Gmail

Alejandra Zambrano <azambrano@cityofsuttercreek.org>

Fwd: Webform submission from: Contact City Council

Tom Dubois <tdubois@cityofsuttercreek.org> Mon, Jul 13, 2026 at 8:47 AM
To: Alejandra Zambrano <azambrano@cityofsuttercreek.org>

---------- Forwarded message ---------
From: **Sutter Creek CA** <noreply@civicplus.com>
Date: Mon, Jul 13, 2026 at 8:03AM
Subject: Webform submission from: Contact City Council
To: <pcaronongan@cityofsuttercreek.org>

Submitted on Mon, 07/13/2026 - 8:01 AM

Submitted by: Anonymous

Submitted values are:

First Name
Brian

Last Name
Comnes

Question/Comment
Dear Councilors, on a cynical note lets plan on enhancing the duck race or ragtime festival with Embarc. Note that their express purpose is to introduce onsite cannabis sales and consumption at the renowned Monterey event, aligning with Embarc's mission to destigmatize cannabis through safe, regulated experiences that allow consumers and the curious to learn about California's diverse cannabis landscape.

See https://www.prnewswire.com/news-releases/embarc-launches-the-smoke-show-at-cali-roots-music-festival-a-first-of-its-kind-cannabis-experience-302134069.html

Or maybe just one of you who voted Yes in February can preserve the character of this town and vote No come August

The choice is yours

Gmail **Alejandra Zambrano <azambrano@cityofsuttercreek.org>**

Fwd: The Embarc DA includes a tax that needs a publiv vote

Tom Dubois <tdubois@cityofsuttercreek.org> Mon, Jul 13, 2026 at 12:12 PM
To: Alejandra Zambrano <azambrano@cityofsuttercreek.org>

---------- Forwarded message ---------
From: **Brian Comnes**
Date: Mon, Jul 13, 2026 at 12:11 PM
Subject: The Embarc DA includes a tax that needs a publiv vote
To: Julia Sierk, Jim Swift, Dan Riordan <driordan@cityofsuttercreek.org>, Claire Gunselman <cgunselman@cityofsuttercreek.org>, sfeist@cityofsuttercreek.org <sfeist@cityofsuttercreek.org>, Tom Dubois <tdubois@cityofsuttercreek.org>
Cc: Glenn Spitzer <gspitzer@amadorcounty.gov>, Teresa Ryan, Christy Melton

Please add this message to the administrative record on the dispensary.

A percentage-of-gross-revenue charge on a dispensary is a **tax**, not a fee, and under California's Constitution it needs voter approval.
Here's the framework:

- **Article XIII C (Prop 218, tightened by Prop 26)** requires any new or increased local tax to go to the voters. A **general tax** (revenue goes to the general fund) needs a simple majority vote. A **special tax** (revenue earmarked for a specific purpose) needs a two-thirds vote.
- Prop 26 (2010) broadened the definition of "tax" so that *any* levy, charge, or exaction by a local government is presumed to be a tax **unless** it fits a narrow exception — e.g., a fee for a specific service/benefit provided directly to the payer, a regulatory fee that doesn't exceed the reasonable cost of regulating the activity, a fine/penalty, or a property assessment.
- A percentage-of-gross-receipts charge on a cannabis business is structured to raise general revenue, not to cover the direct cost of regulating that specific business. That's exactly the profile of a "tax" under Prop 26 — it doesn't fit the regulatory-fee exception because the amount scales with revenue rather than with the cost of oversight.

This is why virtually every California city that taxes cannabis businesses (Sacramento, Oakland, Los Angeles, San Jose, etc.) has done so via a **ballot measure** — typically a general tax capped at some rate (e.g., “up to 6% of gross receipts”), with the city council then setting the actual rate by ordinance within that voter-approved ceiling.

Sent from Yahoo Mail for iPhone

Gmail **Alejandra Zambrano <azambrano@cityofsuttercreek.org>**

Fwd: Additional Comments - Embarc DA includes a tax that needs a publiv vote

Tom Dubois <tdubois@cityofsuttercreek.org> Mon, Jul 13, 2026 at 4:22 PM
To: Alejandra Zambrano <azambrano@cityofsuttercreek.org>

---------- Forwarded message ---------
From: **Brian Comnes**
Date: Mon, Jul 13, 2026 at 4:14 PM
Subject: Additional Comments - Embarc DA includes a tax that needs a publiv vote
To: Julia Sierk, Jim Swift, Dan Riordan <driordan@cityofsuttercreek.org>, Claire Gunselman <cgunselman@cityofsuttercreek.org>, sfeist@cityofsuttercreek.org <sfeist@cityofsuttercreek.org>, Tom Dubois <tdubois@cityofsuttercreek.org>, Derek Cole <dcole@colehuber.com>, eventura@haugebrueck.com <eventura@haugebrueck.com>

Please add this message to the administrative record on the dispensary.

Councilors

A development agreement (DA) does not shield the city from the voter-approval requirement.

The core problem: "voluntary" doesn't mean what it sounds like. Under Prop 26, a charge escapes the definition of "tax" only if it fits one of the seven listed exceptions. There's no exception for "payment negotiated in a contract." The argument cities try to make is that a DA payment is a bargained-for exchange — the operator agrees to pay in exchange for vested development rights, permit certainty, or specific entitlements — so it's not really "imposed" on them the way a tax is. Courts and Prop 26 guidance are skeptical of that framing when:

- The payment is calculated as a percentage of gross revenue (which looks exactly like a tax, not a fee for a specific service).
- Applicant is required to agree to payment terms as a precondition of operating at all — i.e., it's not really optional if there's no realistic path to operate without it.
- The money goes to the general fund rather than covering the city's actual cost of regulating that specific business (that's the Sinclair Paint "regulatory fee" test — the fee must be roughly tied to cost of regulation, not scaled to revenue).

This largely turns on whether the payment is genuinely voluntary and negotiated at arm's length, or whether it's effectively imposed as a condition of doing business at all. A DA can shield mitigation-type payments (impact fees tied to development costs — road improvements, infrastructure) because those fit the "condition of property development" exception baked into Article XIII C. But a revenue-share payment on ongoing dispensary sales isn't a development-impact fee — it's an ongoing operating tax dressed up in contract language, and that's precisely the kind of thing Prop 26 was written to catch.

Practical reality: Many California cities *do* use DAs with cannabis operators to negotiate "community benefit" payments or revenue-sharing **alongside (not instead of)** a voter-approved cannabis business tax. That's common and defensible. Using a DA as a substitute for going to the voters — i.e., the city's only revenue mechanism from cannabis being a DA payment with no underlying voter-approved tax — is a riskier, less-tested move and has been the subject of taxpayer-group scrutiny and threatened litigation in a few California cities.

A successful legal challenge could force Sutter Creek to issue refunds and invalidate the payment structure going forward.

Please vote NO in your Augusr meeting!

Sent from Yaho.o Mail for iPhone