

A few items to consider in researching a possible Embarc Development Agreement

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Tom DuBois, City Manager
cc to Council

I am requesting that the following questions/concerns be addressed when you present your findings to the Council on the possible Embarc Development Agreement.

1. Does the proposed Development Agreement allowing just one dispensary leave Sutter Creek exposed to claims (and law suits) that we are creating a monopoly for Embarc, which is contrary to state law?
2. Once the DA pilot period lapses, wouldn't the City be required to allow additional dispensaries? Could Embarc's competitors use the dispensary monopoly prohibitions to their advantage to gain access here?

While cities have broad authority to regulate or ban cannabis businesses under local land-use and police powers, they cannot legally create or enforce a monopoly for a single dispensary. The California Supreme Court affirmed in *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) that cities may ban medical marijuana dispensaries, but such authority does not extend to granting exclusive rights or monopolies to a single business.

Additionally, local governments cannot exempt one dispensary from competition or grant it exclusive operating rights, as this would conflict with the state's intent to foster a competitive, regulated market.

3. Since the DA puts Sutter Creek into close contractual partnership with Embarc during the pilot phase, is Sutter Creek also exposed to personal injury or negligence liability claims due to Embarc's activities? What does that do to CItY insurance coverage and costs?

Thank you for considering this request.

Brian Comnes, Sutter Creek

===== >> **Brian Comnes Sutter Creek, CA** <<=====
