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What Cities Should Know About

PROPOSITION

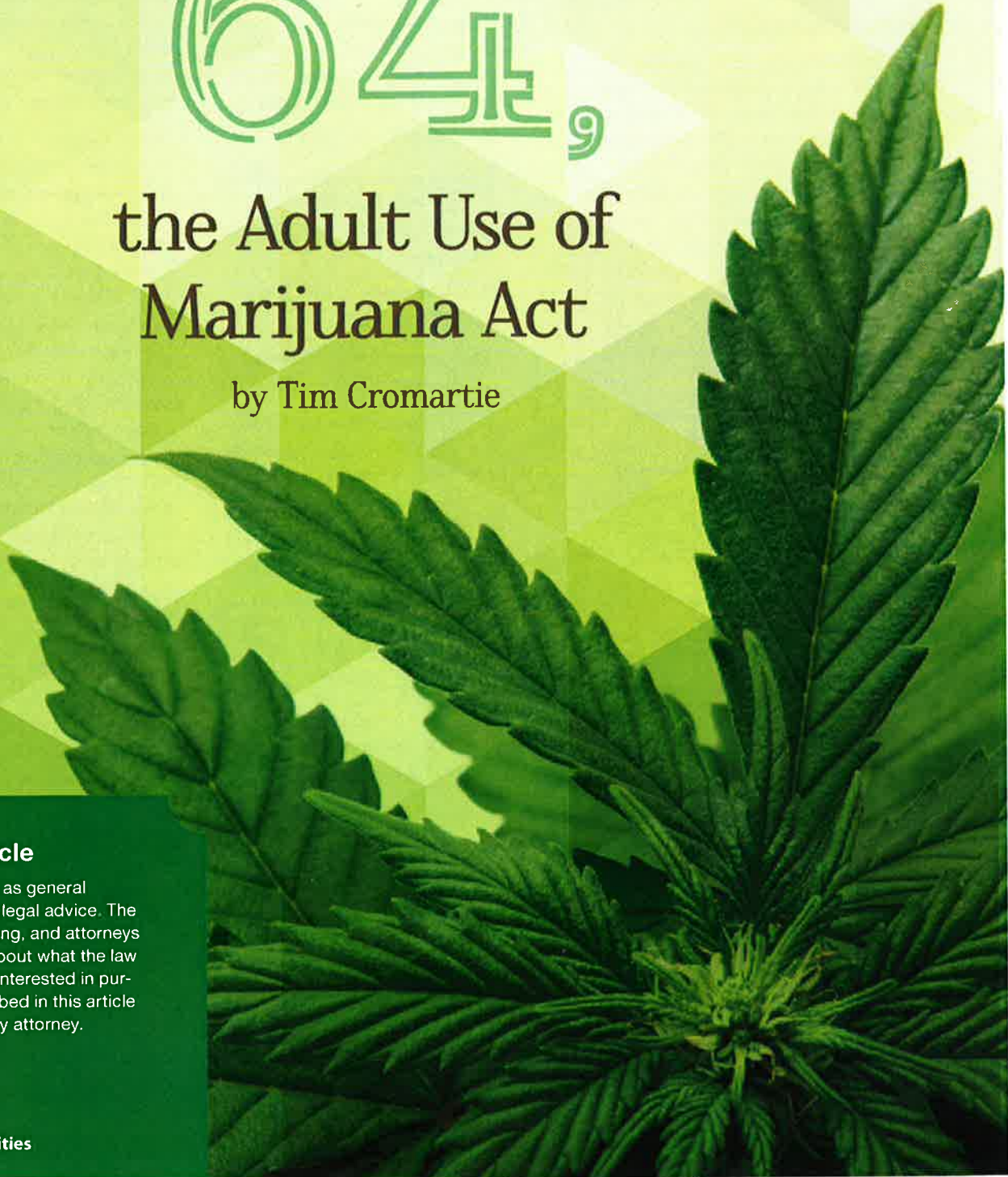
64,

the Adult Use of Marijuana Act

by Tim Cromartie

About This Article

This article is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. City officials interested in pursuing strategies described in this article should consult their city attorney.



In November 2016, California voters approved the legalization of recreational marijuana use.

This article presents some basic information for city officials on how the law has changed.

Personal Cultivation

Under Proposition 64, cities can no longer ban indoor cultivation for personal use and must allow such cultivation of up to six plants per residence. However, cities can “reasonably regulate” indoor cultivation for personal use, if they are willing to undertake the responsibility. This may be an intimidating prospect, given that personal cultivation will in many instances be occurring in people’s homes, but a city may want to actively regulate this activity due to public safety and public health considerations.

A key concern for cities will be whether local regulations are “reasonable” as specified in Prop. 64. Examples of reasonable regulations include but are not limited to:

- Enacting a requirement for a residential cultivation permit, with an appropriate fee;

- Requiring as a condition of the permit that the permit holder agrees to periodic inspections (upon appropriate notice) to ensure that cultivation does not:
 - Exceed the six-plant limit;
 - Draw more electrical power from the grid than the building is designed to carry, thereby causing a fire hazard;
 - Present a health hazard, such as mold accumulation; or
 - Use more water than is reasonably required to cultivate six plants; and
- Requiring compliance with the Fire Code and imposing reasonable limitations on the use of water.

The issues of excessive water and electricity use could be doubly important if a city has levied a utility tax related to those resources, because spikes in such use may not be easily attributed to a specific residence — and thereby appropriately taxed — without the assistance of the relevant utility.

Other Cultivation and Commercial Recreational Marijuana Businesses

Under Prop. 64, cities retain the authority to regulate and ban all other cultivation and all recreational marijuana businesses. Cities can decide whether to allow any recreational businesses in their communities. A decision to allow these businesses

should be accompanied by a relatively detailed plan for regulating them, which is addressed later in this article.

Taxation

Prop. 64 pre-empted all state and local sales tax on medical marijuana; such taxes are no longer allowed. This is based on the assumption that marijuana used for truly medical purposes is not different from conventional pharmaceuticals, which are not subject to federal, state or local taxes. However, a host of other excise taxes may still be levied on medical marijuana, including taxes on cultivation and manufacturing.

Prop. 64 imposes a state excise tax of 15 percent on recreational marijuana, so new local taxes on recreational marijuana should take the cumulative tax rate into account. Any pre-existing local sales taxes, including the 1 percent Bradley-Burns tax and transaction and use taxes, will apply to all recreational marijuana sales. Any business license taxes will also apply. A cumulative tax rate that is too high will stimulate black market activity and deny cities whatever revenue they anticipate from local marijuana taxes. For this reason, cities should ideally examine which other existing local taxes can produce marijuana-related revenue streams before levying a new marijuana-specific tax.

New Rules on Possession

Prop. 64 makes it legal for any adult to possess up to 28.5 grams of cannabis or up to 4 grams of concentrated cannabis. Any person possessing an amount over these limits may be arrested and charged with a misdemeanor.

Deliveries

Cities retain the ability to ban deliveries as a reasonable regulation on the operations of retailers, microbusiness and nonprofits — or any other recreational marijuana

continued

Tim Cromartie is a legislative representative for the League and can be reached at tcromartie@cacities.org.

Cities considering regulatory fees for marijuana businesses should take into account the actual costs of properly regulating such a business for one year, including issuing permits and conducting inspections and audits.



business licensed by the state under Prop. 64. Such a regulation would be within the scope of cities' constitutional police power, which the courts have interpreted broadly and upheld consistently.

As a fail-safe, cities also have the option of prohibiting the local permitting of the categories of licensees that are authorized to make deliveries, should that

become necessary as the only avenue to prevent deliveries within a city's jurisdictional boundaries.

However, cities that have enacted delivery bans cannot prevent the transport of marijuana through their jurisdiction using public roads if the transport originates from and ends in a location outside the jurisdiction.

If there is no local prohibition on deliveries, Prop. 64 clearly allows for home deliveries of recreational marijuana. Delivery is included in the initiative's definition of commercial marijuana activity, which is defined as "the commercial transfer of marijuana or marijuana products to a customer."

Licensing

State licensing of medical and recreational marijuana businesses is slated to begin in January 2018. The Medical Marijuana Regulation and Safety Act (MMRSA) requires evidence of local approval for a licensed activity to be submitted with an application for a state-issued medical marijuana business license; this is known as the dual licensing requirement.

Prop. 64 differs from the MMRSA because it does not require evidence of local approval to be submitted with an application for a state-issued recreational marijuana business license. Instead, Prop. 64 simply provides that a state license cannot be issued if the activity is in violation of local ordinances. However, because evidence of local approval need not be submitted when applying for a state license for a recreational business,

Meet the Challenge of New Marijuana Laws

Matrix Consulting Group can help guide you through the changing regulatory environment in California for marijuana cultivation and retail sales.

It is critical for local governments to be prepared for changes in:

Codes ■ Permitting and inspection processes ■ Fees

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there is no clear mechanism for providing state agencies the required information, namely whether the activity for which the license is sought is in violation of local ordinances. Prop. 64's approach places the responsibility on state agencies to do additional legwork to obtain this information and adds an unnecessary hurdle to the state licensing process. The League plans to ask for legislation requiring evidence of local approval to be included with all applications for recreational marijuana business licenses, consistent with the dual licensing regulatory protocol established in the MMRSA.

Regulating Marijuana Businesses: A Local Regulatory Checklist

Cities have some basic issues to consider when contemplating whether to adopt a local regulatory structure for recreational marijuana. First, there is little appreciable difference between medical marijuana ordinances and those for recreational marijuana, other than the adjective used

continued



J O B O P P O R T U N I T I E S

Director of Planning & Community Development City of Santa Cruz, CA



The popular seaside community of Santa Cruz (pop. 64,632) lies 75 miles south of San Francisco along the San Lorenzo River between the Santa Cruz Mountains and Monterey Bay. The Planning & Community Development Department is supported by a staff of 36.5 FTE and an annual operating budget of \$7.2 million. The department is organized across four divisions: Current Planning, Advance Planning, Code Compliance, and Building & Safety.

The ideal candidate will be a dynamic and highly strategic leader. In addition, he/she will be an empowering and energizing people manager with exceptional interpersonal skills and a history of effective relationship building. Deep knowledge of contemporary planning principles will be expected. Six (6) years of progressively responsible experience in urban planning, which includes at least two years of management experience, is required. A Bachelor's degree in Planning, Public Administration, or related discipline is required. A Master's degree and/or AICP certification is preferred.

Salary range \$142,068 - \$181,284 (additional 2% increase pending). Compensation also includes competitive benefits package. This recruitment will close at **midnight on Monday, February 20, 2017**. For detailed brochure and to apply online, visit www.tbcrecruiting.com.

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CITY OF EL SEGUNDO

El Segundo, a Los Angeles County beach city of almost 17,000, is located on the Santa Monica Bay. Residents enjoy classic California living with ocean breezes and a healthy outdoor lifestyle. El Segundo balances an ideal business environment with a small town community to provide a high quality of life for its residents and employers. There are tree-lined neighborhoods with award winning schools, parks and athletic fields. A wealth of dining and retail experiences are thriving that range from historic Main Street to recently constructed lifestyle shopping centers.

CHIEF OF POLICE The Chief of Police will oversee a high service level department and will direct and manage the development of comprehensive plans to meet the City's future needs for public safety services. The Chief is an at-will employee reporting to the City Manager. The new Chief will have a Bachelor's degree in Police Science, Public Administration or a directly related field, and at least 10 years of professional crime prevention, law enforcement, and police administration experience including five or more years of police management and supervisory experience (or an equivalent combination of education and experience).

PUBLIC WORKS DIRECTOR The Public Works Director oversees a department that provides the full array of public works services including water and wastewater, streets, facilities, equipment and vehicle maintenance, and engineering. The new Public Works Director will have at least five years well-rounded experience in municipal Public Works activities including four years tenure at the division management level or higher, including familiarity of the full range of public works and requires a BS/BA degree in a related field. Registration as a Professional Engineer is desirable.

INFORMATION SYSTEMS DIRECTOR The Information Systems Director is a newly created role that requires an innovative and service oriented business partner that provides pragmatic and timely technology and business solutions to city operations. The Director will work closely with other city executives in defining, prioritizing and addressing city information technology needs. The position will require a background that includes six or more years of progressively responsible experience in the administration of IT systems with at least three of those years at the supervisory or management level. A Bachelor's degree in a related field is required.

For more details, please see the formal job announcements, which include salary and benefits details and final filing dates at <http://www.averyassoc.net/current-searches/>.



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to describe marijuana. Second, some of the rules are different for recreational marijuana — principally that indoor cultivation for personal use can no longer be banned, and the state now pre-empts the imposition of local sales tax on medical marijuana.

Adopting Local Regulations Other Than Bans

Any city considering adopting a regulatory ordinance for medical marijuana should look at Oakland's ordinance, which when first enacted was relatively comprehensive but has recently been updated to reflect

the various licensing categories in the MMRSA. You can find Oakland's original ordinance at www.cacities.org/MedicalMarijuana (click the Ordinances tab). The League website also provides ordinances from several other cities, which represent a variety of local regulatory approaches.

Regulatory Fees

A local regulatory fee must be established at the outset. It is a good idea to survey what other cities are doing in this area. The regulatory fee may take the form of an annual business license fee and should be linked as much as possible to the city's actual cost of regulating one of these businesses for one year. For example, the City of Oakland's marijuana business license fee is \$60,000 per year, and the city can document that this amount is what it costs the city to properly regulate one marijuana business for one year; the fee covers issuance of permits, inspections, audits and so forth.

Law Enforcement and Fire Services Input

City officials should discuss with the local Police Department and local Code Enforcement Department their responsibilities under any local regulatory scheme and their comfort level related to executing those responsibilities. The local

Marijuana businesses deal in large amounts of cash, which presents unique challenges for cities that opt to regulate them.



J O B O P P O R T U N I T I E S

CITY MANAGER City of Diamond Bar, California



Annual Salary: DOQ + Excellent Benefits

Incorporated in 1989, Diamond Bar is a financially stable, culturally diverse community (population of 57,000) on the eastern edge of Los Angeles County within minutes of Orange, Riverside and San Bernardino counties. With an operating budget of \$26 million, the City has award-winning school districts, abundant recreational opportunities, and an unparalleled commitment to public safety.

The ideal candidate will be a public sector generalist, strong communicator and a diplomatic leader responsive to the City Council and public. The position requires at least five years of progressively responsible municipal government experience, preferably in California, in the planning, organization, coordination and administration of city operations at the Department Head level or higher. A Bachelor's Degree and the possession of a driver's license is required.

For a detailed job brochure and to submit an online application, cover letter and resume please visit the City's website at: www.diamondbarca.gov by 11:59 p.m. on March 12, 2017. EOE

Police Chief California State University, San Marcos, CA

California State University, San Marcos (CSUSM) is seeking a Police Chief who will provide leadership, management, and supervision. Today, more than 15,000 students attend the 304-acre, state-of-the-art main campus, which is nestled in the foothills of San Marcos, California (norther San Diego County). CSUSM Police Department is the primary agency for reporting and investigating criminal activity occurring on the CSUSM campus. The selected Chief is required to have a Bachelor's degree in police science, criminology, public administration, or a related field, plus eight (8) years of progressively responsible law enforcement or public safety work experience including a minimum of four (4) years leading and/or managing the work of others at the level of a Lieutenant or higher. A Master's degree, completion of the FBI National Academy or POST Command College is preferred. Current Advanced POST certification is also preferred or the Chief must be able to satisfy all POST standards within the first two years of employment. Experience in university policing is preferred, but not required. Salary is commensurate with the background and experience of the individual selected. If you are interested in this outstanding opportunity, please apply online at www.bobmurrayassoc.com. Contact **Joel Bryden** at (916) 784-9080 with any questions.

Filing deadline is February 24, 2017.



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Fire Department should also be consulted if there is any possibility that the city will permit manufacturing facilities.

In general:

- Law enforcement agencies tend to advise against allowing mobile dispensaries or delivery services because it is difficult to track their movements and activities;
- Police may prefer a designated brick-and-mortar dispensary, whether for medical or recreational marijuana; and
- If a city opts to allow delivery services, they should be under the ownership and control of a dispensary, as required by the MMRSA.

Managing the Local Regulatory Burden

Any city thinking about adopting regulatory ordinances for marijuana businesses should consider first adopting a per capita formula or a numerical limit on how many dispensaries it will ultimately have — for example, it can be one per 15,000 residents or some other formula. Limiting the number of marijuana businesses in its jurisdiction, by whatever means, will automatically make it easier for the city to regulate them, including conducting audits.

continued



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J O B O P P O R T U N I T I E S



City of Mendota DIRECTOR OF ADMINISTRATIVE SERVICES

Salary: \$60,010 – \$72,942 (currently under review) annually, plus excellent benefits

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Ideal Qualifications:

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- » Bachelor's Degree in Public Administration, Business Administration or related field.
- » Knowledge and experience in human resources, risk management, municipal aviation, and grant management.
- » Ability to provide leadership of the department with a clear focus on the duties and responsibilities of administrative services for the City.

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This is important because it accomplishes two things immediately:

1. Automatically limits the city's overall regulatory burden; and
2. Makes it less onerous to perform audits of marijuana businesses. This is a critically important activity. Marijuana

businesses deal only in cash and will continue to do so until the federal government reclassifies marijuana as something other than a Schedule 1 drug. Audits can determine or verify gross revenues, provide a fairly accurate picture of the volume of business and extrapolate how much revenue a local tax will yield for the city.

J O B O P P O R T U N I T I E S

CITY OF MONTE SERENO

Monte Sereno is located approximately 50 miles southeast of San Francisco and just minutes from the heart of Silicon Valley. Because of the City's beauty, location and superior schools many Silicon Valley executives have chosen Monte Sereno as their home. The community remains entirely residential, with no commercial zoning and 99% single-family housing, and is an upscale Silicon Valley bedroom community with a population of about 3,400 residents.

The City Manager is appointed by the City Council and is responsible for carrying out the policy direction of the City Council in accordance with municipal law for the benefit of City residents. Specific duties of the City Manager include overseeing the departments, preparation and administration of the annual City budget and other key projects. The new City Manager will be a collaborative manager

CITY MANAGER

who effectively delegates to and develops and empowers a small, close-knit staff; works well with partner agencies and contractors who provide key services to the community; and places a high value on communication with Council, community, partner agencies, and staff.

The new City Manager will be an experienced and accessible public sector executive with excellent management and administration skills and an unquestionable reputation for integrity and transparency. A background as a City Manager, Assistant/Deputy City Manager or other public sector executive is highly desirable for this position. For more details, please see the formal job announcement, which includes salary and benefits details and final filing date at www.averyassoc.net/current-searches/.



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All-Cash Payments: A Bona Fide Security Issue

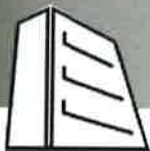
Cities that opt to regulate medical or recreational marijuana businesses should have a procedure in place for receiving and depositing large all-cash payments from them. This must include making appropriate security arrangements for payment of annual business license fees and tax payments. It may also include surveying local financial institutions to see which ones are willing to accept money from marijuana businesses. Credit unions may be more receptive than banks, but they too are regulated by a federal entity, the National Credit Union Administration, and may be reluctant to take any action that could be perceived as violating federal law or regulations. (For more information, read "Why Banks Don't Serve Marijuana Businesses" at www.westerncity.com.)

Going Forward

In the coming weeks and months, there will likely be at least one major piece of legislation that seeks to reconcile the MMRSA with Prop. 64. As noted earlier, the League will push for a provision that requires evidence of local approval as part of the application process for recreational businesses. Many other issues will be raised, including defining terms such as "ownership" and "premise," establishing limits on cultivation acreage, and deciding whether to impose a requirement for independently owned distributors who will ensure the collection of the state excise tax, oversee product packaging and verify product testing.

Finally, it should be noted that the result of the 2016 presidential election places the implementation of Prop. 64 in doubt. It is not yet clear whether the next U.S. attorney general will make enforcement activities against recreational marijuana a priority in the states that have legalized it. The only certainty as *Western City* goes to press is that bipartisan consensus remains intact in Washington, D.C., on

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the issue of continuing to deny funding to federal enforcement efforts against medical marijuana. For that reason, depending on the federal government's actions under the Trump administration, California could see a resurgence in medical marijuana in the coming months, and all efforts to move forward with the implementation of recreational marijuana legalization could be on hold indefinitely.

The League will keep its members apprised of the latest developments as the legislative session progresses. For more information, visit www.cacities.org. ■

Special Notes on Testing Facilities and Manufacturing

Testing Facilities. In accordance with both the MMRSA and Prop. 64, testing facilities should not be engaged in any other activity.

Manufacturing. Until recently, all forms of butane extraction in California were illegal. (Butane extraction is a process used to create a concentrated product containing large amounts of THC, the intoxicant in marijuana.) Consequently many cities were unwilling to issue permits for manufacturing of any kind and, in some cases, those that did saw those facilities swiftly shut down by law enforcement.

AB 2679 (Cooley, Chapter 828, Statutes of 2016) is a new law that addresses this problem by clarifying specific requirements both for a legal form of butane extraction and for extraction using nonvolatile solvents. This clarification is important because the MMRSA clearly anticipated extraction operations would occur as part of manufacturing activities. The League and the California Police Chiefs Association supported this legislation after confirming that the California Fire Chiefs Association was not opposed to the bill.



Butane extraction used to manufacture concentrated marijuana-derived products, such as the resin shown here, has raised health and safety concerns.

J O B O P P O R T U N I T I E S

Finance Director City of Napa, CA



Renowned as the seat of California's premier winemaking region and culinary destination, the dynamic City of Napa (pop. 80,000) is also characterized by its rolling hills, near-perfect weather and beautiful open space. This full-service municipality is supported by a FY2016-17 General Fund Operating Budget of \$79.2 million (total budget \$188.8 million) and a workforce of approximately 460. The Finance Department is organized across five divisions: Administration, Accounting & Auditing, Revenue, Purchasing, and Information Technology divisions.

Napa is seeking an inspiring and engaged professional to lead its 35-member finance team. The ideal candidate will be an exceptional people manager and mentor who is also known for being a collaborative business partner. He/she will be well-versed in contemporary uses of technology and may bring previous experience with system conversions/upgrades. Five years of local government finance experience, which includes at least three years of management experience, and a Bachelor's degree are required. A Master's degree and/or CPA certification is preferred.

Salary range \$137,093 - \$165,645. Placement within the range will be DOQE. A competitive benefits package supplements salary. Closing date: **Sunday, February 12, 2017**. For detailed brochure and to apply online, visit www.tbcrecruiting.com.

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Economic and Development Services Director City of Costa Mesa, CA

The City of Costa Mesa (population 110,000) encompasses 16 square miles and is approximately one mile from Southern California's incomparable coastline. Costa Mesa has established a reputation as one of the area's leading cultural and business centers. The City is now seeking a dynamic, innovative, and experienced professional to lead its Economic and Development Services Department. A Director with a proven track record of successful leadership and ability to effectively cultivate and maintain cooperative working relationships within the organization and the community will be ideal. The successful candidate will possess outstanding oral and written communication skills and be comfortable interacting with internal and external stakeholders on a regular basis. A leader who will embrace working collaboratively alongside an active Planning Commission will be valued. At minimum, candidates must possess a bachelor's degree from an accredited four-year college or university with major course work in planning, public administration, engineering, the social sciences, or a related field, and have extensive progressively responsible experience in the fields of city planning, redevelopment, and closely related fields, with considerable supervisory and administrative experience. Certification by the American Institute of Certified Planners (AICP) is also preferred. A Master Code Professional or Certified Building Official will be a plus. The annual salary range for this position is \$138,612 - \$185,760, DOQ. This salary range is currently under review. If you are interested in this outstanding opportunity, please visit our website at www.bobmurrayassoc.com to apply online. Please contact **Ms. Valerie Phillips** at (916) 784-9080 should you have any questions. Preliminary screening will begin following the application deadline of **February 17, 2017**.



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