We May Disagree, but We Will Be Respectful of One Another  
All Comments Will Be Directed to the Issue at Hand, and Addressed to the City Council  
Personal Attacks are Unacceptable

I. CALL TO ORDER / FLAG SALUTE / ROLL CALL 

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<tr>
<th>Council</th>
<th>Staff</th>
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<tr>
<td>Council Member Tiara Brown</td>
<td>Interim City Manager Randy Mendosa</td>
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<td>Council Member Dean Glaser</td>
<td>City Clerk Linda McGill</td>
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<td>Council Member Douglas Strehl</td>
<td>Deputy Director of Community Development Liz Shorey</td>
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<td>Mayor Pro Tem Tami Trent</td>
<td>Sr. Admin Assist to Community Development Jenn Ourique</td>
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<td>Mayor Sue Long</td>
<td>Police Chief Bill Dobberstein</td>
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<td>Lieutenant Matt Eberhardt</td>
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6:00PM

II. ORAL COMMENTS FROM THE PUBLIC 

Members of the Public may be heard on any item on the Special Meeting Agenda. Speakers addressing the Council will be limited to 3 minutes per speaker. Be advised, by law the City Council cannot deliberate or take action on issues presented during Oral Comments that are not shown on the Agenda.

III. BUSINESS

A. Discussion of State and Local Marijuana Ordinance Issues (Informational item to provide direction to staff)

IV. ADJOURN

Pursuant to Government Code Section 54957.5, any non-confidential documents or writings that the City distributes, less than 72 hours before a regular meeting, to all or a majority of the legislative body's members must be made available to members of the public at the same time as the distribution. Documents and information related to the agenda topics are available for review at City Hall, 621 11th Street, between the hours of 8:00 AM to 5:00 PM. Members of the public are invited to come to the meeting and comment. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at 725-7600. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Linda McGill CMC
City Clerk
DATE: March 22, 2017

TO: Honorable Mayor and Council Members

FROM: Liz Shorey, Deputy Director of Community Development

THRU: Randy Mendosa, Interim City Manager

SUBJECT: Discussion of State and Local Marijuana Ordinance Issues

STAFF RECOMMENDATION:

Receive presentation from staff. Discuss and provide staff with direction regarding any potential amendments to Fortuna’s marijuana ordinance.

EXECUTIVE SUMMARY:

As a result of Proposition 64 passed in November 2016, California now (1) legalizes adult nonmedical use of marijuana, (2) creates a system for regulating nonmedical marijuana businesses, (3) imposes taxes on marijuana, and (4) changes penalties for marijuana-related crimes. Local governments can choose to ban recreational marijuana businesses entirely, but may not ban indoor cultivation for personal use. Cities must allow indoor cultivation of up to six plants per residence for personal use. Cities could adopt regulations to require residents to obtain permits, pay fees, and let their homes be inspected to prevent fire risk, excess water use, or mold. Also, cities cannot ban the transportation of marijuana through their jurisdiction.

Fortuna Ordinance

The City of Fortuna’s Zoning Ordinance No. 2016-719 (attached) was adopted as an “emergency” ordinance in response to State legislation, and prohibits all recreational and medical marijuana uses and activities in all zones, including cultivation of any amount of marijuana for both recreational and medical use.

The ordinance would need to be updated to bring it into compliance with certain sections of the State law, in particular the six plants per residence allowance. This would give the city the opportunity to establish a permitting and inspection process. Compliance will avoid potential lawsuits, provide clarity to the public, and give direction to law enforcement. Revisiting the ordinance will also allow the city to consider nonmedical marijuana within city limits and if so, what fees and taxes would be implemented if desired.

Other Local Ordinances

In January 2015, Humboldt County adopted a land use ordinance that provides for the location and permitting of commercial cultivation, processing, manufacturing and distribution of marijuana. The County’s ordinance allows commercial cultivation on agricultural land, and encourages existing growers to register their unpermitted grows. More than 2,300 cannabis permit applications are being processed, many of which are located in the agricultural lands surrounding
cities, including Fortuna. The County states that they are considering changes to their ordinance to address issues in the city/county interface. In response to neighborhood concerns, City staff is reviewing options for remedy, including annexation of agricultural land into the city.

Rio Dell approved a medical marijuana land use ordinance last year, allowing cannabis activities only at the former Eel River Sawmills property, a 225-acre site. They also approved cannabis business permit fees that were modeled after the City of Arcata’s medical marijuana innovation zone on West End Road. An initial application fee is $2,500, the annual operating fee is $4,000 and the renewal application fee is $300. There are seven administrative permit fees, such as transfer of ownership, police department background check reviews, location and mailing address changes, that run from $50 to $100, with the potential to generate $50,000 annually in permit fee revenue.

The City of Arcata has adopted regulations applying to the cultivation, processing, manufacturing, testing, transport, delivery, distribution and personal use of medical marijuana. Arcata also allows the permitting of certain commercial medical cannabis activities within a Medical Cannabis Innovation Zone.

**Recommended Action**
The purpose of this workshop is to initiate discussion of marijuana activities in Fortuna in light of Proposition 64 and the changes in State law. Staff recommends that the Council provide direction relating to updating Fortuna’s marijuana ordinance, and if the Council wants to consider expanding any activities beyond the minimum required by State law.

**RECOMMENDED COUNCIL ACTION:**

1. Receive staff presentation and review Council questions with staff.
2. Open Public Comment
3. Close Public Comment
4. Provide direction to staff.

Attachments:
- Fortuna Municipal Code Marijuana Ordinance, Section 17.06.120.5
- Business & Professions Code Section 19300.5
- Health & Safety Code Section 11362.7
17.06.120.5 Medical marijuana and cultivation.

A. Definitions.

“Cannabis” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(f) as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Cal. Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Cal. Bus. & Prof. Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(1) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(m) as the same may be amended from time to time.

“Dispensary” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative.

“Dispensary” shall not include the following uses:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Cal. Health & Safety Code;

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Cal. Health & Safety Code;

3. A residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Cal. Health & Safety Code;

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Cal. Health & Safety Code;
5. A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Cal. Health & Safety Code.

“Dispensing” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(y) as the same may be amended from time to time.

“Manufacturing site” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(af) as the same may be amended from time to time.

“Medical cannabis, “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Cal. Bus. & Prof. Code § 19300.5(ag) as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015, as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Cal. Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Cal. Bus. & Prof. Code § 19300.5(aa) as the same may be amended from time to time.

B. Prohibition.
1. Commercial cannabis activities of all types are expressly prohibited in all zones in the city of Fortuna. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the city.

2. To the extent not already covered by subsection (A) of this section, all deliveries of medical cannabis are expressly prohibited within the city of Fortuna. No person shall conduct any deliveries that either originate or terminate within the city.

3. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the MMRSA.

4. Cultivation of cannabis for noncommercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones in the city of Fortuna. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the city, even for medical purposes.

C. Public Nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this section shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Cal. Civ. Proc. Code § 731 or any other remedy available to the city.

D. Civil Penalties. In addition to any other enforcement permitted by this section, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney fees and costs to the prevailing party. (Ord. 2016-719 § 3).
19300.5. For purposes of this chapter, the following definitions shall apply:

(a) “Accrediting body” means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) “Applicant,” for purposes of Article 4 (commencing with Section 19320), includes the following:

1. Owner or owners of the proposed premises, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the premises.

2. If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed premises.

3. If the applicant is a publicly traded company, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) “Batch” means a specific quantity of homogeneous medical cannabis or medical cannabis product and is one of the following types:

1. “Harvest batch” means a specifically identified quantity of dried flower or trim, leaves, and other cannabis plant matter that is uniform in strain, harvested at the same time, and, if applicable, cultivated using the same pesticides and other agricultural chemicals, and harvested at the same time.

2. “Manufactured cannabis batch” means either:

   A. An amount of cannabis concentrate or extract produced in one production cycle using the same extraction methods and standard operating procedures, and is from the same harvest batch.

   B. An amount of a type of manufactured cannabis produced in one production cycle using the same formulation and standard operating procedures.

(d) “Bureau” means the Bureau of Medical Cannabis Regulation within the Department of Consumer Affairs.

(e) “Cannabinoid” or “phytocannabinoid” means a chemical compound that is unique to and derived from cannabis.

(f) “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from
cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) “Cannabis concentrate” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) “Certificate of accreditation” means a certificate issued by an accrediting body to a testing laboratory.

(i) “Chief” means Chief of the Bureau of Medical Cannabis Regulation within the Department of Consumer Affairs.

(j) “Commercial cannabis activity” includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(k) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis.

(l) “Cultivation site” means a location where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

(m) “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) “Dispensary” means a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Section 19340, medical cannabis and medical cannabis products as part of a retail sale.

(o) “Dispensing” means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.
“Distribution” means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

“Distributor” means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

“Dried flower” means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

“Edible cannabis product” means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

“Fund” means the Medical Cannabis Regulation and Safety Act Fund established pursuant to Section 19351.

“Identification program” means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

“Labeling” means any label or other written, printed, or graphic matter upon a medical cannabis product, or upon its container or wrapper, or that accompanies any medical cannabis product.

“Labor peace agreement” means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state’s proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant’s business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant’s employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant’s employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

“Licensee” means a person issued a state license under this chapter to engage in commercial cannabis activity.

“Licensing authority” means the state agency responsible for the issuance, renewal, or reinstatement of the license.

“Live plants” means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

“Local license, permit, or other authorization” means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

“Lot” means a batch or a specifically identified portion of a batch.
“Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

“Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container.

“Manufacturing site” means the premises that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

“Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

“Primary caregiver” has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

“State license” or “license” means a state license issued pursuant to this chapter.

“Testing laboratory” means the premises where tests are performed on medical cannabis or medical cannabis products and that holds a valid certificate of accreditation.

“Topical cannabis” means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

“Transport” means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

“Transporter” means a person who holds a license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold
determined by the bureau between licensees that have been issued a license pursuant to this chapter.

(Repealed and added by Stats. 2016, Ch. 32, Sec. 8. (SB 837) Effective June 27, 2016.)
11362.7. For purposes of this article, the following definitions shall apply:

(a) “Attending physician” means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) “Department” means the State Department of Health Services.

(c) “Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) “Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS).
2. Anorexia.
3. Arthritis.
5. Cancer.
6. Chronic pain.
7. Glaucoma.
8. Migraine.
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
10. Seizures, including, but not limited to, seizures associated with epilepsy.
11. Severe nausea.
12. Any other chronic or persistent medical symptom that either:
   A. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
   B. If not alleviated, may cause serious harm to the patient’s safety or physical or mental health.

   (i) “Written documentation” means accurate reproductions of those portions of a patient’s medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county’s designee as part of an application for an identification card.

(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)
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 illegal 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 business.

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

continued
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 ■ Permits and inspection processes ■ Fees

Courtney Ramos
Senior Manager
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continued on page 21
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
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

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.diamondbar.ca.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 (northern 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.

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

Prop. 64 pre-empted all state and local sales tax on medical marijuana; such taxes are no longer allowed.

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**JOB OPPORTUNITIES**

**City of Mendota**

**DIRECTOR OF ADMINISTRATIVE SERVICES**

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

The City of Mendota is pleased to announce it is recruiting for the position of Director of Administrative Services. Mendota is nestled in the heart of California’s Central Valley and located in Fresno County. The City has a population of over 11,000 residents and bears the destination Cantaloupe Center of the World as agriculture is an important part of the City’s economy. The Administrative Director will be a highly motivated individual who is knowledgeable about administrative services and have the ability to adeptly manage a multitude of departments simultaneously.

**Ideal Qualifications:**

- Three (3) years of increasingly responsible professional, supervisory, and administrative experience in personnel or closely related field.
- 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.

Obtain an application online at [www.cityofmendota.com](http://www.cityofmendota.com). Final filing date: Open until filled.

EOE/ADA

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**Current opportunities . . .**

**Public Works Director**
City of Signal Hill

**Finance Director**
City of Napa

**Deputy City Managers**
Assistant to the City Manager
City of Palo Alto

Check our website for detailed information – [www.tbcruiting.com](http://www.tbcruiting.com)

Teri Black • 424.296.3111
Julie Yuan-Miu • 925.820.8436

Bradley Wardle • 650.450.3299

Western City, February 2017
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 I 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.

**JOB OPPORTUNITIES**

**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 1,300 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 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/.

**Seeking Government Real Estate Professional**

Carpenter/Robbins Commercial Real Estate, Inc., located in San Ramon, CA, specializes in government real estate and seeks an individual to work with Cities and Counties to execute real estate projects on their behalf.

The ideal candidate should understand the internal workings of the city and county real estate, planning, economic development departments as well as an understanding of real estate transactions and consulting services.

Work includes, but is not limited to, lead and/or assist in the execution of government RE assignments including acquisitions, dispositions, consulting, feasibility studies, report preparation, and property searches.

Strong written and verbal communication a must, current CA Real Estate License a plus. Please provide salary requirements and resume to: Alyce Rados, President at arados@crcre.com.

**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
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.

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 DOOE. A competitive benefits package supplements salary. Closing date: Sunday, February 12, 2017. For detailed brochure and to apply online, visit www.tbcrecruiting.com.

Teri Black • 424.296.3111
Julie Yuan-Mu • 925.820.8436
www.tbcrecruiting.com

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’s Degree Program 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.