



**NOTICE AND AGENDA
SANTA CLARA CITY COUNCIL WORK MEETING
WEDNESDAY, SEPTEMBER 24, 2025
TIME: 4:00 PM**

Public Notice is hereby given that the Santa Clara City Council will hold a Work Meeting in the Santa Clara City Council Chambers located at 2603 Santa Clara Drive, Santa Clara Utah on Wednesday, September 24, 2025, commencing at 4:00 PM. The meeting will be broadcasted on our city website at <https://santaclarautah.gov>.

1. Call to Order:

2. Working Agenda:

A. General Business:

1. Continued discussion regarding Liquor License/Package Agency. Presented by Jim McNulty, Planning Director.
2. Discussion regarding Public Comments. Presented by Brock Jacobsen, City Manager.
3. Discussion regarding Freemont Solar and Battery Power Purchase Agreement. Presented by Gary Hall, Power Director.
4. Introduction of the Santa Clara Royalty and Youth Council. Presented by Councilwoman Burton.
5. Discussion regarding Pet Wall of Fame. Presented by Santa Clara Youth Council.

3. Staff Reports:

4. Adjournment:

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodation during this meeting should notify the city no later than 24 hours in advance of the meeting by calling 435-673-6712. In accordance with State Statute and Council Policy, one or more Council Members may be connected via speakerphone or may by two-thirds vote to go into a closed meeting.

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Santa Clara City limits on this 18th day of September 2025 at the Santa Clara City Hall, on the City Hall Notice Board, at the Santa Clara Post Office, on the Utah State Public Notice Website, and on the City Website at <http://santaclarautah.gov>. The 2025 meeting schedule was also provided to the Spectrum on January 1, 2025.


Selena Nez, CMC
City Recorder

Mayor

Rick Rosenberg

City Manager

Brock Jacobsen



City Council

Jarett Waite

Ben Shakespeare

Christa Hinton

David Pond

Janene Burton

CITY COUNCIL

Meeting Date: September 24, 2025

Agenda Item: 1

Applicant: Santa Clara City

Requested by: jmcnulty@santaclarautah.gov

Subject: Liquor License/Package Agency Discussion

Description:

City staff and legal counsel would like to continue the discussion on this topic with City Council. We previously discussed this item during the August 27, 2025, Council work meeting. Section 5.08, Alcoholic Beverages includes current regulations for liquor licenses within city code. Please see the attached draft copy of potential revisions to this section of city code.

Recommendation: Discussion

Attachments: N/A

Cost: N/A

Legal Approval: N/A

Finance Approval: N/A

Budget Approval: N/A

CHAPTER 5.08
ALCOHOLIC BEVERAGES

SECTION:

5.08.010: Definitions

5.08.020: License Required

5.08.030: Retail Licenses Affected ~~By~~by This Chapter

5.08.040: Application For License

5.08.050: Qualifications Of Licensee

5.08.060: Licenses And Local Consent; Number Permitted

5.08.070: Fees

5.08.080: Current Status ~~Of~~of Other Charges

5.08.090: Certification Of Employees

5.08.100: Unlawful Acts

5.08.110: Proximity Limitations

5.08.120: Grounds For Revocation, Suspension ~~And~~and Refusal ~~To~~to Renew; Notice, Hearings, Appeals

5.08.130: Applicability

5.08.140: Violation; Penalty

5.08.010: DEFINITIONS:

As used in this chapter:

ACT: The Utah alcoholic beverage control act, title 32B, Utah Code Annotated, as amended.

ALCOHOLIC BEVERAGES: "Beer" and "liquor" as those terms are defined in this section.

ALCOHOLIC PRODUCTS: All products that contain at least 63/100 of one percent alcohol by volume or at least one-half of one percent by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combination of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this subsection. "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over the counter drugs and medicines that otherwise come within this definition.

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BEER: All products that contain 63/100 of one percent of alcohol by volume or one-half of one percent alcohol by weight, but not more than four percent (4%) of alcohol by volume or 3.2 percent by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products. "Beer" includes products referred to as malt liquor, malted beverages, or malt coolers.

CHURCH: A building set apart primarily for the purpose of worship in which religious services are held and with which clergy is associated, and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose, and which is tax exempt under the laws of the state of Utah.

CITY: The city of Santa Clara, Utah.

CLASS A LICENSE: A license entitling the licensee to sell beer on the licensed premises in original containers of a size not to exceed one quart, for consumption off the premises.

CLASS B LICENSE: A license entitling the licensee to sell beer in original containers of a size not to exceed one quart capacity for consumption on the licensed premises of a restaurant at which food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business and in connection with a license issued by the state of Utah to operate as an on premises beer retailer. Golf course premises where beer is sold in connection with hot food preparation at the point of sale shall be included as class B licenses.

CLASS C LICENSE: A license entitling the licensee to sell beer in original containers of a size not to exceed one (1) quart capacity for consumption on the licensed premises of a restaurant at which food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business and in connection with a license issued by the State of Utah to operate as a beer only restaurant licensee.

CLASS D LICENSE: A license entitling the licensee to sell wine, and beer in original containers of a size not to exceed one (1) quart capacity for consumption on the licensed premises of a restaurant at which food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business and in connection with a license issued by the State of Utah to operate as a limited service restaurant licensee.

CLASS E LICENSE: A license entitling the licensee to sell beer in original containers or on draft in a quantity not to exceed two (2) liters for consumption on the licensed premises and in connection with a license issued by the State of Utah to operate as a private club.

CLASS F LICENSE: A license entitling the licensee to store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a full-service restaurant, at which food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business, and in connection with a license issued by the State of Utah to operate as a full-service restaurant licensee.

CLASS G, BAR ESTABLISHMENT LICENSE: A license entitling the licensee to operate a business primarily engaged in serving alcoholic beverages for on-premises consumption. However, unlike a restaurant license, food service is not required, although many

establishments choose to offer food. Minors are not permitted to enter areas designated under a bar license.

CLASS H, TYPE 5 PACKAGE AGENCY LICENSE: A license entitling the licensee to operate a package agency where they may sell only the alcoholic beverages they manufacture, directly to consumers for off-premises consumption. This license as well as a manufacturing license is required as it cannot exist independently. This license allows for the retail sales of sealed containers of beer, wine or spirits, for customers to take home.

CLASS I, MANUFACTURING LICENSE: A license entitling the licensee to produce and store alcoholic beverages within Utah. This license as well as a type 5 package agency license is required as it cannot exist independently. This license allows the manufacturing entity to produce, package, and distribute its product. This license allows for direct-to-consumer sales.

INTERDICTED PERSON: A person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

LICENSE: Unless the context requires otherwise, ~~refers it refers~~ generally to any license or permit issued under this chapter.

LICENSE OFFICER: The Business License Officer of the City.

LICENSED PREMISES: Any property, building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic beverages or products by a licensee or permittee.

LICENSEE: Any person issued a license by the City to sell, manufacture, store or allow consumption of alcoholic beverages on premises owned or controlled by the person.

LIQUOR: Alcohol, or any alcoholic, spirituous, vinous, fermented, malt or other liquid, or combination of liquids, a part of which is spirituous, vinous, or fermented, and all other drinks or drinkable liquids that contain more than one-half of one percent of alcohol by volume and are suitable to use for beverage purposes. "Liquor" does not include any beverage defined as beer, malt liquor, or malted beverage that has an alcohol content of less than four percent (4%) alcohol by volume.

LOW ALCOHOL BEER OR NONALCOHOLIC BEER: Any product containing alcohol in an amount less than one-half of one percent by weight and obtained by fermentation, infusion, or decoction of malted grain. Low alcohol or nonalcoholic beer may or may not contain hops or other vegetable products.

MINOR: Any person under the age of ~~twenty-one~~twenty-one (21) years.

PACKAGE AGENCY: A retail liquor location operated under a contractual agreement with the department, by a person other than the State, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

PERMITTEE: Any person issued a permit by the City to perform acts or exercise privileges as specifically granted in the permit.

PERSON: Any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

PRIVATELY HOSTED EVENT OR PRIVATE SOCIAL FUNCTION: A specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests. "Privately hosted event" or "private social function" does not include events or functions to which the general public is invited, whether for an admission fee or not.

PUBLIC BUILDING: Any building or permanent structure owned or leased by the State, a county, or local government entity that is used for public education, transacting public business, or regularly conducting government activities. "Public building" does not mean or refer to any building owned by the State or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

RESIDENCE: The person's principal place of abode within Utah.

RESTAURANT: Any business establishment where a variety of foods is prepared and complete meals are served to the general public, located on premises having adequate culinary fixtures for food preparation and dining accommodations and which is engaged primarily in serving meals to the general public.

SCHOOL: Any building used primarily for the general education of minors. "School" does not include nursery schools, infant daycare centers, or trade or technical schools.

SELL, SALE, AND TO SELL: Any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal or proprietor, or an agent, servant or employee, unless otherwise defined in this title or the rules made by the City.

SHAREHOLDER: Any person who owns twenty percent (20%) or more of a corporation's stock.

SINGLE EVENT LIQUOR LICENSE PERMIT: A permit entitling the permittee to store, sell, serve and allow consumption of alcohol on specifically designated premises for a period not to exceed seven (7) consecutive or non-consecutive days, and by connection with a bona fide convention, civic or charitable enterprise conducted by a corporation, church, political organization, or incorporated association, or a recognized subordinate lodge, chapter or unit thereof.

SPECIAL USE PERMIT: A permit entitling the permittee to store, serve and allow consumption of alcohol on specifically designated premises, issued to a person who qualifies in one (1) of the following categories: a) a religious organization for religious wine use; b) a person engaged in an industrial or manufacturing pursuit, for industrial or manufacturing use; or c) a person engaged in a scientific or educational pursuit, for

scientific or educational use. The special use permit when issued shall indicate which category of special use is authorized under the permit.

STATE STORE: A facility for the sale of package liquor located on premises owned or leased by the State of Utah and operated by State employees. "State store" does not apply to any licensee, permittee, or package agency.

WINE: Any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added. "Wine" is considered "liquor" for purposes of this title. (Ord. 2024-16: Ord. 2017-11: Ord. 2015-20)

5.08.020: LICENSE REQUIRED:

It is unlawful for any person, licensee, permittee, or their officers, managers, employees, or agents to keep for sale, or to directly or indirectly or upon any pretense or device offer to sell, sell, or otherwise furnish or supply to another, any alcoholic beverage or product without first having procured appropriate licenses therefor and except as provided by this chapter. (Ord. 2015-20)

5.08.030: RETAIL LICENSES AFFECTED BY THIS CHAPTER:

Retail licenses and permits subject to the provisions of this chapter shall be classified into the following types (as defined in section 5.08.010 of this chapter):

Class A

Class B

Class C

Class D

Class E

Class F

Class G. Bar Establishment License

Class H. Type 5 Package Agency License

Class I. Manufacturing License

Single Event Liquor License~~event permit~~

Special ~~u~~Use ~~p~~Permit

No other sales or other furnishing or supply of alcoholic beverages shall be permitted in the City except those that meet the definition of one (1) or more of the above classifications,

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and meet all the requirements and conditions of this chapter. No other license classifications shall be authorized or permitted under this chapter, regardless of whether such classifications are otherwise authorized or permitted under the Act or other applicable Utah law. A license for the sale of any alcoholic beverage shall be required as provided in the Act, the provisions of which are adopted insofar as applicable to this chapter. In addition to the license required by this chapter, any person engaged in the sale of alcoholic beverages or products must obtain a business license and otherwise comply with the provisions of this chapter. Any license issued ~~hereunder~~ here under that is not a special event permit with a finite duration shall expire on December 31 of the year for which it is ~~issued~~ issued, and a renewal thereof must be obtained. (Ord. 2017-11: Ord. 2015-20)

5.08.040: APPLICATION FOR LICENSE:

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A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the License Officer, and containing at a minimum the applicant's name, social security number, date of birth, and residence address, the location of the proposed licensed or permitted premises, the class of license desired, any convictions for crimes which could disqualify the applicant as a licensee or permittee, and a space for the applicant to sign, under penalty of law, certifying that the applicant has complied with all requirements and possesses all qualifications for issuance of a license and that all information contained in the application is true. If the applicant is a partnership, corporation, limited liability company, or other entity, the names and addresses of all partners, officers, directors, members, joint venturers, trustees, and shareholders must be stated. Applications by a partnership, limited liability company, or joint venture must be ~~subscribed~~ subscribed to and sworn to as set out above by all partners or members. Applications by a corporation must be subscribed and sworn to as set out above by the president and secretary or trustees.

B. Any application submitted under this chapter shall be accompanied by:

1. ~~A nonrefundable one hundred fifty dollar~~ fifty-dollar (\$150.00) application fee for a Class A, B, C, D, E, F, G, H, or I license, or a nonrefundable fee of one hundred dollars (\$100.00) for a Single Event Liquor License or Special Use Permit;

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2. An issuance fee as prescribed in subsection 5.08.070B of this chapter, which is refundable if a license is not issued;

3. A copy of the applicant's current business license or application therefor;

4. For applicants that have not previously obtained a license from the City, character references from at least three (3) individuals who personally know the applicant (or if a business entity, the agent for applicant), and whom the City may contact for an opinion on the moral character of applicant and applicant's fitness to obtain a license; and, if the applicant has previously held a license in the State of Utah, the references shall have

personal knowledge of the applicant's conduct in relation to said prior licensing or permitting;

5. Evidence of the distance to the nearest school, church, public library, public playground or park;

6. A signed consent form stating that the licensee or permittee will permit any authorized representative of the City or any law enforcement officer unrestricted right to enter the licensed premises; and

7. Any other information the License Officer may require.

C. All applications for any license under this chapter shall be made pursuant to this section regardless of whether the application is for a new license, renewal, or due to a change of ownership, a change of lessee of an existing licensed premises, or a change of location of an existing licensed premises. However, an applicant renewing an existing license which is in good standing shall not be required to provide new references or new evidence of distance, and city council approval shall not be required for renewal provided that no material changes have occurred that would warrant a new city council review. However, the city council ~~may~~ may, upon recommendation of the license officer or mayor or of its own volition elect to review any renewal application as if it were a new application hereunder.

D. All applications and accompanying information shall be returned to the license officer.

E. The license officer shall submit copies of the application and accompanying information to the fire department and police department.

F. After receiving the signed, written approval from each of the entities named in subsection E of this section, the application and accompanying information, along with a complete criminal history of the applicant and all appropriate partners, members, officers, directors, agents, and shareholders, shall be presented for review by the city marshal and approval by the city council.

G. The city council shall issue a license only after considering the location, physical characteristics, capacity, and condition of the proposed licensed premises, the character, background, management experience and qualifications of the applicant, the nature and class of the proposed license, and public input with respect to issuance of the license, and after finding that the public convenience requires and the best interests of the community will be substantially served by the issuance of the license.

H. Whenever a license is made available under this chapter, the city shall give notice of the availability of the license in each category by posting the notice in the city office building and by publishing such notice in a newspaper of general circulation in the city. The notice shall provide a deadline of no less than fourteen (14) days within which to make application for the available license. Upon expiration of the deadline and review of all applications submitted in accordance with this section, a hearing shall be set before the city council to consider issuance of any available license. In the event that the number of applications exceeds the number of available licenses or permits in any one category, the

available license may be issued to that applicant or applicants who, in the determination of the city council, best qualify and which will best serve the interests of the community as determined under this section. No provisions of this chapter shall require the city to issue any license applied for under this chapter.

I. Any license issued under this chapter shall be to conduct permitted activities only at the specific place and in the specific manner provided in such license. A separate license shall be obtained for each license classification and for each different location for which the applicant desires to carry on activities regulated by this chapter.

J. No license issued under this chapter shall be assigned, transferred, leased, subleased, sold, or otherwise transferred, except that, in the sole discretion of the city council, a transfer of a license may be permitted upon a change of location where the owner remains the same, or upon a change of owners where the location remains the same. In either case, the same requirements as to the location of premises and the character and qualifications of the licensee shall apply, and the same fees will be required as in the case of the issuance of an original license.

K. A license issued under this chapter which is not used by the licensee within or a period ~~in excess of more than~~ ninety (90) consecutive days shall automatically revert to the city and shall no longer have any validity. (Ord. 2015-20)

5.08.050: QUALIFICATIONS OF LICENSEE:

A. Every licensee hereunder shall be of good moral character, over the age of ~~twenty~~ ~~one~~ ~~twenty-one~~ (21) years, and a bona fide citizen of the United States or a legal resident alien. If the applicant is a partnership, limited liability company, or other entity, it shall be qualified to do business in the ~~state~~ ~~state~~, and each partner or member shall meet the qualifications of a licensee. If the applicant is a corporation, it shall be qualified to do business in the state, and each officer, director, trustee, or shareholder shall meet the qualifications of a licensee. Any partnership, limited liability company, corporation, or other entity shall hold its license through an agent who shall also meet all the qualifications of a licensee. Such agent shall be personally responsible for assuring compliance with this chapter and the act and shall be subject to the penalties for any violation of this chapter or the act. Upon the death, resignation or discharge of its agent, a partnership, limited liability company, corporation, or other entity shall, within fifteen (15) days, appoint another agent to qualify for and hold the license. Failure to designate a substitute agent within the time required shall be grounds for suspension, revocation or refusal to renew the license.

B. No license shall be issued to any person who has violated any provision of this chapter, this title, or the Act, or who has violated any provision of a license to sell alcoholic beverages issued by the City or any other governmental agency within the State of Utah, or who has had such a license revoked. No license shall be issued to any person who has been convicted of a felony or any violation of any law or ordinance relating to alcoholic beverages, driving under the influence, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude, or who has pleaded guilty to or forfeited bail on a

charge of having committed a felony or of having violated any such law or ordinance. No partnership, limited liability company, corporation or other entity shall be issued a license or have its license renewed unless it has on file with the License Officer a list of its partners, members, trustees, officers, directors and shareholders. Any change in partners, members, trustees, officers, directors or shareholders of a partnership, limited liability company, corporation, or other entity which occurs after the issuance of a license under this chapter shall be immediately reported to the License Officer. No partnership, limited liability company, corporation, or other entity shall be issued a license or have its license renewed if any of its partners, members, trustees, officers, directors, or shareholders have been convicted of a felony or any violation of any law or ordinance relating to alcoholic beverages, driving under the influence, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude, or have pleaded guilty to or forfeited bail on a charge of having committed a felony or of having violated any such law or ordinance. (Ord. 2015-20)

5.08.060: LICENSES AND LOCAL CONSENT; NUMBER PERMITTED:

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A. The total number of Class A licenses issued within the City shall not exceed that number determined by dividing the population of the City by one thousand (1,000). However, the City Council shall have discretion to issue a Class A license without regard to the quota set forth above, if the licensee falls within the category of establishment where the total square footage devoted to the sale of grocery or related items exceeds ten thousand (10,000) square feet, total employees will exceed thirty five (35), and the impact of the applicant upon the economy of the City is determined to be beneficial.

B. The total number of Class B licenses issued within the City shall not exceed that number determined by dividing the population of the City by one thousand (1,000). The City Council shall have discretion to issue Class B licenses in the number determined appropriate in accordance with the standards set forth in section 5.08.010 of this chapter.

Upon application for a Class B license, or renewal thereof, the licensee shall submit an exact duplicate of the menu utilized, together with a floor plan showing all seating and the arrangement thereof. Determination of whether an establishment is dedicated primarily to restaurant purposes shall be made by the City Council. A Class B license shall not authorize the sale, storage, or service of any alcoholic beverage other than beer.

C. The total aggregate number of Class C, Class D, ~~and Class F~~, Class G, Class H, and Class I licenses issued within the City shall not exceed that number determined by dividing the population of the City by one thousand (1,000). The City Council shall have discretion to issue Class C, Class D, and Class F licenses in the number determined appropriate in accordance with the standards set forth in this chapter.

Upon application for a Class C, ~~and Class D~~, ~~or Class F~~ license, Class G, Class H, or Class I, or renewal thereof, the licensee shall submit an exact duplicate of the menu utilized, together with a floor plan showing all seating and the arrangement thereof. Determination of whether an establishment is dedicated primarily to restaurant purposes shall be made by

the City Council upon initial application, and, in the City Council's discretion, prior to renewal.

D. The total number of Class E licenses issued within the City shall not exceed that number determined by dividing the population of the City by five thousand (5,000).

E. A license issued by the State of Utah for sale of alcoholic beverages shall not affect the need for a separate license from the City to sell, offer to sell, furnish, or supply alcoholic beverages, and holding a license under one (1) class of license under this chapter shall have no effect on the applicability of regulations or quotas governing other classes.

F. Population for determining the number of licenses shall be by the most recent United States decennial or special census or by any other population determination made by the United States government or the State of Utah. If the City Council wishes to make more frequent determination of population than what may be available from the above sources, it may do so based on such formula as it may reasonably consider to be accurate, and in such event it may abandon that determination upon issuance of a new census figured by the United States or State of Utah if it believes the latter to be more accurate.

G. Single event permits including a single event liquor license associated with a special event permit may be approved by the City Manager or designee(s) without reference to or effect upon the quotas herein provided. Local consent must also be approved by the city as outlined in Chapter 12.22 of city code. (Ord. 2024-16: Ord. 2017-11: Ord. 2015-20)

5.08.070: FEES:

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A. A non-refundable application fee of ~~one hundred~~ fifty dollars (\$~~150.00~~) shall be submitted with any application for a ~~Class A, B, C, D, E, F, G, H, or I~~ non-original license as per the adopted Development Fee Schedule. A non-refundable application fee of \$100.00 shall be submitted for a Single Event Liquor License or Special Use Permit as per the adopted Development Fee Schedule.

B. At the time of application for an original license or renewal, the applicant shall pay an issuance fee as ~~follows:~~

~~Class A license~~	~~\$50.00~~
~~Class B license~~	~~50.00~~
~~Class C license~~	~~50.00~~
~~Class D license~~	~~50.00~~
~~Class E license~~	~~50.00~~
~~Class F license~~	~~50.00~~
~~Single event permit~~	~~50.00~~
~~Special use permit~~	~~50.00~~

C. If a license is issued on or after July 1 in any year, one-half (1/2) of the annual license fee shall be charged.

D. The fee payable for a change of agent, as provided in section 5.08.050 of this chapter, shall be one hundred fifty dollars (\$150.00). (Ord. 2017-11: Ord. 2015-20)

5.08.080: CURRENT STATUS OF OTHER CHARGES:

No license shall be issued to any applicant who is in arrears in the payment to the City for any business license, or who is otherwise indebted to the City. Failure to pay business license fees or other charges assessed by the City when due shall be a basis for suspension or revocation of any license issued hereunder. (Ord. 2015-20)

5.08.090: CERTIFICATION OF EMPLOYEES:

The right to a license hereunder shall be conditioned at all times upon compliance with the following:

A. All employees of a licensee and any licensee who will be authorized to sell, furnish or serve alcoholic beverages to the public shall complete, within thirty (30) days after the issuance of a license or commencement of employment, an instruction seminar as set forth in section 62A-8-403, Utah Code Annotated, and shall thereafter maintain a current certification under this section. Any licensee or employee who sells, furnishes or serves alcoholic beverages without obtaining the certification required herein shall, in addition to any other penalty provided herein, be prohibited from obtaining certification for a period of one (1) year from the date of the violation.

B. No certificate shall be issued to an employee or licensee who has been convicted of a drug or alcohol related offense during a period of one (1) year preceding the application for a certificate, unless this condition is expressly waived by the Chief of Police after investigation of the circumstances. If charges are pending against an employee or licensee arising out of a drug or alcohol related offense, no certificate shall be issued until such charges are resolved and, if there is a conviction, none shall be issued for a period of one (1) year thereafter.

C. If any certified employee or certified licensee is convicted of any drug or alcohol related offense, including the crime of driving under the influence, their certificate shall be automatically revoked and such employee or licensee shall not be permitted to sell, furnish or serve alcoholic beverages for a period of one (1) year and until a new certification is obtained.

D. Any revocation of certification under subsection C of this section may be appealed to the City Council within ten (10) days after the mailing of written notice by the City of such

revocation. Such appeal shall proceed in the manner prescribed in section 5.08.120 of this chapter. (Ord. 2015-20)

5.08.100: UNLAWFUL ACTS:

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It is unlawful:

A. For a person to buy for resale, sell or deal in alcoholic beverages without first having procured appropriate licenses duly issued by the City, and otherwise complying with the provisions of this chapter, the Act, and any other applicable law.

B. For any retail licensee to purchase alcoholic beverages or products from any person other than a wholesaler licensed in accordance with the Act.

C. For a licensee or other person to sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or product to any person under the age of ~~twenty-one~~twenty-one (21) years.

D. 1. For any person under the age of ~~twenty-one~~twenty-one (21) years to purchase, attempt to purchase, solicit another person to purchase, possess, or consume any alcoholic beverage or product, unless specifically authorized by this title;

2. For any person under the age of ~~twenty-one~~twenty-one (21) years to misrepresent his age or for any other person to misrepresent the age of a minor, for the purpose of purchasing or otherwise obtaining an alcoholic beverage or product for a minor; or

3. For any person under the age of ~~twenty-one~~twenty-one (21) years to possess or consume any alcoholic beverage while riding in a limousine or chartered bus.

E. For a licensee to employ a minor to sell or dispose of any alcoholic beverage.

F. For a licensee or its employee to consume an alcoholic beverage or be under the influence of an alcoholic beverage while on duty.

G. For a licensee or its employee, during that employee's working hours or in connection with such employment or the operation of the licensee's business, to give to or purchase for any other person, accept a gift of, purchase for himself or consume any alcoholic beverage.

H. For a person to sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or product to any person who is apparently under the influence of intoxicating alcoholic beverages or products or drugs or to a person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs.

I. For a Class A licensee or its employee to sell, dispose of, deliver or give beer to any person between the hours of one o'clock (1:00) A.M. and seven o'clock (7:00) A.M.

J. For any Class B, Class C, Class D, or Class F licensee, or any employee of such to sell, dispose of, deliver, or give away, or allow a person to consume beer or other alcoholic

beverages on the licensed premises between the hours of twelve o'clock (12:00) midnight to twelve o'clock (12:00) noon of any day, or on any day of any regular general, primary or special election or Municipal, special district or school election until after the polls are closed. Failure to pick up all drinks and beverages containing alcohol which have not been fully consumed at the closing hours as set forth herein shall be considered permission to consume after the closing hours and shall be a violation of this section.

K. For any Class E licensee, or any employee of such to sell, dispose of, deliver, or give away, or allow a person to consume beer or other alcoholic beverages on the licensed premises between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M. on weekdays and Saturdays, on any day of any regular general, primary or special election or Municipal, special district or school election until after the polls are closed, or on any Sunday or State or Federal legal holiday between the hours of twelve o'clock (12:00) midnight and twelve o'clock (12:00) noon. Failure to pick up all drinks and beverages containing alcohol which have not been fully consumed at the closing hours as set forth herein shall be considered permission to consume after the existing hours and shall be a violation of this section.

L. For any single event or special use permittee or any employee or agent of such to sell, dispose of, deliver, or give away, or allow a person to consume beer or other alcoholic beverages on the licensed premises at any time or date other than as expressly established by approval of the City Council at the time of issuance of the permit, or on any day of any regular general, primary or special election or Municipal, special district or school election until after the polls are closed. Failure to pick up all drinks and beverages containing alcohol which have not been fully consumed at the closing hours as set forth herein shall be considered permission to consume after the closing hours and shall be a violation of this section.

M. For a Class B, Class C, Class D, Class E, ~~or Class F~~, Class G, Class H, or Class I, licensee to employ a person for the purpose of soliciting the purchase of alcoholic beverages by patrons of the establishment for themselves, on a percentage basis or otherwise. No Class B, Class C, Class D, Class E, or Class F licensee shall serve employees or allow a patron of the establishment to give alcoholic beverages to, or purchase alcoholic beverages for, or drink alcoholic beverages with any employee while that employee is on duty.

N. For a Class A licensee to sell beer except in the original container, or to permit beer to be consumed on the licensed premises.

O. For a person to consume liquor in a public building, park, or stadium, except as provided in this title.

P. 1. For any person to sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or product to any person under the age of ~~twenty-one~~twenty-one (21).

2. This section does not apply to the furnishing or supplying of an alcoholic beverage or product to a minor for medicinal purposes by the parent or guardian of the minor or by the minor's physician or dentist, in accordance with this title.

Q. For a person to advertise the sale of beer, except as may be expressly permitted by the Utah Department of Alcoholic Beverage Control, and except for the placement of a license issued under this chapter in a location in or about the licensed premises where it will be visible to the public.

R. For any Class E licensee or State store, or their agent or employee, to permit any person under the age of twenty one (21) years to enter upon or to remain in or about any portion of the licensed premises where any alcoholic beverages are sold, dispensed or consumed, unless that portion of the licensed premises is dedicated primarily to the sale and serving of food. ~~Exception~~Exceptions may be made for a musician or entertainer in a prohibited area only upon express written consent of the Chief of Police.

S. The following acts or conduct in a restaurant licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

1. Employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;

2. Employing or using the services of any person to dance or mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in subsection S1 of this section;

3. Encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

4. Permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, anus, pubic hair, or any portion of these;

5. Permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities in this subsection;

6. Permitting any person to remain in or upon the premises who exposes to public view any portion of that person's genitals or anus; or

7. Showing films, still pictures, electronic reproductions, or other visual productions depicting:

- a. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law,

- b. Any person being touched, caressed, or fondled on the breasts, buttocks, anus, or genitals,

- c. Scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection, or

d. Scenes wherein a person displays the vulva or the anus or the genitals.

T. Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the City.

U. Any violation of subsections E, I through L, R, S and T, inclusive, of this section shall constitute offenses of strict liability against any agent, employee or licensee, and such licensee may be liable in addition to an agent or employee. (Ord. 2017-11: Ord. 2015-20)

5.08.110: PROXIMITY LIMITATIONS:

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No licensee, or establishment vending alcoholic beverages, shall be located closer to any public or private school, church, public library, public playground or park than allowed by state law as set forth in Utah Code Annotated 32B-1-202, unless the city council finds after full investigation that compliance with the distance requirement would result in either: a) peculiar and exceptional practical difficulties, or b) exceptional or undue hardships. In either event the city council may, after giving full consideration to the attending circumstances, following a public hearing in the city, authorize a variance from the distance requirement so as to relieve the difficulties or hardships, provided the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this section. (Ord. 2015-20)

5.08.120: GROUNDS FOR REVOCATION, SUSPENSION AND REFUSAL TO RENEW; NOTICE, HEARINGS, APPEALS:

A. The city council may suspend, revoke, refuse to renew, and the license officer may suspend or refuse to renew, any license issued pursuant to this chapter for any of the following reasons:

1. There occurs on the licensed premises repeated acts of violence.
2. The licensee knowingly submits false or fraudulent material information on any application or document filed with the city.
3. The licensee is on the licensed premises habitually drunk or under the influence of alcohol or illegal drugs.
4. The licensed business is delinquent for more than sixty (60) days in the payment of any fee or charge due to the city.
5. The licensee attempts to, or does, assign, transfer or sell a license in violation of this chapter.

6. The licensee fails to keep for a period of two (2) years, or make available to the city upon reasonable request, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of alcoholic beverages.

7. The licensee is convicted of a felony or any violation of any law or ordinance relating to alcoholic beverages, driving under the influence of alcohol or alcohol related reckless driving, keeping a gambling or disorderly house, or any law or ordinance involving moral turpitude.

8. The licensee violates or fails to comply with this chapter or the ~~act, or act or~~ ceases to possess all of the qualifications required by this chapter or the act.

B. The license officer shall receive all complaints of alleged violation of this chapter and is responsible for ordering through the police department or other appropriate department the investigation of all allegations of a violation of, or noncompliance with, this chapter, the act, or any condition imposed upon the licensee by the license. Upon the license officer's initiation of an investigation or upon the receipt of a complaint and an investigation of the complaint as deemed necessary, the license officer may cause a complaint and notice of hearing to be directed to the licensee setting forth the violations alleged against the licensee, and requesting the licensee, within ten (10) days after service of the complaint and notice of hearing, to appear by filing with the license officer an answer to the complaint. Failure of the licensee to answer is deemed an admission by the licensee of the licensee's commission of the act charged in the complaint. The license officer or the city council may then immediately begin disciplinary proceedings. The license officer may set a hearing before the city council on any of the grounds set forth in subsection A of this section. The city recorder and investigating officers shall have all those rights and duties set forth in the act or the rules of the Utah department of alcoholic beverage control. The complaint and notice of hearing provided herein shall be sufficient if it conforms to the rules of the Utah department of alcoholic beverage control.

C. A hearing shall conform to the requirements of the rules of the Utah department of alcoholic beverage control. The city council shall conduct a hearing and may accept any ~~relevant and relevant~~ material evidence and testimony and apply any evidentiary rules set forth in the rules of the Utah department of alcoholic beverage control. The city shall prepare an official record of the hearing, including all testimony recorded mechanically or stenographically and all exhibits introduced. The city is not required to transcribe such record except pursuant to an appeal, except that, upon written request and receipt of a reasonable fee for transcribing such record, the city may transcribe the record or allow for its transcription by the person requesting it.

D. If the hearing is conducted by the city council, the city council shall issue a decision no later than ten (10) days following the hearing. Such decision may be in writing or entered on the record at the hearing. Such decision shall then be final for purposes of appeal.

E. Hearings before the city council are open to the public and are informal, with technical rules of evidence not applying to the proceedings. The licensee involved and any person requesting a hearing may be present and ~~cross-examine~~~~cross-examined~~ witnesses and give evidence before the city council at the hearing. (Ord. 2015-20)

5.08.130: APPLICABILITY:

This chapter shall be applicable to all persons holding valid licenses hereunder at the effective date hereof or who may obtain such in the future. However, all such licensees and other persons shall comply with the provisions of this chapter. This chapter shall apply regardless of whether the application of this chapter results in there being licenses in excess of the quotas set forth in this chapter. (Ord. 2015-20)

5.08.140: VIOLATION; PENALTY:

In addition to the denial, suspension, revocation or refusal to renew a license, the licensee and any person who shall violate the provisions of this chapter shall be guilty of a class B misdemeanor and shall be punished for each offense by a fine in an amount not to exceed one thousand dollars (\$1,000.00) or by incarceration for a period of not more than six (6) months, or by both such fine and incarceration. Each day or incident of violation shall constitute a separate offense hereunder. (Ord. 2015-20)

Mayor

Rick Rosenberg

City Manager

Brock Jacobsen



City Council

Jarett Waite

Ben Shakespeare

Christa Hinton

David Pond

Janene Burton

CITY COUNCIL

Meeting Date: September 24, 2025

Agenda Item: 2

Applicant: N/A

Requested by: Brock Jacobsen

Subject: Public Comment discussion

Description:

Discussion regarding the City's public comment period.

Recommendation: Discussion

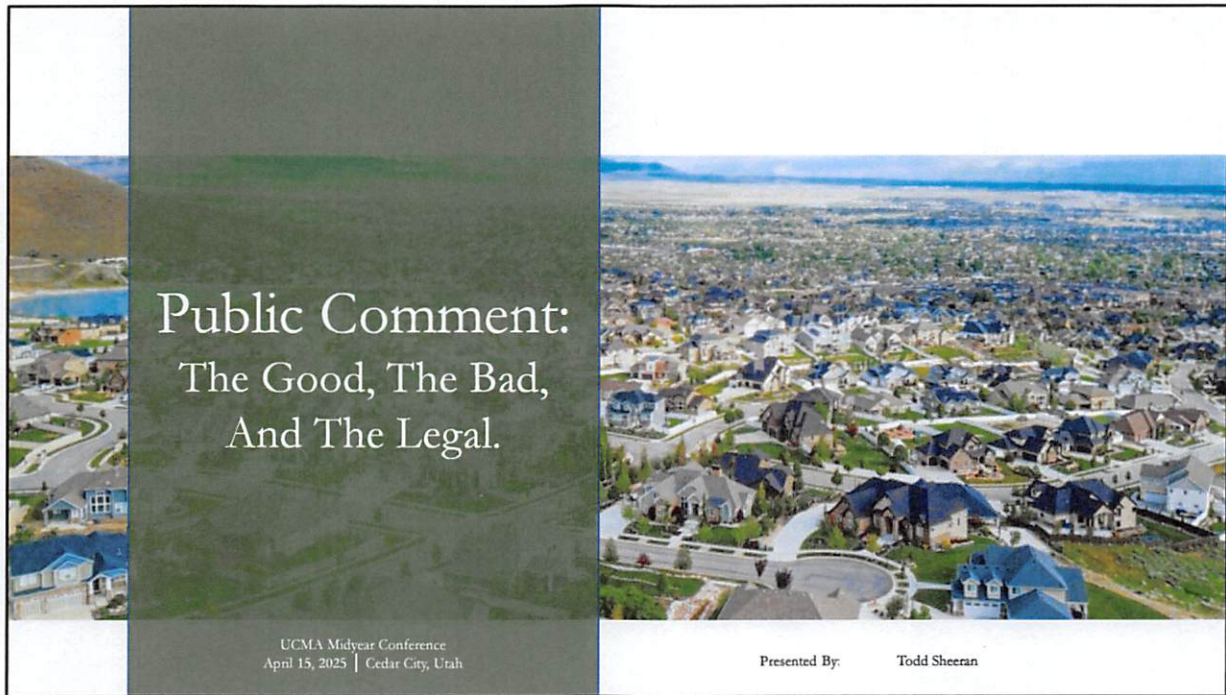
Attachments: N/A

Cost: N/A

Legal Approval: N/A

Finance Approval: N/A

Budget Approval: N/A



Public Comment:
The Good, The Bad,
And The Legal.

UCMA Midyear Conference
April 15, 2025 | Cedar City, Utah

Presented By: Todd Sheeran



Outline

- Part 1: Public Comment and Free Speech
 - Public Comment and the City Manager/Administrator
 - Constitution
 - Utah Code
- Part 2: Regulating Speech
 - Protected and Not Protected Speech
 - Forum and Court Scrutiny
 - Time, Place, and Manner Restrictions
- Part 3: Claims and Tips

4



Your Role in Public Comment – Overarching Principles

- Agenda and Notice
- Speaker Registration
- Timekeeping and Order
- Records and Documentation
- Providing Guidance
- Distribute Written Comments

7



The First Amendment and First Amendment Claims



42 U.S.C. § 1983

No one shall be deprived
"of any rights, privileges, or
immunities secured by the
Constitution and laws..."

The Fourteenth Amendment requires, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." *See also Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) ("The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech."")



Public Comment and the First Amendment

- Does the First Amendment apply to public meetings?
- It depends....
- **On one hand:** "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984).
- **On the other hand:** States can mandate public comment, and councils can (and often do) impose public comment periods on themselves.

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See also, *Heffron v. International Society of Krishna Consciousness, Inc.*, 452 U.S. 640 (1981) ("[T]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.")



Public Hearing Requirement in Utah (Title 10)

- Annexation Policy
- Boundary Adjustments
- Municipal Disconnect
- Municipal Consolidation
- Municipal Incorporation
- Salaries of Officials and Department Head
- Passing Budgets or Taxes
- Appropriate Money for Corporate Purpose
- Issuing Bonds
- Change of Form of Government
- General Plan Modifications
- Adopt/Change a Land Use Regulation, including Subdivision Ordinances
- Petition to Vacate a Street
- Amending Public Improvements in a Subdivision
- Modify Sign Regulations
- Designating a Street as a "Mall"
- Provide Cable or Telecommunications

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Annexation – Utah Code § 10-2-401.5

Boundary Adjustment – Utah Code § 10-2-419

Municipal Disconnect – Utah Code § 10-2-502.5

Municipal Consolidation – Utah Code § 10-2-606

Municipal Incorporation – Utah Code § 10-2a-204.3

Salaries of Officials – Utah Code § 10-3-318; And SB91 (2024).

Change of Form of Government – Utah Code § 10-3b-603.

Passing Budgets – Utah Code §§ 10-3c-204, 10-5-107, 10-6-111

Appropriate Money – Utah Code § 10-8-2.

General Plan Modifications – Utah Code § 10-9a-204; and see Utah Code § 10-9a-302 (PC)

Adopt/Change a Land Use Regulation – Utah Code § 10-9a-205; and see Utah Code § 10-9a-302 (PC)

Petition to Vacate a Street – Utah Code § 10-9a-208

Amending Public Improvements in a Subdivision – Utah Code § 10-9a-212

Modify Sign Regulations – Utah Code § 10-9a-213

Designating a Street as a "Mall" – Utah Code § 10-15-6

Provide Cable or Telecommunications – Utah Code § 10-18-202

Issuing Bonds – Utah Code § 10-18-302



What Do You Do?

- How many of you have a “general public comment period”? → **Not Required**
- How many of you have public hearings for conditional use permits? → **Not Required**
- How many of you have a public hearing in City Council on land use text amendments? → **Not Required**
- How many of you have a public hearing in City Council on a zoning amendment request? → **Not Required**
- What other public hearings do you have that are not required?

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What Can You Do To Control Public Comment?

- **Step One:** You first must determine whether the speech is protected by the First Amendment.
- The answer to this question, in a public meeting setting, is almost always yes. In fact, most governmental entities concede this question.
- However,

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See e.g., Eck v. Oley Valley Sch. Dist., 431 F. Supp. 3d 607, 623 (E. Dist. Penn. Dec. 17, 2019) (“Defendants concede the Students’ statements at the School Board Meeting are protected speech under the First Amendment.”)



Not Protected Speech

- **Incitement to Imminent Lawless Action** (*Brandenburg v. Ohio*, 395 U.S. 444 (1969)).
- **True Threats** (*Virginia v. Black*, 538 U.S. 343 (2003)).
- **Defamation** (*Gertz v. Robert Welch*, 418 U.S. 323 (1974); and see *McKee v. Cosby*, 139 S. Ct. 675 (2019)).
- **Obscenity and Child Pornography** (*Miller v. California*, 413 U.S. 15 (1973)).
- **Fighting Words** (*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)).

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Examples of unprotected speech.



GAME TIME:

PROTECTED OR NOT PROTECTED



Protected
speech?

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Protected. See *Mama Bears of Forsyth Cty. V. McCall*, 2022 U.S. Dist. LEXIS 234538 (D.C. Ga. Nov. 16, 2022).



Court Analysis: Step 2 - Forum

- **Step two:** If the speech is protected, the court must next "identify the nature of the forum" in which the speech occurred.
- For government property, there are four categories of forums:
 - **Traditional public forums** – public places usually associated with the ability to freely express themselves (e.g., parks and sidewalks).
 - **Designated public forums** – places not normally a traditional forum, but the government intentionally opened it up.
 - **Limited public forums** – property limited to use by certain groups or dedicated solely to the discussion of certain subjects.
 - **Nonpublic forum** – places where it is clear that the entity did not intend to create a public forum.

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See Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez, 561 U.S. 661, 679 n.11 (2010); *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 347 (5th Cir. 2001); *Tyler v. City of Kingston*, 74 F.4th 57 (2nd Cir. 2023).



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Comparison

Designated Public Forum

- "Reasonable time, place and manner regulations are permissible, and a **content-based prohibition must be narrowly drawn to effectuate a compelling state interest.**"

Limited Public Forum

- Public comment restrictions "need only be **viewpoint neutral and reasonable.**"

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Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37, 46 (1983).

Hotel Emples. & Rest. Union, Local 100 v. City of N.Y. Dep't of Parks & Rec., 311 F.3d 534, 546 (2nd Cir. 2002).

See also *Tyler v. City of Kingston*, 74 F.4th 57 (2nd Cir. 2023); and *Bronx Household of Faith v. Cmty. Sch. Dist. No. 10*, 127 F.3d 207, 212 (2nd Cir. 1997)



Comparison

Designated Public Forum – Strict Scrutiny

- Strict scrutiny is the highest standard of review courts use to evaluate your conduct.
- It is very difficult for a municipality to win a case if the court applies the strict scrutiny standard.

Limited Public Forum – Viewpoint Neutral and Reasonable

- Viewpoint neutral stands for the idea that when government actions implicate the speech rights of a group and individuals, those actions must be done in an even-handed way.
- You have a WAY better chance of winning a First Amendment suit.

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Municipal Meeting Forums

Designated Public Forum

- “Generally, courts have treated the public comment portion of municipal council meetings where any member of the public may talk *on any subject* as a designated public forum, which is subject to strict scrutiny.”
- E.g., an “open mic”

Limited Public Forum

- When you have a meeting that is limited to members of the public “talking about matters *listed on the meeting's agenda.*”

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Eberhardt v. Vill. of Tinley Park, 2024 IL App (1st) 230139.



How To Create A Limited Forum.

- It's simple – require public comments to be relevant/germane to municipal business.
- “We can think of no content-based restriction more reasonable than asking that content be relevant.” *Youkhanna v. City of Sterling Heights*, 934 F.3d 508 (6th Cir. 2019)



Public Comment - General Rule

"There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."

- *Rowe v. City of Cocoa*, 358 F.3d 800, 803 (11th Cir. 2004).

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Public Comment Regulations & Policy

- Requiring names
- Requiring residency
- Time restrictions
- Disrespectful or attacking comments
- Signs during public meetings
- Profanity/vulgarity/obscenity
- Online vs in-person comments
- Recording of public comment

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Red = Government compelling speech
Green = Government regulating speech



Compelling Speech

- “It is well settled that the First Amendment protects not only the right to speak but also **the right not to speak.**”
- Generally, municipalities require/force the person to state:
 - Their name,
 - The address in which they live, and
 - If they are a resident of the community.
- Can municipalities require the above?

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Associated Builders & Contrs. of Southeast Tex. v. Rung, 2016 U.S. Dist. LEXIS 155232 (Tex. E.D. 2016).



Requiring Name Before Speaking



Requiring a speaker to announce their name before giving public comment does not violate the First Amendment. *See Miller v. Goggin*, 672 F. Supp. 3d 14 (E.D. Pa. May 5, 2023).



What About Requiring Address?

- “[R]equiring the speaker to announce their specific home address is an unreasonable restriction” because of “the chilling effect of being forced to announce to all present one’s actual home address before speaking on a hotly-contested issue.” *Marshall v. Amuso*, 571 F. Supp. 3d 412 (E.D. Pa. 2021)



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See also *Miller v. Goggin*, 672 F. Supp. 3d 14, 38 (E.D. Pa, May 5, 2023).



What About Requiring Residency?

- Courts have upheld a bona fide residency requirement as a reasonable speech restriction in a limited public forum. *See, e.g., Rowe v. City of Cocoa*, 358 F.3d 800, 803-04 (11th Cir. 2004) ("It is reasonable for a city to restrict the individuals who may speak at meetings to those individuals who have a direct stake in the business of the city").





Residency Caution

- Anyone potentially affected by a city decision should be allowed to speak.
 - For example:
 - Business or lot owner who does not live in the city.
 - A person who lives just outside city limits but is affected by an adjacent development.
 - Other individuals who are directly impacted by the city.

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Time Restrictions Per Person



- A time limit for speakers is a reasonable time, place and manner restriction and serves "a significant governmental interest in conserving time and in **ensuring that others had an opportunity to speak.**" *Wright v. Anthony*, 733 F.2d 575 (8th Cir. 1984). *See also Shero v. City of Grove* 510 P.3d 1196 (10th Cir. 2007) (time limitations "promote orderly and efficient meetings.")

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Public Comment vs Rules of Decorum

- What are rules of decorum?
- They often look like this:
 8. Comments shall be respectful and courteous. Comments which do not conform to those requirements including those that are personal, threatening, attack others, are obscene or insulting, berate opposing points of view, or are properly subject to closed session such as those relating to personnel matters, will not be allowed. Offending commentators or those who are disruptive will be ruled out of order by the Board Chair and shall immediately stop speaking as directed by the Board Chair. Such individuals may be required to leave the meeting.



- Or this:

6. Speakers and audience members shall maintain proper decorum, etiquette, and civility at all times. Speakers shall remain at the podium to make comments and not approach City Council or City staff. No one can accompany the speaker at the podium. The speaker may use visual aids but shall not engage in demonstrations or inappropriate theatrics. Yelling, making threats, insulting, or rude comments directed towards the Mayor, City Council, City staff or a member of the public will not be tolerated. Profanity, abusive language, public ridicule, or personal attacks will not be tolerated. A speaker that fails to maintain proper decorum may be sanctioned including forfeiting the remainder of their time or, in especially egregious cases, be asked to leave the City Council Meeting.



Decorum: Criticisms



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Barron v. Kolenda, 491 Mass. 408 (Mass. 2023). The Town's civility code read as follows:

All remarks and dialogue in public meetings must be respectful and courteous, free of rude, personal, or slanderous remarks. Inappropriate language and/or shouting will not be tolerated. Furthermore, no person may offer comment without permission of the [c]hair, and all persons shall, at the request of the [c]hair, be silent. No person shall disrupt the proceedings of a meeting.

The Court stated this:

the text, history, and case law surrounding art. 19 provide for the “fullest and freest” discussion of public matters, including protection of fierce criticism of governmental action and actors, so long as that criticism is done in a peaceable and orderly manner and is consistent with time, place, and manner restrictions. *Porter*, 1 Gray at 478. See *Desrosiers*, 486 Mass. at 390-391. “Peaceable and orderly” is not the same as “respectful and courteous.” There was nothing respectful or courteous about the public assemblies of the revolutionary period. There was also much that was rude and personal, especially when it was directed [***19] at the representatives of the king and the king himself.⁸Link to the text of the note See *Bowie*, 130 Yale L.J. at

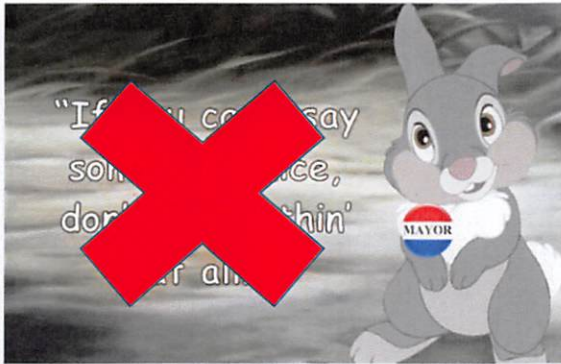
1677 ("in London, a columnist called [*419] Boston's town meetings a 'declaration of war' and criticized Boston's leaders for 'working up the populace to such a frenzy of rage'").

A provision "that public officials [can] be praised but not condemned" is "the essence of viewpoint discrimination."



Continued

Courts have said this about criticizing public officials:



- Actually, courts have said this:
 - "Public officials may need to have **thicker skin** than the ordinary citizen when it comes to attacks..."
 - *Mattox v. City of Forest Park*, 183 F.3d 515, 522, (6th Cir. 1999)



- And this:
 - "It is asking much of City Council members, who have given themselves to public service, to tolerate profanities and personal attacks, but **that is what is required by the First Amendment.**"
 - *Dowd v. City of L.A.*, 2013 U.S. Dist. LEXIS 111435, p. 61 (C.D. Cal. Aug. 7, 2013)
- And this:
 - "The right to criticize public officials is at the heart of the First Amendment's right of free speech."
 - *Kaluczyk v. City of White Plains*, 57 F.3d 202, 210 (2nd Cir. 1995).

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Decorum: Vulgar

- Remember the “F*** the Draft” case? In *Cohen v. California* (1971), the United States Supreme Court famously stated, “it is nevertheless often true that one man’s vulgarity is another’s lyric.”
- Courts are split on the question of whether profane or vulgar remarks constitute protected speech in a public council meeting.
- One court observed that “whether profane speech is constitutionally protected may in fact depend on its context and thus, it is not categorically protected or unprotected.”
- 10th Circuit (2024), “The impoliteness, passion, or profanity of his speech do not overcome his free speech interests. (Citations omitted). And the offensive, vulgar manner of Plaintiff’s speech does not deprive him of constitutional protections—especially in the context of petitioning the government for redress for grievances.”

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Cohen v. Cal., 403 U.S. 15 (1971).

Knots v. Or. Trail Sch. Dist. 46, 2017 U.S. Dist. LEXIS 178441 (D.C. Or. Oct. 26, 2017).

Pryor v. Sch. Dist. No. 1, 99 F.4th 1243 (10th Cir. 2024).



Racist Remarks

- In *Mama Bears of Forsyth Cty. v. McCall*, 642 F. Supp. 3d 1338 (Ga N. Dist. 2022), the court found that a prohibition on “abusive remarks” was “impermissible viewpoint discrimination and is therefore unconstitutional.” *Id.* at 1358. However, the court went on to say that ***a governmental entity may “restrict certain sub-categories of that type of speech, such as hateful racial epithets.”*** *Id.* (emphasis added).
- The court cited two cases as guidance: *Dyer v. Atlanta Indep. Sch. Sys.*, 426 F. Supp. 3d 1350, 1357, 1369-61 (N.D. Ga. December 5, 2019); and *Moms for Liberty v. Brevard Pub. Schs.*, 582 F. Supp. 3d 1214, 1220 (Fla. Mid Dist. Ct. 2022).

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What About Signs During Public Meetings?

- In *Tyler v. City of Kingston*, 74 F.4th 57 (2nd Cir. 2023), the council was scheduled to hold a public meeting to discuss whether the City would purchase an armored rescue vehicle. Several activists planned to protest the purchase and bring non vulgar or obscene signs (e.g., "No Tanks No Thanks!" and "Oh my God! No Tank! Move on!!!")
- Getting word of the protest, the council (a few days earlier) passed a No Signs policy for city hall.
- The court held that "Plaintiffs have not adequately alleged that the sign prohibition was unreasonable in relation to the City's common-sense interest in running efficient and orderly meetings."

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Continued

- You can prohibit online comments if you have physical comment period at the council meeting.
 - **Possible exception:** accommodation requests under the ADA. *See Barich v. City of Cotati*, 2022 U.S. Dist. LEXIS 222435 (N.D. Cal. Dec. 9, 2022).
- Require the camera to be turned on, name to be given, and residency stated.



What About Not Recording or Broadcasting the Comment Period?

- One court has held that denying the listening of public comments online does not violate the First Amendment. It also held that there is no First Amendment right to observe public comment outside of the physical location provided by the town.

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Potanovic v. Town of Stony Point, 2023 U.S. Dist. LEXIS 8045 (S.D. N.Y. Jan. 17, 2023)



Removing Disrupters

- Utah Code § 52-4-301 states, “This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.”

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Pro Tips

- Create a public comment policy.
- The policy should include:
 - A robust purpose statement e.g., “There is a significant governmental interest in conducting orderly, efficient meetings of the municipality.”
 - An understanding that the municipality has created a **limited** public forum and comments need to relate to municipal business or issues within the council’s purview.
 - Clear statements of restrictions e.g, residents only, time constraints per person.

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Pro Tips

- Publish your public comment policy and have it available online **and** in print at the meeting (next to the public comment sign in card).
- Require anyone giving public comment to fill out a public comment card. The card should include:
 - The person's name,
 - The person's address, and
 - Acknowledgment that they will adhere to the public comment policy.

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Mayor

Rick Rosenberg

City Manager

Brock Jacobsen



City Council

Jarett Waite

Ben Shakespeare

Christa Hinton

David Pond

Janene Burton

CITY COUNCIL

Meeting Date: September 24, 2025

Agenda Item: 3

Applicant: Gary Hall

Requested by: Gary Hall

Subject: Freemont Solar and Battery Power Purchase Agreement

Description:

The Fremont Solar Project consists of a 99 MWac solar photovoltaic generation facility coupled with a 49.5 MW / 198 MWh battery energy storage system (BESS) located in Iron County, Utah. The combined project will deliver clean energy and grid flexibility through solar generation and four-hour battery dispatch capability. This resource was identified in the UAMPS 2024 Resource Procurement Plan as a planned generating resource. We are now executing on the procurement plan.

Recommendation: Discussion

Attachments: N/A

Cost: 0

Legal Approval: N/A

Finance Approval: N/A

Budget Approval: N/A



Fremont Solar + Battery PPA

TO	Resource Project PMC
FROM	UAMPS Staff
DATE	September 12, 2025
SUBJECT	PPA Talking Points

What is the Resource?

The **Fremont Solar Project** consists of a **99 MWac solar photovoltaic generation facility** coupled with a **49.5 MW / 198 MWh battery energy storage system (BESS)** located in **Iron County, Utah**. The combined project will deliver clean energy and grid flexibility through solar generation and four-hour battery dispatch capability. This resource was **identified in the UAMPS 2024 Resource Procurement Plan** as a planned generating resource. We are now executing on the procurement plan.

How is UAMPS Contracting for the Resource?

UAMPS is entering into a **25-year Solar + Battery PPA** with Fremont Solar, LLC on behalf of participating members. This is structured through the **Master Firm Power Supply Agreement**, with a dedicated transaction schedule for the Fremont Solar PPA Project.

What is the Term of the Agreement?

- **25-year contract term**, beginning on the **Commercial Operation Date (COD)** of both the solar and battery systems.
- COD is expected by **December 31, 2027**, with guaranteed delivery by **June 30, 2028**.

Who is the Developer?

The project is being developed by **Longroad Energy**, a highly experienced independent power producer with a strong track record in renewable energy development and operations across the U.S.



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What if the Project Is Delayed?

- The agreement includes **Delay Damages** of:
 - **\$21,970/day** for delays in battery COD.
 - Additional provisions for solar delays between **\$17,643 and 57,582/day** (see Exhibit 12).
 - Cumulative delay damages are capped at the amount of the **Development Security**.
 - If delays extend beyond the “Outside COD” (including up to 180 days of force majeure), either party may terminate the agreement.
-

What is the Pricing?

- **Solar Energy Price: \$35.45/MWh** (flat, no escalation) – includes RECs and environmental attributes.
 - **Battery Capacity Price: \$13.50/kW-month** (plus potential tariff-related adjustments, capped at \$14.14/kW-month).
 - Payment includes **fixed battery capacity payments** and **solar energy payments** (based on measured MWh).
-

What Are the Benefits of the Battery?

- Provides **4-hour discharge at full capacity (198 MWh)**.
 - Enables **load-shifting**, peak-shaving, and enhanced resource adequacy.
 - UAMPS (as Buyer) controls the charging and discharging via real-time AGC Set-Points.
 - Guarantees:
 - **BESS Capacity**
 - **Availability**
 - **Ramp Rate**
 - **Round Trip Efficiency**
 - Liquidated damages apply for any underperformance based on guarantees (Exhibits 10, 14, 15).
-

How Are Curtailments Managed?

- The PPA includes provisions to manage **transmission or economic curtailments**.
 - Economic curtailments between solar COD and battery COD, up to **198 MWh/day**, may occur without compensation during shoulder months.
-

What Happens If Participants Drop Out?

- Full subscription by UAMPS participants is required for the agreement to become effective.
 - If not 100% subscribed within 135 days of execution, the project may be downsized or terminated (Section 3.4).
-

What Environmental and Educational Benefits Are Included?

- Includes delivery of all **RECs** (Renewable Energy Credits) to members.
 - A **Scholarship Program** is included: \$10,000/year for high school seniors from UAMPS communities pursuing studies related to renewable energy (Section 12.21).
-

Why Now?

- **IRA incentives**, current **solar and battery supply chain certainty**, and **project viability** support executing this PPA now. The **IRA tax credits will be discontinued** under the One Big Beautiful Bill Act (OBBBA). Future solar PPA pricing is expected to increase as a result.
- Delay risks or rejection could mean a **5+ year setback** with higher costs and fewer viable alternatives due to interconnection backlogs and price inflation.



Fremont Solar + Battery PPA

TO	Resource Project PMC
FROM	UAMPS Staff
DATE	September 12, 2025
SUBJECT	PPA Executive Summary

Overview of the Agreement

The Power Purchase Agreement (PPA) is between Fremont Solar, LLC and UAMPS. This PPA outlines the terms and conditions under which UAMPS (the Buyer) will purchase energy products from Fremont Solar, LLC (the Seller), which plans to develop, own, and operate a combined 99 MW solar photovoltaic (PV) facility and 49.5 MW/198 MWh battery energy storage system (BESS) in Iron County, Utah. The project is collectively referred to as the Fremont Solar Project.

The agreement sets a 25-year delivery term from the Commercial Operation Date, during which UAMPS will purchase all energy and related products produced by the project, including Renewable Energy Credits (RECs) and capacity rights.

Key Project Features

Solar Facility

- Capacity: 99 MW
- Energy Rate: \$35.45/MWh (fixed, no escalation)
- Commercial Operation Date Target: By December 31, 2027, with a final deadline of June 30, 2028

Battery Facility

- Capacity: 49.5 MW, 4-hour duration (198 MWh)
- Battery Rate: Between \$13.50/kW-month and a max of \$14.14/kW-month depending upon the additional tariff impact after January 1, 2025. (fixed, no escalation)
- Performance Guarantees: minimum round-trip efficiency, availability, ramp rate, and capacity retention

Combined Cost

Combined Energy and Battery Rate: Between approximately \$69/MWh and \$74/MWh depending upon the degradation of solar and BESS through the life of the contract.



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Commercial and Financial Terms

PV Energy is sold at the fixed price and delivered at a designated metering point. BESS Product includes stored energy delivery and capacity, compensated via monthly payments. Lost Production due to UAMPS-caused economic curtailments is paid at the PV rate. Lost Production as a result of transmission curtailment prior to Designated Network Resource status is paid at the PV rate.

Delay Damages apply for late COD of PV and BESS facilities. Performance Damages apply for underperformance. Cumulative delay damages are capped.

Scheduling, Operation, and Metering

UAMPS will act as the Scheduling Coordinator, with exclusive rights to dispatch the BESS and to receive all project energy and associated benefits. SCADA and metering systems must enable real-time monitoring and control.

Risk Allocation and Force Majeure

Includes force majeure provisions and options to extend deadlines or terminate the agreement due to tariff changes.

Regulatory and Legal Provisions

Seller retains tax benefits; Buyer receives RECs. Compliance with CRS Listing and California RPS required. Environmental and capacity attributes are transferred to the Buyer.

Assignment, Step-In, and Default Remedies

Includes rights for UAMPS to step in, terminate for default or missed deadlines, and pursue remedies.

Exhibits and Supporting Materials

Includes project description, schedules, metering and SCADA specs, performance test protocols, and legal forms including a form of limited assignment for participation in a prepay.

Conclusion

This PPA ensures clean, dispatchable solar energy for UAMPS participants through a well-structured framework with clear performance metrics, risk-sharing terms, and legal protections.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FREMONT SOLAR PPA PROJECT TRANSACTION SCHEDULE UNDER THE MASTER FIRM POWER SUPPLY AGREEMENT WITH UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS; AND RELATED MATTERS.

WHEREAS, the City of Santa Clara (the "*Member*") owns and operates a utility system for the provision of electric energy to its residents and others (the "*System*") and is a member of Utah Associated Municipal Power Systems ("*UAMPS*") pursuant to the provisions of the Utah Associated Municipal Power Systems Amended and Restated Agreement for Joint and Cooperative Action dated as of March 20, 2009, as amended (the "*Joint Action Agreement*");

WHEREAS, the Member desires to purchase all or a portion of its requirements for electric power and energy from or through UAMPS and has entered into a Power Pooling Agreement with UAMPS to provide for the efficient and economic utilization of its power supply resources;

WHEREAS, the Member has previously entered into the Master Firm Power Supply Agreement with UAMPS in order to allow for UAMPS entering into various firm transactions for the purchase and sale of firm supplies of electric power and energy;

WHEREAS, UAMPS has investigated the Fremont Solar PPA Project, a 99 megawatt (MW) solar photovoltaic generation facility and a 49.5 MW battery storage system located in Iron County, Utah, on behalf of its members and is now prepared to enter into a 25 year power purchase agreement with Fremont Solar, LLC to secure the delivery of all the energy from the Project and associated environmental attributes; and

WHEREAS, the Member now desires to authorize and approve the Fremont Solar Transaction Schedule ("*Transaction Schedule*") attached hereto as Exhibit A for the Project subject to the parameters set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Clara as follows:

Section 1. Authorization of Fremont Solar Transaction Schedule. The Transaction Schedule, in substantially the form presented at the meeting at which this resolution is adopted, is hereby authorized and approved, and the Member Representative is hereby authorized, empowered and directed to execute and deliver the Transaction Schedule on behalf of the Member. If additional subscription becomes available, Member Representative may approve an adjustment to the Member's kW subscription up to _____ total subscription, in which case a revised Transaction Schedule reflecting the increase will be prepared for signature. Promptly upon its execution, the Transaction Schedule shall be filed in the official records of the Member.

Section 2. Other Actions. The Chairman, Secretary, Member Representative and other officers and employees of the Member shall take all actions necessary or reasonably required to carry out, give effect to, and consummate the transactions contemplated hereby and shall take all actions necessary to carry out the execution and delivery of the Transaction Schedule and the performance thereof.

Section 3. Miscellaneous; Effective Date. (a) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(b) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this _____ day of _____, 2025

CITY OF SANTA CLARA

Mayor

ATTEST AND COUNTERSIGN:

City Recorder

[SEAL]

EXHIBIT A
FREMONT SOLAR PROJECT TRANSACTION SCHEDULE

FREMONT SOLAR PROJECT FIRM POWER SUPPLY AGREEMENT TRANSACTION SCHEDULE

This Transaction Schedule to the Master Firm Power Supply Agreement (together, the “Agreement”) sets forth the agreement of the Parties with respect to transaction described below through the UAMPS Firm Power Supply Project.

PURCHASER:	City of Santa Clara (the “Participant”).
ENTITLEMENT SHARE:	3.0303% of UAMPS’ rights, interests and obligations under the PPA described below (the “Entitlement Share”). The Entitlement Share represents 3,000 kW of the expected Project output and associated Environmental Attributes acquired by UAMPS under the PPA.
SUPPLIER:	Fremont Solar, LLC (the “Supplier”).
PROJECT:	The Fremont Solar Project (the “Project”) is a to-be-constructed 99 MW solar photovoltaic generation facility (“PV Facility”) and a 49.5 MW battery energy storage system (“BESS”) located in Iron County.
PPA:	The Power Purchase Agreement dated as of September 12, 2025 (the “PPA”) by and between UAMPS and the Supplier with respect to the Project.
EFFECTIVE DATE:	The PPA becomes effective upon UAMPS obtaining sufficient Participant governing body approvals for the purchase of all of the output and attributes it acquires under the PPA. UAMPS anticipates satisfying these conditions within 60 days of executing the PPA.
TERM:	A 25-year delivery term commencing on COD.
PRICE:	\$35.45 per MWH for PV facility and the sum of (i) \$13.50/kW-month, and (ii) the Incremental BESS Tariff Cost divided by \$1,000,000 and multiplied by \$0.08/kW-month, rounded to the closest \$0.01/kW-month, each with no escalation; provided that if the sum of (i) and (ii) exceeds the BESS Price Cap, then the BESS Price shall equal the BESS Price Cap for BESS.
COD:	The Scheduled Commercial Operation Date of the Project (“COD”) is December 31, 2027. COD may not occur earlier than June 1, 2027 or later than June 30, 2028 except as specified under the PPA.
OTHER PROVISIONS:	
<i>Energy:</i>	UAMPS will schedule all energy pursuant to the terms and conditions of the PPA and will deliver to the Purchaser its Entitlement Share from the Project.
<i>Transmission:</i>	UAMPS will charge and the Purchaser will pay transmission charges as adopted by the UAMPS Board of Directors from time to time.

Administration: UAMPS will charge and the Purchaser will pay the scheduling fee and reserve fee as adopted by the UAMPS Board of Directors from time to time.

Default: The failure of Purchaser to pay any amount when due under the Agreement within three business days of written notice from UAMPS shall constitute a default by the Participant. Upon the occurrence of any such default, UAMPS may (a) cease and discontinue delivery of the energy and attributes of Participant's Entitlement Share but the Participant shall remain responsible for the payment of all costs and expenses allocable to its Entitlement Share and (b) will pursue any remedy available to UAMPS at law or in equity.

Step-Up: Upon a default by a Participant, UAMPS shall have the right to terminate the defaulting Participant's Entitlement Share and immediately reallocate it among the non-defaulting Participants in proportion to their existing Entitlement Shares; *provided that* no Participant's Entitlement Share may be increased by more than 25% as a result of such reallocation. The Project Management Committee shall provide direction to UAMPS with respect to the reallocation of a defaulting Participant's Entitlement Share, the disposition of reallocated Entitlement Share that may be surplus to the requirements of non-defaulting Participants, the continued "qualified use" of reallocated Entitlement Share and such other matters as it shall deem necessary.

Other: Any costs incurred by UAMPS due solely to this Agreement, including but not limited to the PPA costs, transmission costs, scheduling costs, administrative costs and legal costs will be the responsibility of the Purchasers based on their respective Entitlement Shares and invoiced through the UAMPS Power Bills.

The Participant further covenants to and agrees with UAMPS as follows:

(a) *Maintenance of Rates.* The Participant shall establish, maintain, revise, charge and collect rates for electric service rendered by it to its customers so that such rates shall provide revenues which, together with other funds reasonably estimated to be available, will be sufficient to meet the Participant's obligations to UAMPS under this Agreement, to pay all other operating expenses of the Participant's electric system and to provide revenues sufficient to pay all obligations of the Participant payable from, or constituting a charge or lien on, the revenues of its electric system.

(b) *Maintenance of Revenues.* The Participant shall promptly collect all charges due for electric utility services supplied by it as the same become due. The Participant shall at all times maintain and shall exercise commercially reasonable efforts to enforce its rights against any person, customer or other entity that does not pay such charges when due.

(c) *Sale or Assignment of Electric System or this Agreement.* The Participant shall not assign this Agreement except upon the prior written approval of UAMPS given upon the direction of the Project Management Committee."

(d) *Prudent Utility Practice.* The Participant shall, in accordance with prudent utility practice, (i) at all times operate its electric system and the business thereof in an efficient manner, (ii) maintain its electric system in good repair, working order and condition, (iii) from time to time

make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the electric system, so that at all times the business thereof shall be properly conducted, and (iv) duly perform its obligations under all power supply and transmission service agreements to which it is a party.

(e) *Operating Expenses.* The payments to be made by the Participant under this Agreement shall be payable as (i) a cost of purchased electric power and energy (ii) an operating expense of the Participant's electric system and (iii) a first charge, together with all other operating expenses, on the revenues derived from the operation of the Participant's electric system. The Participant shall include the payments to be made under this Agreement as a cost of purchased electric power and energy and an operating expense (x) in the annual operating budget of its electric system and (y) in any future resolution, ordinance or indenture providing for the issuance of debt obligations payable from the revenues of the Participant's electric system.

(f) *Future Prepay; Qualified Use.* In the event that the Project Management Committee approves a future prepayment transaction with respect to the PPA and the Participant elects to participate in such transaction with respect to all or a portion of its Entitlement Share, the Participant agrees as follows:

(i) it shall sell the energy from its Entitlement Share to retail customers located in the established service area of its municipal electric utility pursuant to generally applicable and uniformly applied rate schedules or tariffs;

(ii) it shall provide such information and certificates as may be reasonably requested by UAMPS with respect to its electric utility and its past and projected loads and resources; and

(iii) it will comply with such additional instructions as may be provided by UAMPS in order to establish and maintain the tax-exempt status of the bonds issued to finance the prepayment.

This Transaction Schedule may be signed in counterparts.

Dated this _____ day of _____, 2025.

CITY OF SANTA CLARA

UTAH ASSOCIATED MUNICIPAL POWER
SYSTEMS

By: _____

By: _____

Title: _____

Title: _____