitted cities to use a fixed-sales tax rate of one percent.²³⁰ This created a source of revenue for cities that had not existed before.

C. Industry and Spatial Divisions Feed Historic Race-Based Exclusions in Southern California

Economic and political motives made Irwindale a racially identified space. These material objectives in 1957 left a long-term impact in how the city is governed, treats its residents, and regulates businesses. Since incorporation, Irwindale has exemplified a single-use industrial city, which is common in Southern California. Victor Valle and Rodolfo Torres include Irwindale, along with City of Industry, City of Commerce, Santa Fe Springs, Azusa, and Vernon, in a list of such cities.²³¹ They describe single-use industrial cities as having the basic municipal purpose to operate like a private enterprise but with municipal powers to determine local taxes.²³² These cities benefit from public powers like expropriating private property and determining city boundaries. With the ability to set local borders, these municipalities can limit the influence of residents and voters. Borders can be drawn to minimize the number of persons who live inside such a city, which effectively restricts the size of the population who elects the city leaders.

²²⁷ See *id.* at 72.

²²⁸ See MILLER, *supra* note 34, at 57.

²²⁹ See *id.* at 56.

²³⁰ See *id.* at 21.

²³¹ See VICTOR VALLE & RODOLFO TORRES, *LATINO METROPOLIS* 26–27 (2000).

²³² See *id.*

City incorporation also guarantees exploitation of economic assets including infrastructure such as highways, bridges, and ports, or natural resources such as oil, natural gas, or other mineral access. For Irwindale, this obviously secured access to gravel quarries. Typically incorporated in the last century, these municipalities were formed to benefit private businesses, including manufacturing, energy production, or mining.²³³ These companies contribute taxes and jobs to a city, but the municipality's resident population is usually extremely small or virtually non-existent.²³⁴ For many of these small cities the business and residential sectors are spatially separated.

Irwindale is one example of a single-use industry city, but with the distinction that its residential areas are inter-mixed and extremely close to industrial locations. Irwindale's mining pits and newer businesses, such as the Breeders Choice pet food factory and the Miller-Coors brewery, sit next to resident housing. This arrangement has resulted in 700 businesses and 40,000 workers in a city with less than 1500 residents.²³⁵ Because of this small population size, Irwindale city residents can greatly influence how the city treats local businesses. A small group of citizens has the ability to make its impressions become issues of city concern. Controversies like the sriracha-apocalypse easily develop in this highly localized and implicitly politicized context.

Irwindale's history, as a mostly Latino city incorporated to benefit a single industry, reflects larger regional patterns in San Gabriel Valley's cultural history. This area of Los Angeles County extends east from the city of Los Angeles. Irwindale had previously been rural and became suburban during the last century.²³⁶ The San Gabriel Valley is now made up of different cultural communities separated by diverse labor and economic demands, unequal access to housing, and distinct municipal jurisdictions. On its west end are the historically white communities of Pasadena and San Marino, legacies of early suburban affluence, formed when the means to live outside of a city was a sign of economic status.²³⁷ On its east end, San Gabriel Valley communities are more ethnically diverse, legacies of past economies based on citrus, mining, ranching, and manufacturing.²³⁸ In the later decades of the

²³³ See *id.* at 27.

²³⁴ See *id.* at 28.

²³⁵ See Webster, *supra* note 87.

²³⁶ See generally BROGGIE, *supra* note 48 (describing Irwindale's history as rural in the nineteenth century, Sonora Town in the early twentieth century, and then suburban after incorporation).

²³⁷ See CHENG *supra* note 27, at 3.

²³⁸ See *id.*

twentieth century, with increased immigration, many of these areas developed into residential suburban communities intermixed with industry and commercial services.²³⁹

This economic history shaped how the San Gabriel Valley's geography developed, with residential communities divided according to Latino, Asian, African American, Anglo, and existing and recent migrant groups. This transpired as general trend after citrus grove economy across the region developed in the late nineteenth to early twentieth centuries.²⁴⁰ As this industry slowly declined in the mid-twentieth century, East Los Angeles and Chinatown communities extended eastward, and the rural communities along the San Gabriel River extended westward.²⁴¹ Both movements were in search of housing and employment in manufacturing and other industries.²⁴² Afterwards, Asian and Latino migrants developed multiple commercial, resident, and cultural centers in the San Gabriel Valley.²⁴³

In this area, economic interests fueled how racial divisions developed spatially, eventually gaining permanence. Matt Garcia describes the cultural and geographic landscape of the San Gabriel Valley for the period after 1900, noting the significant influence of race, community formation, and citrus labor. In *A World of Its Own: Race, Labor, and Citrus in the Making of Greater Los Angeles*, Garcia incorporates a historic reference from Cary McWilliams about Mexican and Mexican American *colonias* as culturally isolated with limited Anglo contact but economically significant to the region.²⁴⁴ These communities were presented as “carefully planned” and “sufficiently inconvenient” where workers and families lived at a specific location in the service of an industry, but distanced from segregated enclaves in urban centers.²⁴⁵ Applying this lens, Garcia unveils how the Greater Los Angeles landscape would expand as mixed residential suburban and industrial uses once the citrus economy declined after World War II.

The most significant legacy of this history is that the citrus industry

²³⁹ See *id.*

²⁴⁰ See generally GARCIA, *supra* note 58 (describing how citrus farming relied on racial divisions and the racial geography suburban development in Southern California).

²⁴¹ See CHENG *supra* note 27, at 3.

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See GARCIA *supra* note 58, at 14.

²⁴⁵ See *id.* at 47 (quoting CAREY MCWILLIAMS, *NORTH FROM MEXICO* (1949)).

depended on segregated worker settlements. Garcia's mix of historical and cultural analysis builds on Edward Soja's critical geography suggestions. Specifically, Soja argues that space is not neutral and instead is organized to benefit private economic interests, creating fragmented and poly-nuclear political terrain.²⁴⁶ Garcia shows how large scale orange and lemon farming in the San Gabriel Valley depended on the exploitation of non-white laborers, segregating settlements for Mexican, Asian, and Native American workers and their families. Eventually, Mexican and Mexican American workers became a majority of the workforce.²⁴⁷ Garcia draws a clear thematic line, in spatial and cultural terms, from historic citrus settlements to suburb communities divided by race after the 1970s.²⁴⁸ These insights demonstrate that race, geography, and economic interests—the forces that established Irwindale—were actually part of a larger pattern in Southern California.

This history of exclusion shapes how urban and suburban geographies developed. Urban planning scholars, David Diaz and Rodolfo Torres, argue that the evolution of metropolitan areas in the American West depended on Latinos living in *barrios* and *colonias*, referring to urban Latino neighborhoods and rural Latino labor camps, respectively.²⁴⁹ Cities needed these locations to function, but these locations were intentionally physically separated. Latino laborers would be excluded, through redlining and other forms of discrimination, from residing in certain areas of a city or in white suburbs.²⁵⁰ This separation could not place the laborers too far, since these workers had to be close enough to work in manufacturing and service sector industries. These communities of workers became effectively relegated to locations outside urban centers. As cities grew, these segregated communities would be incorporated into larger metropolitan areas, with suburbs or edge cities eventually associated with migrant and racial groups.²⁵¹

This history illuminates how Irwindale's past as a *colonia* close to mining, placed it at the center of regional economic and political

²⁴⁶ See GARCIA *supra* note 58, at 4–5.

²⁴⁷ See *id.*

²⁴⁸ See *id.* at 1–2.

²⁴⁹ See LATINO URBANISM: THE POLITICS OF PLANNING, POLICY, AND REDEVELOPMENT 6 (David R. Diaz & Rodolfo D. Torres eds., 2012).

²⁵⁰ *Id.*

²⁵¹ Nestor Rodriguez describes this process from *colonia* to city neighborhood. Nestor Rodriguez, Urban Redevelopment and Mexican American Barrios in the Socio-Spatial Order, in LATINO URBANISM, *supra* note 249, at 87–89.

transformations. California's need for gravel and aggregates increased to build new roads and suburbs. With minerals easily mined in Irwindale, a municipal jurisdiction was established to benefit this industry. A vital element of this municipal incorporation was that a Latino community lived in Irwindale, before and after the city was established. The Latino residents would be subject to these public and economic changes. Simultaneously, larger forces such as expanding highways, suburbanization, and car culture made mining in Irwindale increasingly necessary.²⁵²

This resulted in a series of dependence and vulnerabilities for cities, businesses, and communities in places like Irwindale. Private enterprise would grow to rely heavily on geographic location, in this case in the San Gabriel Valley, and access to physical resources in these cities. This was obvious with citrus farming and mining, which could not easily be transplanted elsewhere because geology, topography, and climate prevented relocation. Huy Fong would similarly be dependent on having its large-scale chile pepper grinding in Irwindale, a short drive from farms in Ventura and Kern Counties. Sriracha's recipe and thus quality is highly dependent on this variable. These municipalities would also be reliant on, if not extremely vulnerable to, businesses operating within their small area. In the case of Irwindale, mining companies provided the city a tax base that could not be replicated easily with the other businesses. Thanks to the tax revenue exclusively from mining operations and redevelopment projects, residents had access to generous public benefits from the city for a long time.²⁵³ Lastly, these cities needed residents, who would be constituents and who would vote for city leaders. The sriracha-apocalypse reflects this complex layering of vulnerabilities and dependencies between Huy Fong, its consumers, the city, and the city's residents.

Populations of color would increasingly inhabit suburban communities in places like the San Gabriel Valley. When these localities became separate cities, minority groups acquired political influence in local governments. Wei Li describes this phenomenon with the term "ethnoburb," referring to multiethnic suburbs with class diversity.²⁵⁴ Li drew this insight from Monterrey Park in the San Gabriel Valley, which in the 1990s became the American city with the largest percentage of Chinese population.²⁵⁵ Unlike historic Chinatowns in

²⁵² See BROGGIE, *supra* note 48, at 61–65.

²⁵³ See Pool, *supra* note 99; Moran, *supra* note 45.

²⁵⁴ See Li, *supra* note 36, at 3–4.

²⁵⁵ See *id.*

urban centers, an ethnoburb is not a neighborhood in a city. An ethnoburb can be its own municipal jurisdiction, populated by diverse ethnic and racial groups.

Incorporation into a municipality created local political influence. Examining San Gabriel Valley's local electoral politics in the 1990s, Leland Saito posed that this suburban diversity resulted in both co-existence and contests over public space.²⁵⁶ As an example, Asian, Latino, and black voters sought increased representation on school boards and in forming voting districts. Gilda Ochoa describes similar negotiations between Mexican American and Mexican or Central American communities and first- and second-generation immigrant communities in the San Gabriel Valley.²⁵⁷ At times these groups would find common ground or tensions, with their attitudes being situation-specific and influenced by factors such as economic power, permanent residency or citizenship, and political arrangements.

Li, Saito, and Ochoa offer important lessons on why local gripes in Irwindale from 2012 to 2014 about hot sauce production would erupt, produce public controversy, and become so difficult to resolve. Their research generally suggests that the geographic landscape of the San Gabriel Valley reflects an exclusionary past. This past greatly contributes to where a population resides currently, and it shapes how these communities interpret notions of racial identity in their immediate surroundings. These insights are invaluable to help decipher the interplay between economics, public authority, and politics in the sriracha dispute. Potential smells from a new hot sauce business were not just issues regarding city efforts to curb a public nuisance. In the Irwindale-and-Huy Fong dispute, larger factors were at play locally, shaping why a conflict erupted, who could enflame it, and what could resolve it legally or politically. A critical lens examining privilege, sourced in local law, explains how suburban racialized exclusion operates.

D. Inherited Landscapes Shape Privilege in the Suburbs

In *The Changs Next Door to the Díazes: Remapping Race in Suburban California*, Wendy Cheng explains how local notions of race are closely linked to property in the San Gabriel Valley. She argues that in these suburbs a “regional racial formation” develops, with place-specific

²⁵⁶ See SAITO, *supra* note 27, at 25, 36, 38.

²⁵⁷ See GILDA OCHOA, *BECOMING NEIGHBORS IN A MEXICAN AMERICAN COMMUNITY* 5 (2004).

processes of racialization.²⁵⁸ This perspective builds on Michael Omi's and Howard Winant's ideas about racial formation by making them applicable to specific local geographies.²⁵⁹ Accordingly, Cheng poses that neighborhoods, localities, and regions are associated with notions of race.²⁶⁰ Geography and race operate locally, not in clean lines or divisions but instead as a set of spatial and social relations. Cheng's insights are based on interviews with local residents including Asian, Latino, immigrant, citizen, and multi-generation residents. These interviews focused on every day and on-the-ground issues to identify how social and spatial racial formation operates.²⁶¹ Cheng's perspective poses that homeownership, a critical form of property, shapes how individual persons develop ideas of race in the San Gabriel Valley.

This Article uses these insights, regarding persons, race, and geography, to help examine how race and geography inform city regulation of a local business in Irwindale. In Cheng's book, three themes emerge, that: (1) a non-white ideology develops in these middle-class suburbs, (2) race and property intimately influence these popular notions, and (3) institutions such as local government and school boards are forced to reconcile these ideas.²⁶² This Article applies these themes to examine how Irwindale's regulation of Huy Fong with public nuisance doctrine actually reflects a racialized exclusion.

In ideological terms, Irwindale's public efforts to protect local interests, in this case from perceived smells from sauce making, reflect a non-white ideology. Latinos have historically and currently monopolized Irwindale's interests. The city's course of action included lawsuits and Council hearings in reaction to resident gripes about smells and odors. City leaders did not wait for air quality regulators. They argued in court and in Council hearings that approximately thirty complaints warranted legal action to stop a factory.²⁶³ For a long time, Irwindale leaders were hesitant to follow the

²⁵⁸ See CHENG, *supra* note 27, at 10.

²⁵⁹ See *id.* at 17. See also OMI & WINANT, *supra* note 16, at 55. Greg Hise provides a similar account of racial identity and place in Los Angeles by focusing on history of land use and cultural analysis. See generally Greg Hise, *Identity and Social Distance in Los Angeles*, 26 LANDSCAPE JOURNAL 45 (2007).

²⁶⁰ See CHENG, *supra* note 27, at 10.

²⁶¹ See *id.* at 19–20.

²⁶² See *id.* at 13–14.

²⁶³ See CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL, *supra* note 166.

advice from regional politicians, business organizations, and the media.²⁶⁴ Because of its small size and its history as a racially identified space, Irwindale's public choices would be highly sensitive to the preferences of local residents, despite the legal, political, and long-term reputation problems they would create. With Irwindale's demographics and history, the city's choice to pursue public nuisance claims points to a non-white ideology. For this, racist intent or animus is not needed; instead racialized exclusion is fueled by history and geography.

Next, in Irwindale race operates as a property interest, in particular with an ability to influence local government. Private influence over the city's government serves as a privilege. Given its small size and history as a racially identified space, government choices prioritize local residents, which effectively excludes non-Latinos. City residents acquire this influence from the apparently race-neutral rules for voting in city elections and serving in local government. In this light, when residents complained about sriracha smells, the city could easily move to litigation and council hearings. Here, the city attorney, city staff, and City Council responded to a small number of complaints. Irwindale's history and cultural geography gave this a racial impact. In a larger city, this influence would not be so apparent or direct. In a city with a more diverse population, these public choices would not neatly serve a Latino community.

Similarly, public institutions had to reconcile these tensions. In the sriracha dispute, the City Council, state courts, area politicians, and the governor's office all found themselves addressing issues such as chile pepper odors and fumes, technical reports on air quality, nuisance claims, and abatement procedures.²⁶⁵ These public actors were forced to address these issues because of their political impact. Irwindale residents complained about smells and urged the city to take Huy Fong to court and to initiate public nuisance proceedings and possibly abate the harms. When these institutions began to consider these issues, media attention about this local matter spread widely. To the city and residents, and other observers, this dispute presumably appeared as a race neutral exercise of the city's legal powers. These powers included: a city attorney initiating a lawsuit, a City Council declaring a public nuisance, and a City Council directing city staff to start abatement.²⁶⁶ This could appear as mere local government

²⁶⁴ See *Apr. 9 Agenda*, *supra* note 26, at 17–31; *Save Sriracha!*, *supra* note 153.

²⁶⁵ See Preliminary Injunction, *supra* note 130; CITY OF IRWINDALE, AGENDA FOR THE REGULAR MEETING OF THE CITY COUNCIL, *supra* note 166.

²⁶⁶ See *Complaint*, *supra* note 105; CITY OF IRWINDALE, AGENDA FOR THE REGULAR

regulation of a business. But this Article argues that these choices made by the city took on exclusionary significance, when viewed in light of Irwindale's history as a racially identified space and the privilege residents have in influencing city policies.

E. Sriracha Shutdown Is One Example of Exclusion in the Suburbs

It is important to place the Irwindale-Huy Fong controversy within a larger context of race and privilege in suburban America. Such an exercise helps to understand how a hot sauce fight reflects greater trends. These tendencies include the development of Latino and Asian and Asian American communities outside urban centers, segregation for migrant and minority communities without de jure discrimination, and the influence that private economic interests exert in shaping local governmental choices. Placing the sriracha-apocalypse inside this context helps to identify potential causes of the conflict. It suggests how similar problems could re-emerge, in Irwindale or in similar places or with other businesses. Without this perspective, the sriracha-apocalypse could appear as something quick, incidental and insignificant. Worse, without this context the consequence of the dispute could be overstated.

The threat of sriracha shutdown erupted and ended, for now. This small dispute received a great deal of news, foodie, political, and business attention. Had this hot sauce not been so popular, it is doubtful that these local issues would have been noticed widely. A trendy sauce with expansive culinary appeal effectively illuminated how a city treats local businesses, how city residents can influence public policy, the concentrated politics of economic redevelopment, the environmental consequences of food production, and interstate rivalries for businesses. Seen in a limited light, the sriracha-apocalypse implied a legal conflict lasting only seven months and reviewed by one court, in a city of less than 1500 residents with a private company that, at its maximum, employed less than 200 workers. While the conflict is not isolated, a limited view of the sriracha conflict also does not explain all the issues involving local politics and race in Irwindale, the San Gabriel Valley, or Southern California. To avoid overstating the significance a hot sauce fight, this Article places the sriracha-apocalypse within three important contexts regarding Asian and Latino suburban communities in the United States and racialized tensions in suburbs fueled by a confluence of economic interests. As

described below, historical and social science scholarship provides detailed and thorough examination of these contexts. Their conclusions suggest looking at this Chile-based legal dispute in a small corner of Los Angeles County as consistent with long-term suburban trends in the United States.

Huy Fong is often identified with Asian and Asian American communities. The Tran family, who fled Vietnam, owns it. Although its sauces were originally crafted for Vietnamese dishes, sriracha and Huy Fong's other products are used to spice up many dishes from other Asian cultures. Its dispute with Irwindale reflects the cultural and political conflict experienced by Asians and Asian Americans in the United States. Robert Ji-Song Ku, Martin Manalansan, and Anita Mannur present food as a symbol of legal and cultural challenges for Asians and Asian Americans in the United States.²⁶⁷ They explain that for Asian Americans foodways are mediated with "senses" and a "corporeal frame."²⁶⁸ Importantly, these foodways are seen as part of the "trope of the smelly and unwashed immigrant."²⁶⁹ Studying earlier experiences in Monterrey Park, a few communities west of Irwindale, Leland Saito explained that notions of privilege belonging to white residents fueled local political contests.²⁷⁰ He described how local measures, including "English only" housing and commercial regulations, operated as a local privilege and as a reaction to Asian residents.²⁷¹ Seen from these perspectives, the sriracha-apocalypse illustrates how food continues to be a critical medium to express identities and resist exclusion. Moreover, the public eye on Irwindale shows how local politics creeps its way to exclude and to protect existing privileges. In Irwindale, public nuisance doctrine became the small but powerful legal tool to seek exclusion.

Similarly, Irwindale's history as a racially identified space reflects larger trends for Latinos in American cities. After existing as rural community for over a century, in 1957 the city was incorporated with the primary motivation being to secure commercial access to gravel, a necessary material for constructing freeways and other car-focused infrastructure. The year before, 1956, the Federal-Aid Highway Act initiated a massive effort to construct highways nationwide, providing suburban communities with a way to move between residential areas

²⁶⁷ See EATING ASIAN AMERICA, *supra* note 15.

²⁶⁸ See *id.* at 3.

²⁶⁹ See *id.*

²⁷⁰ See generally SAITO, *supra* note 27.

²⁷¹ See SAITO, *supra* note 27, at 37–38.

and urban centers.²⁷² Eric Avila explains how these plans physically ripped into and divided Latino and African American residential communities.²⁷³ They isolated these residential communities with concrete barriers from new single-home residential options in mid-century suburbia. Irwindale provides a counter-point to this story. At this location, legal incorporation as a city secured access to raw materials to build highways, while also physically restricting local constituents to a working-class Latino population. As other communities became the subject of freeway dislocation or boxed out, Irwindale provided the material feed to construct these roads. Irwindale's history as a racially identified space is intimately a product of long-term and large-scale American preference for cars, highways, and suburbia.

Irwindale's previous close ties to México, with its residents escaping the Mexican Revolution after 1910 or working as Braceros until 1964, points to a local border between this community, its immediate surroundings, and México. In this light, Irwindale reflects many of the characteristics George Sánchez paints for Los Angeles. Sánchez argues that East Los Angeles represents a culturally mediated, transnational, and evolving community, not easily cast as an enclave or destined for inevitable assimilation.²⁷⁴ The key to this is that East Los Angeles is at the same time American and Mexican and that this dynamic continues to change.²⁷⁵ These insights suggest that Irwindale, in critical race terms, can be seen as a racially identified space; but importantly, this evolves. Irwindale's dispute with Huy Fong points to the local challenges of seeking new businesses as the mining operations run out and redevelopment in California lies in limbo. Furthermore, Irwindale's current open spaces and actual location between diverse communities point to the city's future challenges. Past economic and political decisions capitalized on this Latino population and helped keep them living between quarries and highways long after the city was established and after the height of gravel mining.

Noting the race and suburban context, key questions emerge. What policy choices protect this privilege of local power for residents?

²⁷² See generally, Kevin Douglas Kuswa, *Suburbification, Segregation, and the Consolidation of the Highway Machine*, 3 J. L. Society 31 (2002) (describing the social and racial impacts of suburbs after the Federal-Aid Highway Act).

²⁷³ Eric Avila, *L.A.'s Invisible Freeway Revolt: The Cultural Politics of Fighting Freeways*, 40 J. OF URBAN HISTORY 831 (2013).

²⁷⁴ See GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN: ETHNICITY, CULTURE, AND IDENTITY IN CHICANO LOS ANGELES, 1900-1945* 45 (1995).

²⁷⁵ See *id.*

How does the law facilitate or hinder this privilege? The Irwindale-Huy Fong dispute provides some indication as to how a city, primarily associated with a Latino population controlling city government, can use municipal legal powers to exclude new business. More importantly, the short sriracha-apocalypse inspires looking for similar settings where property and private interests attempt to exclude populations of color. Such observation helps to understand how business exclusions are not limited to Irwindale, mining, or an industry such as sauce making which depends on local control.

For California, a multi-racial setting in the mid-twentieth century offers illumination of racialized exclusions. Mark Brilliant shows how, after civil rights gains in the 1940s, African American, Asian American, and Mexican American communities in California had different legal priorities in combatting racism.²⁷⁶ These differences were due to the “distinct racialized experiences” of such communities.²⁷⁷ Their respective objectives included ending discrimination in housing and employment, land laws, and school segregation.²⁷⁸ In this light each community fought different sets of privilege and exclusion. Robert Self paints a detailed picture of how economic and spatial forces fueled black political activism and conservative white exodus from Oakland after World War II.²⁷⁹ For Oakland, local policies signaled where homeownership would be prioritized, where businesses should locate, and where tax and public funds would cease to be invested. From a mixture of business and political examinations, Self shows how space is “the process through which markets, property, communities, and . . . race are constituted within capitalist urbanization.”²⁸⁰

Similar spatial and economic contexts have been identified as leading to racialized exclusions in school integration and eminent domain jurisprudence²⁸¹ as well as housing and real-estate markets for African Americans in Chicago²⁸² and in Greater Miami.²⁸³ In particular,

²⁷⁶ See MARK BRILLIANT, *THE COLOR OF AMERICA HAS CHANGED: HOW RACIAL DIVERSITY SHAPED CIVIL RIGHTS REFORM IN CALIFORNIA 1941-1978* 9 (2010).

²⁷⁷ See *id.* at 9.

²⁷⁸ See *id.* at 8–12.

²⁷⁹ See ROBERT O. SELF, *AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND* (2003).

²⁸⁰ See *id.* at 17.

²⁸¹ See Tom I. Romero, II, *Kelo, Parents and the Spatialization of Color (Blindness) in the Berman-Brown Metropolitan Heterotopia*, 2008 UTAH L. REV. 947 (2008).

²⁸² See BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (2010).

²⁸³ See N.D.B. CONNOLLY, *A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA* (2014).

these dynamics point to new ways to examine racialized exclusion with the movement of persons and capital between suburbs and cities.²⁸⁴ These examples suggest that the short sriracha-apocalypse is consistent with long-term discord outside urban centers. As with sriracha, these tensions require a mix of economic, class-based, and public actors to act on their privilege to seek racialized exclusion in specific location.

CONCLUSION

This Article has described the legal efforts of the city of Irwindale to shutdown sriracha production in 2013 and 2014 and how these legal efforts reflect a racialized exclusion. The city employed its municipal legal powers, with a city attorney armed with public nuisance claims, to attempt to enjoin all Huy Fong operations in Irwindale. Municipal legal muscle was used to try to halt production of sriracha and other chile-based condiments. The efforts applied race neutral law and lacked any apparent animus. The city argued that “offensive chili odors” were a public nuisance causing “physical harm and discomfort for the people of Irwindale.”²⁸⁵ It explained that these odors and fumes irritated eyes and throats; caused coughs, difficulty breathing, headaches, bloody noses, and heartburn; and forced residents to limit their outdoor activities.²⁸⁶ To the world outside of this suburb of less than 1500 residents, such claims seemed extremely odd, since no air quality infractions were cited and Irwindale had eagerly invited Huy Fong to relocate just the prior year. Because sriracha is so popular worldwide and the apparent absurdity of these actions, news and social media fixated on the sriracha-apocalypse.

Eventually, the conflict between city and business cooled when the lawsuit was dropped and the City Council ended public nuisance proceedings. Presumably, Huy Fong and the city began to trust each other and informally resolved the gripes. On its legal face, this dispute looked like Irwindale lacked sufficient basis to win a nuisance suit in court. Not even forty people complained.²⁸⁷ In political and economic terms, it appeared as if Huy Fong and Irwindale could not get over deep mistrust in a new relationship.

²⁸⁴ See Matthew D. Lassiter, *The New Suburban History II: Political Culture and Metropolitan Space*, 4 J. PLANNING HISTORY 75 (2005); Andrew Needham & Allen Dieterich-Ward, *Beyond the Metropolis: Metropolitan Growth and Regional Transformation in Postwar America*, 35 J. URBAN HISTORY 943 (2009).

²⁸⁵ *Complaint*, *supra* note 105, at 2–4.

²⁸⁶ *Id.*; Motion for Preliminary Injunction, *supra* note 116, at 4.

²⁸⁷ See *supra* notes 164–67 and accompanying text.

This Article makes one basic argument about race and local power in this chile-based controversy. This law-and-food conflict reflects a racialized exclusion, given Irwindale's history and its ability to pursue legal action against businesses. The exclusion stands out after a critical reading of Irwindale's history and of its legal privileges as a municipality. Irwindale is a racially identified space,²⁸⁸ since over ninety percent of its population is Latino.²⁸⁹ It was incorporated over fifty years ago as such a place, with mining companies seeking lower taxes and capitalizing on loyal Latino residents. This illustrates how race operates spatially and historically in Irwindale. First, incorporation as a city secured that Latino residents within Irwindale's borders, and later as an incorporated city Irwindale could protect these divisions from perceived threats. The city's legal powers, when directed at outsiders, capitalize on this local privilege. For Huy Fong, this came in the form of lawsuits and public nuisance proceedings. With the two aspects of space and privilege, the Irwindale-Huy Fong dispute points to a racialized exclusion, even when it looked like the city merely applied race-neutral law and did not express any racist animus.

This leads to three important lessons from the sriracha shutdown. First for food issues, the legal notion of what is local may be the most significant subtext of the colloquial saying: "what matters most is location, location, location." To food manufacturers and chefs, what stands out about Huy Fong is that it uses locally sourced chile peppers and that it maintains strict control in farming and pepper grinding. Legions of fans love the end result of this monitoring, i.e. high quality sriracha. Huy Fong chose Irwindale to secure its control at this location close to its just-picked pepper supplies. Sadly this became its Achilles heel when Irwindale turned on them. The lesson for foodies is that all politics, and often the application of the law, are local. Moreover, with the food item increasing in popularity, demand for sriracha and Huy Fong's business pressures were global. This reflects a complex dynamic where local control can be in conflict with global forces. A cautionary lesson arises from Huy Fong's move to Irwindale. This lesson suggests that one day farmers, ranchers, food processors, restaurant owners, mobile vendors, or eaters may find themselves embroiled in local politics in order to keep planting, manufacturing, cooking, or eating food. These local controversies may fuel food hysteria far from the site of conflict.

²⁸⁸ See *supra* notes 207–11 and accompanying text.

²⁸⁹ See AMERICAN FACTFINDER, *supra* note 4.

Second, the privileges of local government law stand out. Irwindale was able to threaten shutdown of a plant for a widely popular company that makes over sixty million dollars annually. It did this because as a city, it could employ a city attorney to bring lawsuits and city residents pressured the city to do this. More importantly, public nuisance doctrine offers cities a great deal of latitude to threaten residents and businesses within its borders. For Irwindale, it is presumed that Council members and city staff chose these legal options because they prioritized the interests of residents, who complained about chile odors and fumes. Even if these harms could not be easily identified nor suffered by many, city leaders attended to virtually any gripe in such a small city. A neighborhood dispute, most likely reserved to a few blocks in this tiny city, provided the spicy fuel for global sriracha hysteria. The lesson becomes local governments may adversely employ their legal powers to new businesses or outsiders.

Third, geography and history help explain how racialized exclusion operates in suburbs even when animus or racist intent is not evident. Irwindale illustrates how private economic forces, in the form of mining companies, secured city incorporation and capitalized on its Latino residents. This reflects a larger pattern in Southern California of small city suburbs established to benefit businesses and to control the makeup of resident populations, often with the racist intent of excluding populations of color. Even though the sriracha-apocalypse was a controversy limited to a small city and a specialty sauce maker, it reflects the critical roles of race, geographic history, and the public influence of private economic interests. Irwindale's past made its government hyper-protective of local interests, if not abusive of non-residents. In sum, sriracha's legal controversies point to larger challenges in American suburbs as racialized exclusions adapt, lack animus, and feed off prior governmental and private choices. Recent fears of Huy Fong's shutdown merely show how quickly these problems can erupt.