

# Six Recommendations for Effective Cannabis Policy

Rational, thoughtful, inclusive policy principles are critical to a safe, fair, and profitable cannabis marketplace. Such guidelines must take into account cannabis' century-long history of prohibition, repercussions of the failed war on drugs, use as medicine, ability to generate tax revenue, and allure as an adult-use product. In addition, policies that fail to address the disproportionate impact of cannabis criminalization on marginalized communities in the past will exacerbate inequalities in the future.

Culled from the successes and challenges from nearly a decade of adult-use cannabis legalization efforts, these **six recommendations for effective cannabis policy** are:

- Establish an open market to ensure sufficient access;
- Allow both storefront and non-storefront delivery services;
- Allow advertising across various mediums while maintaining safeguards;
- Prioritize social equity and community reinvestment policies;
- Automatically expunge nonviolent cannabis-related criminal records; and
- Set reasonable tax rates to generate meaningful revenue.

More information about each recommendation can be found on [wmpolicy.com](https://wmpolicy.com).

## 1. Establish an open market to ensure sufficient access.

An efficient supply chain coupled with low barriers to entry results in a robust, well-functioning cannabis market. Burdensome regulations and onerous application requirements result in a constricted legal market and a persistent unlicensed market.

To create an open market, the following must be avoided:

- **Arbitrary License Caps** on cannabis retailers benefits the unlicensed market by limiting access to legal cannabis. If there are not enough retail licenses to meet demand, the unlicensed market will persist and undercut legal operators. Allowing consumer demand to dictate the number of retail licenses will displace the unlicensed market and ensure consumers purchase safe, lab-tested cannabis products. In addition, creating a pathway for legacy market operators to transition to the regulated industry is critical.
- **Burdensome Application Requirements and Fees** prevent many qualified individuals from entering the legal cannabis market. Exorbitant application and license fees, capitalization requirements, property requirements, and lengthy application review periods pose significant barriers to entry and heavily favor those with access to considerable funding. Applications should require the information needed to determine an applicant's qualifications and potential viability in the market. They should not require excessive application fees, expensive legal assistance, or the actual acquisition of property before a license is issued. Additionally, dedicated

funding and technical assistance should be made available to applicants disproportionately impacted by cannabis criminalization.

- **Overly Restrictive Zoning and Land-Use Requirements** run the risk of creating a de-facto ban on cannabis businesses. Cannabis-specific land-use regulations --including zoning restrictions, buffer zones, density controls, and aesthetic restrictions--should enable cannabis businesses to operate freely while simultaneously adhering to the needs of the community. Land-use regulations must enable cannabis retailers to maintain visible storefronts and signage to promote their business. Buffer zones between licensed cannabis businesses and designated sensitive use areas such as schools, should not be so restrictive that no cannabis business could actually comply. Additionally, cannabis businesses should not be restricted to only industrial or manufacturing zoned districts. Because most banks are prohibited from working with the cannabis industry, many businesses are cash-only operations. Relegating commercial cannabis activity to a single zone within a jurisdiction poses significant safety risks, particularly for employees.

## 2. Allow both storefront and non-storefront delivery services.

Delivery services are an integral part of a well-regulated cannabis market. Delivery is critical in ensuring that patients have access to their medicine, particularly those with mobility concerns and those who reside in rural communities. Delivery played an especially important role during the COVID-19 pandemic by allowing patients to safely access essential medicine while minimizing unnecessary exposure. Delivery also provides convenience for consumers to purchase legal cannabis, making it less likely they will turn to the unlicensed market.

Policy frameworks should allow for both storefront (when “brick & mortar” retailers also provide delivery or contract with a third-party to do so) and non-storefront delivery (sales and delivery with a depot-model headquarters out of which inventory and vehicles move). The primary difference is onsite consumer access, as non-storefront retailers do not have a public-facing retail space.

To ensure that cannabis delivery is both safe and convenient, the following requirements should be included for both modes of delivery:

- Services should be subjected to the same **identification and age verification standards** as traditional retail storefronts;
- Providers should be allowed to use **online ordering** to facilitate transactions;
- **GPS tracking** should be required for all drivers;
- Transactions should be accompanied by appropriate **order forms, invoices and manifests**; and
- Deliveries must be **made to physical addresses** with deliveries to schools, parks and youth centers prohibited.

## 3. Allow advertising across various mediums while maintaining safeguards.

As with any other industry, advertising plays a critical role in supporting a functioning legal cannabis market. Advertising allows licensed operators to establish brand awareness, educate consumers on legal cannabis products, and compete against the unlicensed market. Policies that support the legal cannabis

industry and protect public health and safety are not mutually exclusive. While cannabis businesses should be allowed to advertise, there should be reasonable restrictions in place that explicitly prohibit advertisements from appealing to children, as well as making false or misleading claims.

Cannabis businesses should have sufficient flexibility to advertise across various mediums, including out-of-home (billboards, ads on bus shelters, stadium signage) and digital (ads on internet platforms). At a minimum, licensees should be allowed to include information on pricing, available products, hours of operation, and other information pertinent to consumer purchasing decisions.

Supporting the legal cannabis industry and protecting public health and safety can be accomplished with responsible advertising policies. Cannabis advertisements should not feature individuals under the age of 21, and should not appeal to children in any manner. False or misleading claims regarding the health benefits of products should be prohibited.

#### 4. Prioritize social equity and community reinvestment policies.

Cannabis legalization presents an opportunity to address the social and racial inequities of the failed war on drugs and create an inclusive, equitable cannabis marketplace. Additionally, the launch of a multi-billion dollar legal cannabis industry creates new avenues for community reinvestment through the sector's proven capacity to generate tax revenue, create good (often union) jobs, spark entrepreneurship, and foster economic development. Social equity and community reinvestment policies ensure that those communities disproportionately harmed by cannabis criminalization are able to benefit from its legalization.

Achieving an equitable cannabis industry is not accomplished through the inclusion of a single measure, but instead through the alignment of multiple policies. These policies include:

- **reducing entry barriers** into the cannabis market;
- **creating social equity programs** to facilitate business ownership and employment for disproportionately impacted communities; and
- **reinvesting cannabis revenue** to fund community efforts.

#### 5. Automatically expunge nonviolent cannabis-related criminal records.

One of the most important components of repairing the harms of cannabis criminalization is expunging cannabis-related criminal records. An arrest or conviction can create significant barriers to employment, housing, education and even immigration status. Carrying the burden of a criminal record for something that is no longer illegal is blatantly unjust.

The onus of expungement (the legal process of clearing arrests, charges or convictions from an individual's record) for nonviolent cannabis-related crimes should be automatic. Simply "allowing" expungement prevents those who cannot afford the costly and time-consuming expungement process from having their records cleared. Automatic expungement relieves individuals of the burden of petitioning the courts and places the responsibility of identifying and clearing all qualifying criminal records on the local or state government.

## 6. Set appropriate tax rates that balance goals of minimizing the unlicensed market and generating meaningful tax revenue.

The cannabis industry can be a source of significant tax revenue for state and local governments looking to generate additional funding. In 2019 for example, California generated \$1.01 billion and Colorado generated \$387.5 million in tax revenue from legal cannabis.<sup>1,2</sup> In addition to funding the regulatory and oversight needs of the cannabis industry, cannabis tax revenue also funds specific public education, healthcare, and infrastructure projects in both states.

But policymakers must strike the right balance between generating revenue and diminishing the unlicensed market. If taxes are set too high, the price of cannabis will rise and consumers will seek out cheaper products from unlicensed shops. It has been proven time and time again that consumers will pay more for legal cannabis products, but once prices surpass a certain threshold, they will revert to the unlicensed market.<sup>3</sup>

Taxes on cannabis should be restricted to the final point-of-sale and be based on final retail prices (not by weight or THC levels). Local tax should be allowed, but capped at 3-5% .

## Endnotes

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<sup>1</sup> California Department of Tax and Fee Administration, Cannabis Tax Revenues.

<https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=CannabisTaxRevenues>

<sup>2</sup> Colorado Department of Revenue. Marijuana Tax Reports.

<https://revenue.colorado.gov/data-and-reports/marijuana-data/marijuana-tax-reports>

<sup>3</sup> A Society in Transition, an Industry Ready to Bloom: 2018 Cannabis Report. Deloitte, 2018,

<https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/consulting/ca-cannabis-2018-report-en.PDF>