

Q&A: Sriracha-Based Lessons For Manufacturers

Mitch Carrel, Partner, Real Estate Practice Group and Food Industry Team,
Freeborn & Peters

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The battle between Sriracha-maker Huy Fong Foods and the city of Irwindale, Calif., has fired up in recent weeks, highlighting the importance of food companies maintaining a positive relationship with their surrounding community. Mitch Carrel spoke with *Food Manufacturing* about the case, what considerations food manufacturers should make when choosing a new plant site and how a facility's location plays an important role in its ability to do business.

What are your thoughts on the Los Angeles County Superior Court's decision to deny the city of Irwindale's request for a temporary restraining order? Will this set a precedent for other similar cases?

*Carrel:*The moving party for a temporary restraining order (TRO) generally must show a likelihood of prevailing on the cause of action and irreparable harm without an adequate remedy at law. The court in the case of Huy Fong Foods determined that the city's request for a TRO on 24-hour notice was "too radical." In lieu of ruling, a hearing was scheduled within a very short time frame.

After subsequently hearing the evidence, the court found that the city was likely to prevail on the public nuisance claim and that irreparable harm may occur. The court also found that the Mitigated Negative Declaration connected with the initial Facility Permit requires the company to reduce the potential for odors if strong odors are verified off-site. Because of these facts and findings, the company was ordered to immediately make changes in its site operations to reduce odors and the potential

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for odors—consistent with its initial permit. However, the court declined to enjoin the “operating or using of the property generally,” as requested by the city in its complaint.

While this ruling may provide a road map for those similarly situated for what may constitute reasonable efforts and measures necessary to avert a finding of a public nuisance, TROs are fact-specific and each case is evaluated on its own merits.

In your opinion, how well is Huy Fong Foods handling this situation, and why? How might this company improve its community relations?

Carrel: Based on news reports and the facts alleged in the city’s complaint, there may be opportunities to improve communications between the parties. The reports suggest that the parties were originally cooperative, but that efforts slowed or halted possibly in response to the city’s suggestion of the installation of an expensive filtration system.

Often, poor communications lead to unnecessary and costly litigation. Instead of allowing communications to falter, maintaining open and timely communications between the local government and company decision-makers is essential. Such efforts not only apprise all parties of the efforts being taken, but also build trust — which is essential to a long-term, collaborative and mutually beneficial relationship.

An action plan should also be developed and implemented. This allows the company to understand the available solutions. Once the options are determined, they should be explored and a final solution diligently pursued. Taking appropriate and timely action also leads to improved community relations.

What considerations should food manufacturers make when considering new plant sites?

Carrel: The site selection process for food manufacturers involves more than just picking a “good location.” It’s the process of evaluating your options by clarifying your short- and long-term goals, establishing the measurable objectives you want to reach, and weighing the entitlement and incentive opportunities available to help you get there.

To best understand all available options and opportunities, a site selection strategy should be developed. The strategy should address the need for flexible zoning approvals that allow for future expansion — in capacity as well as product lines. If possible, the zoning should not only address current and future needs, but also efforts that may be taken to minimize risk that incompatible uses may put the company at an operational disadvantage.

When evaluating possible new sites, companies should begin by looking at a lot of options, and then use their goals and objectives to narrow the field. The site selection strategy should include a coordinated outreach plan to ensure timely communications with interested parties, which may include community members as well as local businesses and government officials and staff. These and other

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considerations — including evaluation of financial incentive opportunities, the local workforce and a comparison of operating costs for each option — should help a company narrow the field to three to five locations.

A successful site selection strategy involves coordinated efforts to secure entitlements and other approvals, permits and licenses. This usually requires early and heavy coordination with government authorities and other community members to get the best results, to ensure proper timing for receipt of the necessary approvals and to ensure compatibility.

What are some common performance standards and other restrictions that cities may impose on food companies?

Carrel: Common performance standards include restrictions on noise, vibration, lighting and particulate matter. There may also be limitations on 24-hour operations and roadway use for heavy truck traffic. These and other limitations should be evaluated during the due diligence portion of the site selection process. It is also important to ensure that all potential operations and planned and proposed uses within the property legally are permitted to avoid any operational issues or business interruption.

How can food manufacturers help ensure their operations are compatible with the surrounding community, and how can companies best engage in community outreach?

Carrel: As part of the site selection process, the proposed business uses and operations should be evaluated to ensure compliance with zoning and other regulations and restrictions. However, as the Huy Fong Foods' situation illustrates, companies may also be subject to other claims. Effective community outreach efforts may provide the necessary nexus and community connection to avoid unnecessary and costly community disputes. Best practices for community outreach generally include the commencement of a dialogue and the building of trust between interested parties at the time of business inception, rather than after a problem arises.

Community outreach involves ongoing and continuous efforts to positively integrate a business into the community, and it is recommended that businesses have a community outreach plan.

Becoming a constructive part of the community allows a company to communicate directly with other community stakeholders. It also allows the company to be an active participant on issues that may impact the community — and ultimately its own business interests. These efforts are dynamic and may take many forms. A combination of messaging, local hiring, support for local interests and integration with the local community may all be part of a coordinated outreach plan.

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and helping them secure land use and zoning approvals, public incentives, local regulatory and siting approvals, as well as performing zoning due diligence.

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