

Written Communication - Agenda Item No. 10.B.

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Subject: Online Form Submittal: City Council Written Communication
Date: Monday, September 8, 2025 11:11:18 AM

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Council Meeting Date 9/17/2025

Please check one: Agenda Item

Agenda Item No. *Field not completed.*

Please check one: Against

First Name	Allan
Last Name	Cohen
Street Number	1230
Street Name	Rosecrans
Street Type	Avenue
Apt #	Suite 400
City	Manhattan Beach
State	CA
Zip	90266
Phone Number	<i>Field not completed.</i>
Email Address	acohen@cjbllp.com; tstephen@cjbllp.com
Representing: (self, name of organization, or other party)	Raymond Man-Shu Chan and Cindy Chung Chan, trustees of the Chan Family Trust, and Raymond Man-Shu Chan, trustee of the Chan Family Living Trust
Written Communication	<p>Our office, Cohen Johnson Bartlett LLP, represents Raymond Man-Shu Chan and Cindy Chung Chan, trustees of the Chan Family Trust, and Raymond Man-Shu Chan, trustee of the Chan Family Living Trust, in connection with the City of Monterey Park's (the "City") efforts to pursue relief for alleged public nuisance conditions at 795 W. Garvey Ave., Monterey Park, California 91754 (the "Property"). Timothy E. Campen, the City's attorney, notified us that the City intends to conduct a public hearing on September 17, 2025, to determine whether the Property constitutes a public nuisance. In light of this, and the concurrent litigation commenced by the City, we sent a letter to the Mr. Campen to request the City dismiss our clients from all legal and administrative proceedings concerning the alleged public nuisance at the Property, and refrain from asserting any claims or imposing any liability against them (see attached letter). We respectfully request the City Council also take into consideration the attached letter during the September 17, 2025, hearing.</p>
You can also upload your written communication	2025-08-27 A. Cohen Ltr to T. Campen.pdf

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Direct: (213) 594-4722
acohen@cjbLLP.com

August 27, 2025

Via Email (TCampen@bwslaw.com)

Timothy E. Campen, Esq.
BURKE WILLIAMS & SORENSEN, LLP
444 S. Flower Street, 40th Floor
Los Angeles, CA 90017

Re: Notice of Public Nuisance Hearing – 795 W. Garvey Ave., Monterey Park, CA 91754

Dear Mr. Campen:

We write on behalf of our clients, Raymond Man-Shu Chan (“Raymond”) and Cindy Chung Chan (“Cindy”), trustees of the Chan Family Trust (the “CFT”), and Raymond, trustee of the Chan Family Living Trust (the “CFLT”), in connection with the City of Monterey Park’s (the “City”) efforts to pursue relief for alleged public nuisance conditions at 795 W. Garvey Ave., Monterey Park, California 91754 (the “Property”).

Specifically, we request the City dismiss Raymond and Cindy, trustees of the CFT, and Raymond, trustee of the CFLT, from all legal and administrative proceedings concerning the alleged public nuisance at the Property, and refrain from asserting any claims or imposing any liability against them. As set forth below, based on relevant California law governing public nuisance claims, our clients are neither necessary nor indispensable parties to the current administrative proceeding (and the prior civil litigation) since their actions are not a substantial factor in creating or causing the alleged nuisance.

California courts have consistently held that public nuisance liability does not arise solely from ownership of the property on which the nuisance exists. In *People v. Superior Court*, the court held “ownership of the land upon which a public nuisance is maintained does not, of itself, make the owner an indispensable party defendant in an action to abate the nuisance.” 81 Cal. Rptr. 555, 557 (1969). This is because liability for public nuisance flows directly from the defendant’s role in creating or causing nuisance; it does not stem from ownership or control of the property in question. See *People v. ConAgra Grocery Products Co.*, 17 Cal. App. 5th 51, 109 (2017).

Additionally, in *People v. ConAgra Grocery Products Co.*, the court noted “liability for nuisance does not hinge on whether the defendant owns, possesses or controls the property, nor on whether

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he is in a position to abate the nuisance; **the critical question is whether the defendant created or assisted in the creation of the nuisance.**" *Id.* (emphasis added).

Similarly, in *Citizens for Odor Nuisance Abatement v. City of San Diego*, the court held "causation is an essential element of a public nuisance claim." 8 Cal. App. 5th 350, 359 (2017). To succeed on a public nuisance claim "plaintiff must establish a 'connecting element' or a 'causative link' between the defendant's conduct and the threatened harm." *Id.*

As evidenced by the discovery responses in the civil litigation, our clients had no involvement in the construction project at the Property, and there is no connection between their actions and the alleged nuisance. Accordingly, it is a misapplication of the principles that govern public nuisance to include our clients as parties to any proceedings concerning the alleged public nuisance based solely on their ownership interests in the Property.

Furthermore, to include our clients as parties based on a strict liability interpretation of the applicable municipal code, MPMC § 4.30.50, contravenes California public policy. Traditionally, strict liability is only narrowly applied in California to cases involving dangerous animals, ultrahazardous activities, and defective products. *Lussier v. San Lorenzo Valley Water Dist.*, 206 Cal. App. 3d 92, 101–02 (1988). Even if MPMC § 4.30.50 is construed to impose strict liability on property owners, the plaintiff is still required to demonstrate the defendant's conduct caused the plaintiff's harm. *See Daly v. Gen. Motors Corp.*, 20 Cal. 3d 725, 733 (1978) (holding "strict liability has never been, and is not now, absolute liability"). Specifically for public nuisance claims, plaintiffs must demonstrate that the defendant's conduct was a "substantial factor" in causing the alleged harm, as recognized in *Birke v. Oakwood Worldwide*. *See* 169 Cal. App. 4th 1540 (2019).

Here, outside of our clients' small ownership interests in the Property, they are not involved with the management of the Property or any construction projects at the Property. Our clients have not participated in any decision-making related to the current construction project, nor have they played any role in hiring contractors or personnel involved in the work. Moreover, they were neither consulted nor asked to provide input concerning any decisions related to the current construction project.

Instead, the other owners, Edward ("Edward") and Howard Chan ("Howard"), exercised exclusive control over the day-to-day management of the Property and all construction matters, including all review, management, and decision-making related to the current construction project.

It is apparent our clients played no role in creating, contributing to, or maintaining the alleged public nuisance, and thus, were not a "substantial factor" in causing the public nuisance. As a result, the causation element necessary to support a public nuisance claim against our clients is absent.

For these reasons, we request the City dismiss our clients from all legal and administrative proceedings related to the alleged public nuisance and refrain from asserting any claims or

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imposing any liability against them, as their inclusion is not supported by the facts or applicable legal standard.

Sincerely,

COHEN JOHNSON BARTLETT LLP

A handwritten signature in blue ink, appearing to read "A.S. Cohen", followed by a long horizontal line extending to the right.

Allan S. Cohen

cc: Client (via e-mail)

**CONTRACT RE COMPLETION OF CONSTRUCTION AT
795 W. GARVEY AVE., MONTEREY PARK "7 LEAVES PROJECT"
AND CONSTRUCTION SCHEDULE**

This Agreement between Edward M. Chan and Howard M. Chan (collectively "Owners") and Tar Khong (Thomas) Vong ("Contractor") is made on September 16, 2025 at Monterey Park, California.

1. THE PARTIES

Owners are the owners of the real property at 795 W. Garvey Ave., in Monterey Park at the corner of Atlantic Boulevard and Garvey Avenue. Owners are in the final stages of completing a commercial building at the site which will operate as a 7 Leaves Café with additional commercial space. ("7 Leaves Project") Contractor is and has been a licensed general contractor since 1992. Neither Contractor, nor Contractor's firm, Solidway Construction, Inc. has ever been named as a defendant in a lawsuit. The Parties warrant that they will fully cooperate in good faith to achieve the purpose of this Contract, and to work in good faith to timely and fully resolve any concerns raised by the City of Monterey Park regarding the status of the 7 Leaves Project.

2. PURPOSE

Owners wish to expedite completion of the 7 Leaves Project. Owners' first contractor's license expired, leading to its termination by Owners. Owners' second licensed general contractor abandoned the 7 Leaves Project without informing Owners. Owners accordingly have dealt directly with their various subcontractors and suppliers. Upon retaining Contractor, Owners retained the same suppliers in order to expedite completion. Because Owners have historically dealt with their subcontractors directly, Owners continued to do so in order to preserve an established practice. The Parties now wish to vest full decision-

making power on construction matters, including the direction of all subcontractors and suppliers, in Contractor.

3. DUTIES

A. CONTRACTOR'S RIGHTS AND DUTIES

Contractor shall be fully empowered to make and shall be fully responsible for all substantive decisions relating to construction matters in connection with the 7 Leaves Project. Contractor is fully empowered and solely responsible for directing and overseeing the work of all of Owners' existing subcontractors and suppliers and such subcontractors and suppliers as are retained during the duration of this Contract. Contractor warrants that Contractor will take all actions in order to ensure that the 7 Leaves Contract is completed in as timely a manner as is possible.

B. OWNERS' RIGHTS AND DUTIES

Owners warrant that now and through the duration of this Contract, Owners have and shall continue to have, at all times, monies on reserve sufficient to fully fund completion of the 7 Leaves Project and all stages thereof for which Owners are financially responsible. Owners warrant that Owners shall timely and fully pay their subcontractors and suppliers and have and will continue to have sufficient monies to do so, with the exception that Owners may withhold payment in the event of a bona fide dispute between Owners and subcontractors or supplier regarding the sufficiency of work performed or services rendered.

Owners acknowledge that costs of completing the 7 Leaves Project may be subject to increase because of (1) current immigration policy which the Parties anticipate will increase the price of construction labor, and (2) federal tariff policies, which the Parties anticipate will increase the price of supplies from foreign vendors. Owners warrant that, notwithstanding these contingencies, Owners do and will continue to have sufficient funds ready and available to fully fund completion of the 7 Leaves Project and will timely expend those funds as agreed upon under the provisions of this Agreement.

Owners warrant that all substantive decisions regarding general construction services, and the order and manner of construction, shall be made by Contractor. Owners agree that Contractor shall be the first and primary contact for communications with all subcontractors and suppliers for the 7 Leaves Project, except in cases of those subcontractors or suppliers with whom, in the discretion of Contractor, communication with Owners directly would better effect project completion.

The Parties agree that Contractor will be the first point of contact with City staff and City officials regarding progress of the Project, except in those cases where the Parties agree that direct communication between Owners and the City is better suited to bringing the 7 Leaves Project to conclusion.

4. GOOD FAITH CONSTRUCTION SCHEDULE

The Parties agree to proceed, in good faith, in accordance with the following Construction Schedule.

a. **Sidewalk:** Work commenced on September 8, 2025 and is ongoing. The Parties shall make every reasonable effort to complete all sidewalk work *within three weeks* of the date of this Contract.

Identity of contractor: MOA Construction

Phone: (909) 637-5333

b. **LID System:** Presently backfilling dirt. Chamber backfill will be done by September 25, 2025.

Identity of contractor: MOA Construction (same as above).

Remaining pumps will require excavations and pump stations and plumbing into the floor. Completion date: October 17, 2025 by MOA Construction.

c. Installation of **pump chambers and associated piping** will be completed by October 17, 2025. This includes the Wetland Pump, overflow sidewalk pump, and sewer pump. All three will be installed by October 17, 2025

Identity of contractor: **Santa Fe Water Systems, and
Shun Liang Phone: (510) 773-
8029**

d. **Power Panel:** The Parties shall make every reasonable effort to complete all power panel work **within two weeks** from the date of this Contract.

Identity of contractor: **TE Construction
Phone: (626) 236-6637**

e. **Roof Cap:** The Parties shall make every reasonable effort to complete all roof cap work within two weeks after the date of delivery of materials. Expected delivery date is September 30; installation will be complete by October 15, 2025.

Identity of contractor: **TBD**

f. **Parking Lot:** The Parties shall make every reasonable effort to complete all sidewalk work within seven weeks from the date of this Contract. *Date of completion to be determined after all necessary equipment is delivered. Estimated start date early November 2025; estimated completion date: December 1, 2025.*

Identity of contractor: **The parties plan to use MOA
Construction.**

g. **Landscaping:** Commencement date is contingent on completion of earlier project stages. Estimated completion date: Mid to late February 2026.

Identity of contractor: **Gamboa Landscaping.**

Phone: (714) 260-6150.

h. Power Installation: The bulk of hard electrical equipment to be done by December 31, 2025. Completion of the working system is contingent on decisions to made independently by the City and Southern California Edison.

i. Planning and Building & Safety inspection: the Parties will complete the project in February or March 2026. After completion, Contractor will then call City inspectors re final approvals.

The foregoing schedule is premised upon the absence of adverse circumstances beyond the Parties' control. Should such circumstances arise, the Parties shall, within 7 days of knowledge thereof, notify relevant City staff in order to advise them of the adverse circumstances. The Parties shall make every good faith effort to determine a date which work affected by the adverse circumstances can be completed, where it is possible to do so with reasonable certainty.

The Parties herein are the only parties to this Contract.

Executed on September 16, 2025 at Monterey Park, California.



Edward M. Chan



Howard M. Chan

Tar Kong (Thomas) Vong