

# Social Equity & Justice in Cannabis

Advancing Restorative & Equitable Cannabis Policies



WM Policy is the government relations, research, education, and public engagement arm of Weedmaps.

The WM Policy staff—with decades of legislative, regulatory and public policy experience, and an impressive record of achievement in local, state and national political campaigns; far reaching and impactful policy development; effective and creative public awareness efforts; and powerful, change-making coalition building—works with lawmakers, advocates, industry groups and other allies to forge safe, open, and sensible cannabis policy across the country and around the world.



## Executive Summary

### **Acknowledging the Harms of the War on Drugs**

Decades of cannabis prohibition has not impacted every community the same. Minority populations have historically been disproportionately affected by cannabis criminalization—contributing to generational socioeconomic disparities. Before exploring potential solutions to these long-standing issues, the facts of the War on Drugs’ impact must be examined, including the consequences that many disadvantaged communities face as a result.

### **Policy Reforms: An Opportunity to Advance Justice and Equity**

Social equity is not a new concept, nor is it new to the cannabis space. Establishing agreed-upon definitions of social equity, especially as it relates to the cannabis industry, is key to advancing policy reforms. To best serve these equity efforts, policymakers are responsible for creating and maintaining dedicated cannabis social equity programs, equitable laws and regulations, meaningful retroactive relief policies, and community reinvestment efforts.

### **Cannabis Social Equity Program—Direct Policy**

Targeted social equity programs must be designed to create and maintain a diverse cannabis industry—providing business opportunities for disadvantaged communities, and ensuring assistance where it is most needed. Robust social equity programs consist of six key elements: eligibility requirements, priority licensing and license set-asides, license availability, financial assistance, technical support, and exclusivity periods.

### **Equitable Laws and Regulations—Indirect Policy**

The effect of indirectly-related public policy on social equity in the cannabis industry cannot be discounted. Laws and regulations involving license caps, license types, zoning restrictions, financial services, and taxation, for example, can have significant impacts on market access and business viability, especially for social equity licensees.

### **Retroactive Relief**

True social equity cannot be achieved solely through forward-looking policy reforms. The impacts of cannabis criminalization must be addressed through meaningful criminal justice reforms. These policies must include procedures for retroactively clearing cannabis-related criminal records and resentencing active criminal sentences.

### **Community Reinvestment**

Given the significant tax revenue that can be achieved through cannabis legalization and commercialization, communities that have been historically disadvantaged by cannabis criminalization should realize proportionate reinvestment efforts. These communities must also have a seat at the table when determining how to allocate this funding.

### **Lessons Learned: A Review of Social Equity Programs**

Not all social equity programs are created equally—this section addresses a few examples of problematic social equity provisions, and what lessons can be drawn from each of them.

## Policy Recommendations

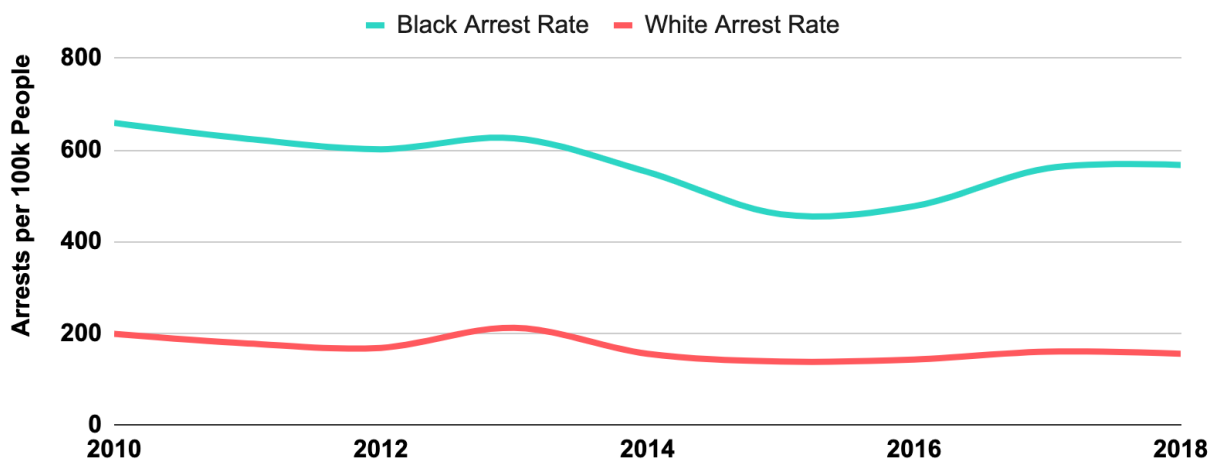
1. Broaden opportunities for market participation among communities disproportionately impacted by cannabis criminalization through the creation of cannabis social equity programs.
2. A portion of cannabis business licenses should be reserved for social equity applicants, along with government-backed funding mechanisms and technical assistance to aid with the high start-up costs and operational barriers associated with opening a cannabis business.
3. Define “disproportionately impacted communities” in terms of socioeconomic factors and areas of historically concentrated over-policing and discriminatory cannabis enforcement.
4. Ensure that licensing criteria include granting approvals for disproportionately impacted communities “by right,” or with a merit-based criteria, granting additional merit for disproportionately impacted candidates.
5. Advance state and local policy frameworks that minimize barriers to entry into the cannabis industry.
6. Eliminate any state or local caps on cannabis business licenses to prevent artificial scarcity for licenses, which inflates the value of licenses and shuts-out small and social equity businesses owners.
7. Allow for a broad range of licensing categories including those which typically have lower start-up costs, such as delivery services, consumption lounges, and microbusinesses.
8. Provide retroactive criminal justice relief through record clearance and resentencing for cannabis-related offenses.
9. Direct a portion of cannabis tax revenue toward community reinvestment efforts through a participatory grantmaking process, ensuring that the communities impacted by cannabis criminalization have a direct say in how funding is allocated.

## Acknowledging the Harms of the War on Drugs

Beginning in the 1970s, the Nixon administration’s infamous “War on Drugs” campaign has stretched across decades—fueling oppression, imprisonment, and long-lasting consequences for personal freedoms and socioeconomic opportunities. Although the War on Drugs initially targeted heroin and cocaine<sup>1</sup>, cannabis criminalization quickly became a tool for political persecution and admitted targeting of minority populations.<sup>2</sup> This era also witnessed the proliferation of mandatory minimum criminal sentences and “three strikes laws” that greatly increased the amount of time an individual could be imprisoned for cannabis, even amounting to a life sentence for drug offenses under the three strikes framework.<sup>3</sup> Today, according to data from the Federal Bureau of Investigation (FBI), cannabis accounts for more than 30% of drug-related arrests—equating to a cannabis arrest every 90 seconds.<sup>4</sup> This statistic has improved in recent years with the spread of cannabis legalization; just a few years ago in 2018, cannabis held claim to more than 43% of drug arrests.<sup>5</sup>

### Racial Disparities in Cannabis Arrests

Source: ACLU



Although cannabis is used at comparable rates by both Black and white people, Black individuals are far more likely to be arrested for cannabis-related offenses. According to an analysis by the American Civil Liberties Union (ACLU), Black individuals are nearly 4 times more likely to be arrested for cannabis possession than white people, on average.<sup>6</sup> Those disparities are even higher in some states, such as Montana, where Black people are 9.6 times more likely to be arrested for cannabis than white people. Even in states that have legalized cannabis, racial disparities persist—and have even worsened in some cases—while population-wide arrest statistics have improved.

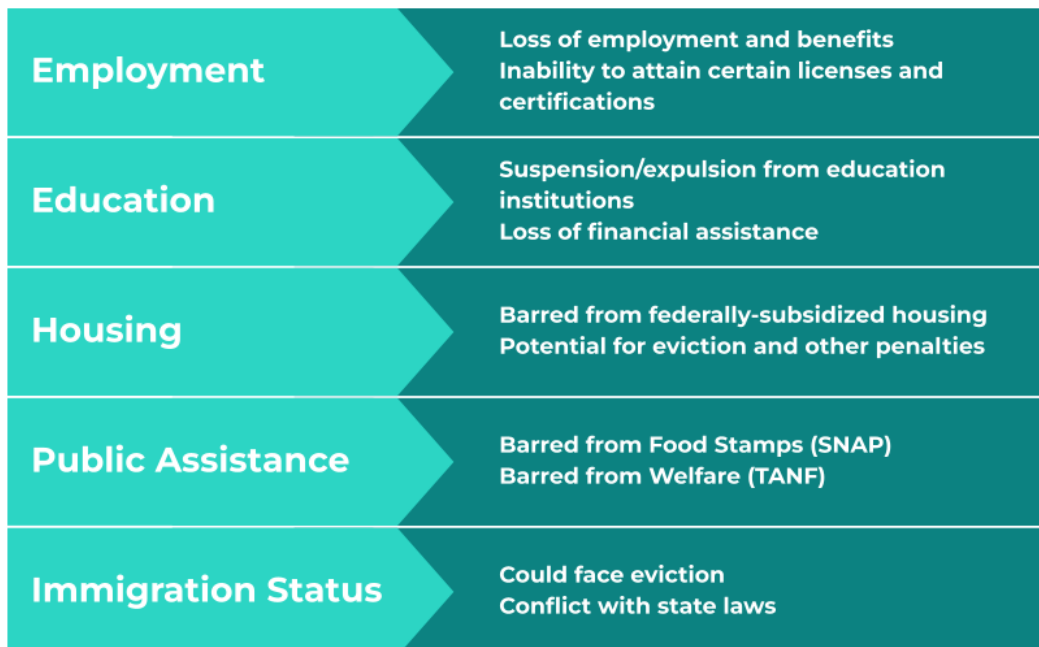
The Black community is not the only population disproportionately targeted by perverse cannabis laws—the Latinx community also faces distinct disparities in cannabis arrests. However, much of the existing data pertaining to racial disparities in arrests fails to properly identify differences in the Latinx population. Official FBI data does not recognize the Latinx population as a distinct racial category and therefore does not collect information specifically on this group. The ACLU puts forward a startling consideration in this regard: most Latinx arrests are likely counted as “white” arrests, artificially inflating this group’s arrest rate. Given the likely assumption that Latinx populations are arrested at a higher rate than white people, it can be inferred that the disparity between minority and white populations is even

larger than reported.<sup>7</sup> Indigenous populations also face disparate treatment by law enforcement, with arrest rates reaching 7 times that of white arrest rates in the example of North Dakota.<sup>8</sup>

Outdated cannabis laws also have a disproportionate impact on immigrants. According to an analysis by researchers at Syracuse University’s Transactional Records Access Clearinghouse, simple cannabis possession was the fourth most common cause of deportation from 2012 to 2013.<sup>9</sup> Because of the supremacy of federal law, immigrants risk deportation for consuming cannabis or working in the cannabis industry, even in a state where it is legal.

### Consequences of Cannabis Criminalization

Cannabis arrests have profoundly impacted the lives of millions of people in the United States. At the community level, high incarceration rates have negatively impacted local economies, labor markets, and social institutions.<sup>10</sup> Incarceration also has devastating consequences for the economic, social, and emotional well-being of families.<sup>11</sup> For the individual, a cannabis-related charge and/or conviction can be life-altering, sometimes resulting in jail time and restricted access to public and private services and programs resulting from a criminal record. These impacts on employment, public assistance programs, and more are known as collateral consequences. As defined by the National Inventory of Collateral Consequences of Conviction (NICCC), collateral consequences are “legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities” (NICCC).<sup>12</sup> According to NICCC, nearly 45,000 separate collateral consequences exist at the local, state, and federal levels.<sup>13</sup> For example, those with a cannabis-related criminal record can be prohibited from obtaining certain professional licenses (e.g. barber, nurse, electrician), be barred from federally-subsidized public housing, and lose access to student loan services and education grants— all mechanisms that traditionally facilitate upward economic mobility. The following graphic illustrates some examples of these collateral consequences:



These consequences are especially harmful to minority communities. With inflated arrest and conviction rates, Black and Brown populations are disproportionately impacted by these wide-ranging socioeconomic penalties—often leading to disparate community-wide and intergenerational outcomes in education, housing, employment, and more.

## Policy Reforms: An Opportunity to Advance Justice and Equity

Legalization is necessary to end prohibition and inequitable cannabis-related arrests, but care must be taken during the legislative and regulatory processes to ensure the communities disproportionately targeted by cannabis criminalization can meaningfully benefit from the legal industry. With intentional policy formulation, legalization can foster an equitable cannabis industry with diverse business ownership opportunities, invest tax revenue into the communities harmed by criminalization, and adopt vital retroactive criminal justice reform measures.

### What is Social Equity?

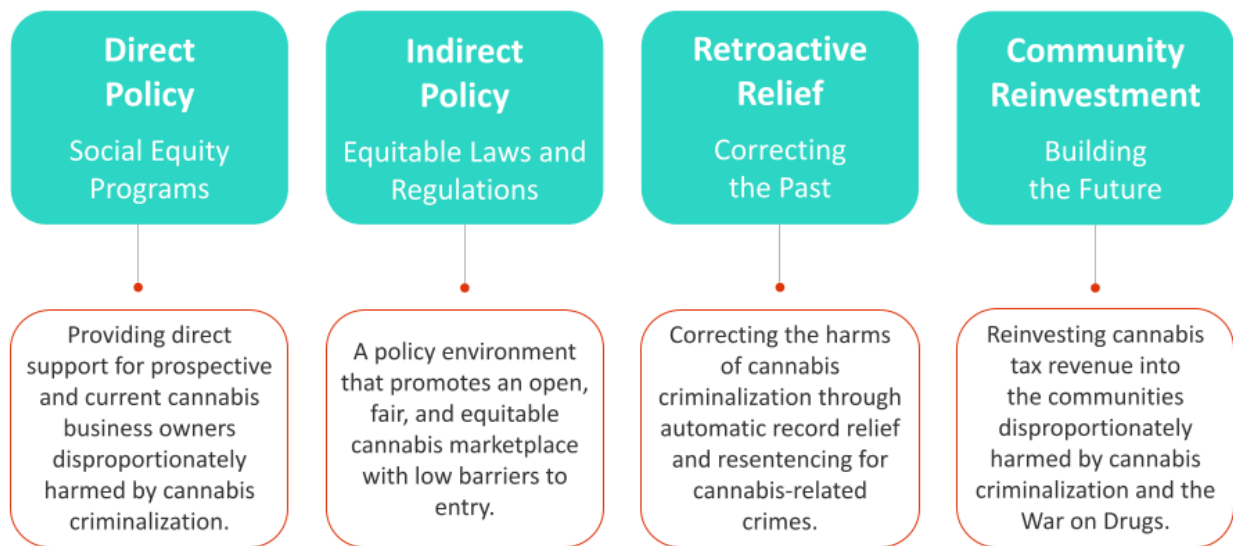
The concept of social equity as it relates to public policy is not new, nor is it exclusive to the cannabis industry. In a 2011 book, James Svava and Norman J. Johnson defined social equity as the following:

**“Social equity is the active commitment to fairness, justice, and equality in the formulation of public policy, distribution of public services, implementation of public policy, and management of all institutions serving the public directly or by contract. Public administrators, including all persons involved in public governance should seek to prevent and reduce inequality and injustice based on significant social characteristics and to promote greater equality in access to services, procedural fairness, quality of services and social outcomes” (pg. 282).**

At its core, Svava and Johnson argue that “social equity’s fundamental success boils down to the broad values of fairness and justice.”<sup>14</sup> As succinctly and eloquently stated by PolicyLink, social equity is the “just and fair inclusion into a society in which all can participate, prosper, and reach their full potential.”<sup>15</sup> Social equity initiatives must pursue both a retroactive and a proactive approach to serving the public interest—paving the way for a more equitable society is dependent on addressing the injustices of the past and investing in the future.

### What is Social Equity in Cannabis?

To understand how social equity applies to the cannabis industry, all public policies, public services, and institutions serving the public must be examined carefully. The impact of these policies and institutions must be measured by the number of individuals who benefit from them, with added consideration for race, gender, economic status, and other unique differentiators. Social equity in cannabis is best viewed as a matrix of four interdependent policy drivers, as shown below:



These four components—social equity programs, equitable cannabis policies, retroactive relief, and community reinvestment—offer a holistic approach to advancing an equitable cannabis industry and meaningfully addressing the harms of cannabis criminalization.

### A Note on Racial Equity

As described previously, equitable cannabis policy must be founded in the restoration of rights and the creation of opportunities for individuals and communities marginalized due to the disproportionate enforcement of cannabis criminalization. Specifically, this restoration must include the repeal of punitive cannabis policies, the clearing of cannabis-related records, and the resentencing of cannabis crimes. As noted in preceding sections, the equity impacts of cannabis prohibition have mostly fallen on the shoulders of minorities—especially Black and Brown individuals and communities. Given this distinct and measurable impact on minority populations, the core of cannabis-specific social equity programs must be rooted in racial justice. Put simply, racial justice is the “systematic fair treatment of people of all races, resulting in equitable opportunities and outcomes for all” (NEA Center for Social Justice). Notably, racial justice “is not just the absence of discrimination and inequities, but also the presence of deliberate systems and supports to achieve and sustain racial equity through proactive and preventative measures” (NEA Center for Social Justice).<sup>16</sup>

It is important to clarify that this paper’s particular focus on racial equity does not preclude other equity considerations, such as gender, socioeconomic status, veteran status, citizenship, or criminal justice considerations, for example. It is critical that cannabis social equity efforts are inclusive of a wide range of factors—while race may typically be the focus of such policies, as supported by data, it is not the only equity consideration and does not detract from the importance and inherent value of other efforts to create an equitable cannabis industry. In fact, state policies on the use of race as criteria for the provision of public benefits and services vary significantly. In New York, minority-owned businesses are explicitly defined as meeting eligibility criteria for inclusion in the state’s social equity program.<sup>17</sup> On the contrary, California does not permit race as criteria for social equity programs, but many jurisdictions use criminal history, income, and cannabis justice-affected areas instead.<sup>18</sup> In the example of Ohio, explicitly race-based social equity program provisions were deemed unconstitutional.<sup>19</sup> While implementation and



legality of race-based policies may vary across jurisdictions, it is critical that policymakers and the cannabis industry recognize the overarching role of race in creating and maintaining an equitable industry.

## **Cannabis Social Equity Programs—Direct Policy**

Cannabis social equity programs are local and state government initiatives designed to foster a diverse cannabis marketplace by creating business ownership opportunities for disproportionately impacted communities, especially BIPOC populations. These programs typically offer a range of benefits and services to qualified social equity applicants, including but not limited to: priority licensing, extra merit for license applications, reduced or waived fees, low-interest loans, technical assistance, tax deferrals, mentorships programs, and educational workshops.

### **Why Social Equity Programs Are Important**

Social equity programs are important for two key reasons: (1) there is a responsibility on all levels of government to rectify the past harms of cannabis criminalization, and (2) legalization on its own has demonstrated to be insufficient in creating a diverse cannabis industry.

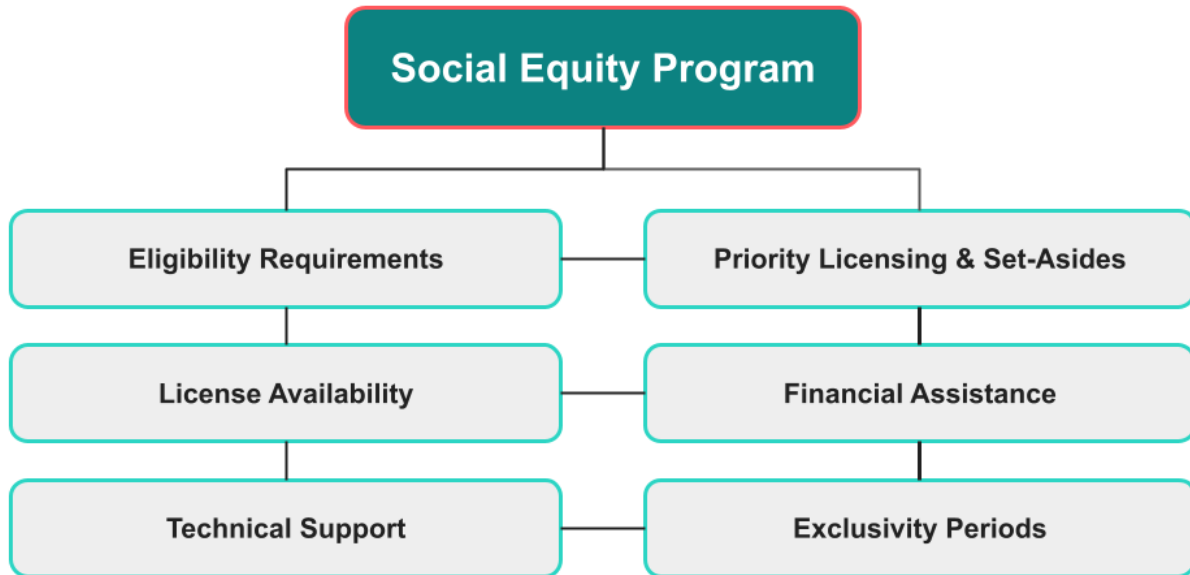
For several reasons, a lack of access to traditional banking and financial services (due to both historical under-serving and federal illegality), and burdensome state cannabis policies (e.g. license caps or mandatory vertical integration), entering the legal cannabis industry can be incredibly difficult, even for well-capitalized operators.<sup>20</sup> These difficulties are further exacerbated when factoring in the compounding and generational socio-economic impacts of cannabis criminalization, especially among Black and Brown individuals, making social equity programs necessary to carve out opportunities in the legal industry for those most harmed by prohibition.

### **Economic Impact of a Social Equity Program**

Ensuring that the communities most harmed by the prohibition of cannabis can benefit from its legalization is nothing short of a moral imperative for all levels of government. And while there is an inherent and compelling government interest in rectifying the harms of cannabis criminalization, new research from Supernova Women demonstrates a clear return on investment when a local or state government adopts a cannabis social equity program. According to the Social Equity Impact Report, for every \$1 spent on a social equity program, there is a “projected \$1.20 in social value generated through increased earnings for operators and employees, wealth, health, and tax revenue.”<sup>21</sup> Further, when factoring in the investment of cannabis tax revenue into community reinvestment efforts that support critical social programs and services, the estimated social value generated for every \$1 spent on social equity increases to a return on investment of \$4.56.

### **Elements of a Comprehensive Social Equity Program**

While the creation of a well-intentioned social equity program is commendable, the real impact of such a program lies in its nuances and ultimate implementation. The remainder of this section describes the essential elements of a social equity program and what measures can be taken to optimize them. These elements include: well-crafted eligibility requirements, priority licensing and license set-asides, licensing availability, financial assistance, technical support, and exclusivity periods. In a comprehensive research paper published in 2021, Shaleen Title describes a similar framework of effective elements that must be considered in the creation of a social equity program—including considerations for social equity applicants, what benefits they receive, and how licensing frameworks can support equity goals.<sup>22</sup>



### Eligibility Requirements

When designing a cannabis social equity program, policymakers must clearly define the eligibility criteria for program participation. Many jurisdictions conduct a “social equity analysis” first (sometimes referred to as an equity impact study) to establish a foundation and government interest in ensuring that demographics who have been disproportionately impacted by a particular public policy area have the opportunity to benefit from new programs going forward. These analyses seek to define “disadvantaged” communities—populations with historically disparate treatment with regard to drug policy enforcement. This is a critical first step in developing a social equity program, as it determines the beneficiaries of such policies. Local and state governments should conduct these equity analyses/impact studies to best inform social equity eligibility requirements.

#### Los Angeles, California—Disproportionate Impact Study

Prior to the passage of ordinances governing Los Angeles’s cannabis marketplace in December 2017, the City commissioned a report to promote ownership and employment opportunities for disproportionately impacted communities.<sup>23</sup> To establish “disproportionate impact,” the analysis methodically combed city data to map concentrated areas of over-policing. During the information gathering phases, the City held various engagements throughout communities to gather feedback and public sentiment to include within the analysis. The final report highlighted the racial disparity in arrests, noting that while Black people only made up 9.6% of the City’s population, they totaled 40% of all cannabis arrests. Ultimately, the methodology for identifying areas eligible for support from the City’s social equity program settled on the following:

1. Identifying disparities
2. Map hotspots for arrests
3. Map low-income populations
4. Map overlay of poverty and arrest data
5. Identify potentially eligible districts

Additionally, the report compiled information and recommendations for various aspects of the program’s implementation, including ways to lower barriers to entry and strategies to include communities in the policymaking process. As with many social equity programs, the City of Los Angeles defines eligibility for program participation by mapping policing data and economic indicators. Where the geographic areas overlap is identified as an area of “disproportionate impact”. An individual may qualify for the social equity program if they are low-income, and if they or an immediate family member have a prior cannabis offense on their record, or they have been a resident of a disproportionately impacted area for at least 5 years.

### **Priority Licensing and License Set-Asides**

At the highest level, one of the most simple methods for advancing equity in the industry is to allow for priority licensing and for a set proportion of licenses to be awarded to equity applicants. By considering a predetermined number of social equity license applications prior to non-equity applications, regulators ensure that these operators secure their place in the industry.

#### **Oakland, CA**

The City of Oakland’s cannabis regulations required at least half of all cannabis permits to be issued to equity applicants during the initial permitting phase.<sup>24</sup>

### **License Availability**

The availability of a wide range of license types is critical for social equity applicants. Social equity-backed licenses must be made available for delivery services, craft cultivators/microbusinesses, consumption lounges, and other less capital-intensive business models. Options like these often require fewer resources and are much more accessible—although it is imperative to note that social equity licensees must not be relegated to these license types only; they should simply be provided as a viable option.

#### **Denver, CO**

The City of Denver is an example of creating a range of license types that allow equity applicants to have widely varying entry points to the industry, with widely varying startup costs and business considerations. The City offers the following permit types: medical or retail delivery, medical or retail products manufacturer, medical or retail testing facility, medical or retail transporter, medical or retail off-premises storage facility, research and development, retail store, marijuana hospitality business, and marijuana hospitality and sales.<sup>25</sup>

### **Financial Assistance**

Funding, especially for start-up capital, is critical for prospective social equity cannabis business owners. Many states require applicants to have significant capital reserves on-hand prior to approval. For example, the state of Florida requires license applicants to post a \$5 million performance bond prior to consideration of an application.<sup>26</sup> This typically puts social equity applicants at a significant disadvantage, especially when considering the lack of traditional bank-provided financing options for the cannabis industry (a result of federal illegality) and that many social equity programs require participants to be under a certain income threshold. Many jurisdictions seek to remedy this by providing low-interest loans, grants, and/or tax deferrals to social equity applicants. However, in many cases, these assistance measures are funded through revenues from the cannabis market, which arrive far too late and have

minimal impact on the social equity landscape. To better serve the legitimate needs of social equity applicants, jurisdictions should consider providing financial assistance options up-front, with the potential to reimburse state funds after the fact with cannabis tax revenue. Without immediate funding available when progressing through the license application process, many social equity applicants may unfortunately not succeed in securing a license and operating a viable business, especially given the historical lack of access to capital in disadvantaged communities.

**Illinois—Social Equity Cannabis Loan Program**

The state of Illinois offers qualified social equity applicants access to low-interest loans after receiving a conditional license. Funding for this program is derived from appropriations from the state’s Cannabis Business Development Fund.<sup>27</sup>

In addition to start-up assistance, social equity licenses should also be offered a reduced cost, or with fees waived entirely. Application fees and other charges often total hundreds or thousands of dollars (as shown in the figure below)—yet another barrier for those with limited resources.

State	Retail Application Fee	Retail License Fee	Retail Renewal Fee
Michigan <sup>28</sup>	\$3,000	\$15,000	\$15,000
California <sup>29</sup>	\$1,000	\$2,500 – \$96,000	\$2,500 – \$96,000
New Jersey <sup>30</sup>	\$2,000	\$10,000	\$10,000

**Technical Support**

The provision of technical assistance to social equity applicants is critical in assuring their inclusion in the industry. This support typically includes help with navigating the application and licensing process, which can be extremely complex and time-consuming, especially for first-time prospective business owners. This support includes assistance with filling out an application, developing a business plan, securing real estate (if an application includes property requirements), acquiring all necessary zoning and land-use approvals, and more. After obtaining a license, continued support programs for regulatory compliance can protect social equity applicants from common pitfalls and foster meaningful relationships and trust dynamics between the governing jurisdiction and the cannabis industry. Technical support can also be critical during license application windows, as many minority communities are often burdened with a lack of access to quality broadband internet services, which can affect their ability to connect to online, time-sensitive application portals.

**Oakland, CA—Technical Assistance Offerings**

The City of Oakland’s “Make Green Go”<sup>31</sup> program allows qualified equity applicants to receive assistance with navigating the permitting process for a cannabis business, free of charge. The program curates workshops and other online training initiatives through all phases of a business startup. Services include, but are not limited to, compliance workshops, business coaching, business plan review, entrepreneurship training, licensing information, industry research, legal resources, and funding sources.

## Exclusivity Periods

Policymakers should consider adopting an exclusivity period, where certain license categories are only available to eligible social equity applicants for a set period of time. An exclusivity period provides social equity businesses with the first-mover advantage, allowing them to establish their business and build brand awareness ahead of large capital-heavy operators.

### **Massachusetts—Exclusivity Period for Delivery Licenses**

Although the policy only applies to cannabis delivery licenses, Massachusetts established a program allowing social equity applicants to have sole access to delivery licenses for the first three years of availability.<sup>32</sup> This gives exclusive access to the first set of delivery licenses to social equity applicants and allows time to establish brand recognition and capture a significant portion of the delivery market.

## Equitable Laws and Regulations—Indirect Policy

Social equity programs are an important public policy tool to encourage the market participation of those communities disproportionately impacted by cannabis criminalization. However, these programs cannot be successful if the policy environment does not promote an open, fair, and equitable marketplace. Social equity programs cannot operate in a vacuum. Lawmakers have a responsibility to ensure that social equity programs are backed by synergistic public policy that enables said programs to meaningfully reach BIPOC communities.

### Lowering Barriers to Entry

Despite efforts by state and local governments to broaden participation in the regulated cannabis market, high barriers to entry remain a significant problem that discourages market participation and undermines social equity. In many jurisdictions, state and local governments have advanced policies like rigid license caps, restrictive zoning standards, and limited licensing categories that severely narrow opportunities for small- and minority-owned entrepreneurs to enter this emerging industry. In some instances, municipalities have gone a step further to lock out potential market participants by requiring applicants to have previously held a license for a pharmacy or liquor store.<sup>33</sup> Such restrictive policies all but ensure that state and local cannabis markets will be dominated by large businesses backed by venture capitalists, high net worth individuals, and foreign investors. Not only will low barriers to entry promote a more diverse range of market entrants, but it will also increase healthy competition within the industry.

### Elements of Equitable Cannabis Laws and Regulations

While nearly every facet of a regulated cannabis market can play a role in promoting equity, the following policy areas can be the most impactful when paired with a robust social equity program. These elements include: license caps (or the lack thereof), license variety, zoning restrictions, banking services, and taxation.

### License Caps

Arbitrary license caps, while detrimental to the entirety of the cannabis industry, are especially harmful to social equity applicants. The enforcement of an arbitrary ceiling on licenses creates an artificial shortage of legal pathways into the cannabis marketplace, raising the costs of obtaining a license. If no additional state-issued licenses are available, the only remaining possibility is to purchase a license from an existing operator, where prices can potentially reach into the millions. This scarcity of licenses unfairly

benefits large operators with more capital and creates an environment dominated by multi-state businesses. Issuing enough licenses to result in at least 1 retailer per 10,000 residents in a given jurisdiction helps ensure that industry success is determined by factors such as innovation, customer service, product offerings, and other competitive advantages, and not arbitrary market restrictions that only benefit well-capitalized operators. These free market principles are standard in many other sectors of the economy, and cannabis should be no different.

### **License Variety**

As noted in preceding sections, the variety of licenses available plays a significant role in the market participation of social equity program-backed entrepreneurs. With the start-up costs of cannabis businesses often reaching millions of dollars, and retail dispensaries typically being the most costly, a range of alternatives is key to ensuring that all entrepreneurs, including social equity applicants, have a feasible path toward business ownership.<sup>34</sup> Authorizing smaller-scale license types—such as craft cultivation licenses in Illinois<sup>35</sup> or microbusiness licenses in Michigan<sup>36</sup>—provides for less capital-intensive opportunities. This is not to imply that social equity program licensees are incapable of obtaining financing for large-scale retail operations, or lack adequate capital on-hand for start-up costs. Permitting these smaller-scale license opportunities simply recognizes that social equity licensees, by definition, have been disadvantaged by cannabis criminalization and may subsequently lack the resources for multi-million dollar operations, especially when faced with competition from multi-state operators. Less capital-intensive business models like delivery services or consumption lounges can provide social equity licensees with pathways into the legal market from which they can grow and expand their operations. With this said, social equity programs must not only focus on these potentially less-costly license types, but simply provide them as a viable option for market entrance.

### **Zoning Restrictions**

Overly-restrictive local and state zoning standards undermine social equity by limiting the availability of properties, therefore suppressing market participation. These ultra-strict measures can relegate cannabis businesses to less-desirable areas of cities, place limitations on the number of cannabis businesses in a given area, and even restrict the distance between one business and the next. By shrinking the pool of available properties, restrictive zoning laws raise rental costs (through the simple economics of supply and demand)—making many properties unattainable for social equity businesses, who often have less capital and other resources at their disposal when compared to larger, well-funded multi-state operators. As a result, the limited number of land parcels falls into the hands of these large players, pushing small businesses and social equity prospects out of the market. Burdensome zoning policies that only allow for cannabis businesses in certain geographic areas are severely detrimental; these types of standards usually push cannabis businesses into less-desirable real estate for retailers, such as industrial districts, and also serve to limit property availability.

Establishing zoning laws that permit the reasonable distribution and concentration of cannabis businesses ensures that social equity licensees are at least on a level playing field with larger, well-funded operators when it comes to acquiring property.

### **Banking Services**

The cannabis industry's lack of access to traditional banking services has quickly spiraled into a national issue, impacting all states with a legal cannabis market. As states legalize cannabis for medical use, adult-use, or both, the federal government continues to fight the protracted War on Drugs. Because cannabis is a Schedule 1 substance, financial institutions face significant risks for conducting business

with the cannabis industry. Working with a cannabis business is risky for financial institutions, as they are required to report ‘suspicious’ and illegal activities to federal authorities—a requirement that encompasses cannabis activity.<sup>37</sup> For institutions that choose to take on this risk, service does not come cheap—many banks charge significant fees to simply keep an account active.

While this is an existential concern for the entire industry, it is especially harmful to social equity entrepreneurs. In most other circumstances, an entrepreneur that lacks the capital to fund their start-up could access funding through traditional bank loans; this is not the case in the cannabis industry. Social equity applicants who may not have the up-front resources to fully fund their business venture are left with no traditional means of obtaining capital. Even if banking services integrate cannabis businesses, the challenges for equity applicants are not over. Historically, minority populations face more difficulties in obtaining loans than white populations; in this sense, banking is not a silver bullet, and all efforts must be taken to ensure access to capital for equity applicants.

### **Taxation—Section 280E and Tax Rates**

The tax environment is difficult to navigate for cannabis businesses. Arguably the most egregious of disparities in the treatment of the cannabis market is Section 280E of the Internal Revenue Code. This policy prohibits licensed cannabis businesses from claiming standard business deductions when paying federal income tax.<sup>38</sup> This results in cannabis operators paying significantly more in federal taxes because they are unable to deduct “ordinary and necessary” expenses from their taxable income, such as employee salaries, rent, and utilities. In effect, the federal government profits tremendously from the cannabis industry while continuing to enforce prohibition-era policies—hypocrisy by definition.

High tax rates throughout the supply chain can also negatively affect social equity licensees. While inflated tax rates are problematic for the entire industry, they are especially harmful for social equity business owners who are less likely to have sufficient capital on-hand. High taxes also open a gateway for the unregulated market to flourish, jeopardizing the success of well-intentioned legal operators; policymakers must ensure that tax rates are set to reasonable levels that allow legal businesses to meaningfully compete with the unregulated market and grow the market share of legal cannabis.

### **Retroactive Relief**

True social equity as it relates to cannabis cannot be achieved solely through business programs and cannabis-adjacent law—jurisdictions must also address the catalyst of the problems that have created a need for social equity programs: criminalization. Fortunately, many effective tools exist for repairing the consequences of unjust cannabis prohibition. First, cannabis must be legalized and decriminalized at state and local levels, as this is where the majority of arrests and incarcerations take place. Despite significant progress on the state level, federal law and sentencing guidelines reign supreme and many individuals continue to be convicted of federal cannabis crimes—demonstrating the need for comprehensive federal reform as well.

While legalization and decriminalization are largely proactive measures—reducing or eliminating criminal penalties in the future—retroactive relief must be prioritized, and must be made effective alongside legalization, not years afterward. The most effective methods for this include record sealing and expungement, and resentencing of cannabis convictions. When comparing these tools, it is important to clarify that record sealing is inferior to expungement. Because sealed records are still accessible to the justice system, they can be used in any future proceedings and still stand to negatively impact a person’s life. Expungement is permanent, holistic, and much more effective as a relief tool.



## Forms of Retroactive Relief

**Record Sealing:** Sealing of a criminal record entails removing their criminal history from public view (e.g. employers, universities, credit agencies), although the record is still accessible via court order.<sup>39</sup>

**Record Expungement:** Expungement of a criminal history is the complete and total removal of associated records, as if the criminal incident(s) never occurred.<sup>40</sup>

**Resentencing:** The resentencing of a criminal sentence is the adjustment or elimination of the sentence due to an error or problem with the original punishment.<sup>41</sup>

Further, these retroactive relief measures should be automatic. Individuals should not be required to petition the courts to have their criminal record addressed in accordance with new laws. The administrative undertaking of these proceedings should rest with the state: record relief must be automatically granted to impacted individuals, as navigating these processes without assistance can be extremely costly and time-intensive. Petition-based processes are especially harmful to historically disadvantaged minority individuals, who may often lack the resources to secure an effective attorney or pay administrative/document filing costs.

The establishment of a concrete framework for these retroactive relief policies to be put into practice is critical to achieving social equity along with the legalization of cannabis. Citizens should no longer bear the burdens of a criminal record or unjust criminal sentence for something that is no longer illegal. Meaningful criminal justice reform creates socioeconomic opportunities that justice-impacted individuals wouldn't otherwise have—potentially affecting generations of people both directly and indirectly.

## Community Reinvestment

In 2022, it is clearer than ever that jurisdictions with legal cannabis await a windfall of tax revenue that can be meaningfully reinvested in communities disproportionately harmed by the War on Drugs. As of December 2021, Marijuana Policy Project reports that states have raked in over \$10 billion in tax revenue since the first legal adult-use cannabis sales began in 2014.<sup>42</sup> While this additional revenue must be distributed and invested in accordance with state law, policymakers should consider directing substantial sums toward social equity-focused programs and resources. These untold millions of dollars in revenue can play an impactful role in correcting the injustices of cannabis prohibition and provide meaningful reparations for the discriminatory and inequitable miscarriage of justice borne from punitive drug laws.

In California, a significant portion of cannabis tax revenue is invested in community non-profits that help to remedy the consequences of the War on Drugs, with over \$100 million already having been distributed to communities as of December 2021.<sup>43</sup> By directing cannabis-generated revenue toward programs that directly benefit disadvantaged individuals and communities, discrepancies in a wide range of measures such as arrest rates, education, business ownership, and other community-wide socioeconomic and criminal justice factors can begin to be leveled with the entirety of society. In particular, funding provided to communities should be distributed to beneficiaries via participatory grantmaking—a process whereby members of the community take an active role in directing funding.<sup>44</sup>



Ensuring that community members play a leading role in distributing funds and managing programs leads to more impactful, measurable outcomes.

### **California—Community Reinvestment Grants Program**

In California, cannabis-generated tax revenue is used to fund the Community Reinvestment Grant program, supporting mental health treatment, job placement, system navigation services, substance abuse disorder treatment, linkages to medical care, and legal services to address barriers to reentry.<sup>45</sup>

### **Illinois—R3 Program**

The state of Illinois has established the “R3” program, whereby cannabis tax dollars are used to fund grants that “restore, reinvest, and renew” communities.<sup>46</sup> The grants fund five key programs: civil legal aid, economic development, reentry, violence prevention, and youth development.

## **Economic Development**

Distributing tax revenue among projects that play a role in developing local economies can help with achieving social equity. Decades of targeted arrests and disparate prohibition enforcement have devastated the local economies of many minority communities: employable and hardworking citizens are incarcerated, and unregulated markets destabilize legal marketplaces.<sup>47</sup> Policymakers should consider directing cannabis-generated funds toward programs that promote economic growth within disadvantaged communities (primarily Black and Brown communities), such as:

- Post-secondary education; providing continued skill growth that generates employment
- Employment assistance programs; including job-seeking assistance, job training, and job retention programs, to name a few
- Childcare services; increased access to reliable childcare creates more employment opportunities for parents<sup>48</sup>
- Infrastructure development; such as broadband internet expansion, road repair, public transportation, etc.

These are just a few examples that would create opportunities for individuals to seek employment and ultimately attract employers to communities that are often overlooked—growing tax bases, creating generational wealth, and building equity. These funding opportunities should be directed by the impacted communities themselves, either through existing local government bodies, or through boards composed of active community members—a framework known as participatory grantmaking.

### **New Jersey—Funding “Impact Zones”**

In New Jersey, 70% of cannabis-generated tax revenue is required to be invested in “Impact Zones”—municipalities that have been socially and economically disadvantaged by the War on Drugs. These funds are used to support education services, economic development, and social support initiatives.<sup>49</sup>

## **Recidivism Reduction**

Investing cannabis tax dollars in programs that discourage criminal recidivism can contribute to further declines in prison populations, increases in employment, and the resulting positive community impacts. Expanding initiatives like the example provided below, and establishing new investments where they do

not exist is critical for correcting injustices. Programs that invest in education, employment, and other social integration services can aid in breaking the cyclical relationship between poverty and crime.<sup>50</sup>

#### **Alaska—Recidivism Reduction Fund**

In Alaska, 50% of tax revenue from adult-use cannabis sales is invested in the state’s Recidivism Reduction Fund, which assists currently and formerly incarcerated individuals with their reentry into society.<sup>51</sup>

## **Lessons Learned: A Review of Social Equity Programs**

As described throughout this paper, it is apparent that no social equity program is perfect. While this analysis has focused primarily on recommendations for critical pieces of social equity programs, it is also necessary to review some of the common pitfalls of these initiatives and learn from them.

### **Property Requirements**

Requirements for applicants to obtain property prior to submitting an application is inequitable, as it requires applicants to spend thousands of dollars a month on a vacant property without a guarantee of licensure. With no guarantee of license approval, social equity applicants in Los Angeles were forced to rent or purchase property (one of the largest expenses for a business start-up), only to have their application denied or delayed. Hundreds of applicants spent exorbitant amounts of money renting property while waiting for license approval.<sup>52</sup> This is especially prohibitive to social equity applicants, as many do not have the resources to purchase or rent property without a sufficient guarantee of licensure.

#### **Los Angeles, California—Property Requirements**

In Los Angeles, social equity applicants are required to have proof of property ownership or rental agreements prior to even applying for a social equity license. While obtaining property makes an individual/entity eligible for a license, it is no guarantee.<sup>53</sup>

Considering the particular disadvantages that burden minority communities, these property requirements are especially absurd in the social equity context. Minimal access to capital and a general lack of resources paired with the possibility of a stranded investment makes restrictive property requirements inequitable and unjust. Instead, applicants should be allotted a grace period or granted a conditional license after their application is approved to allow them to secure property for their new business.

### **Predatory Incubator Models**

Jurisdictions that offer business incubator programs run the risk of unscrupulous investors gaming the system—Oakland California is a prime example. While the idea behind this Oakland program is commendable, this framework creates the potential for predatory business practices—large investors can partner with social equity businesses and provide them with property and other resources, creating a dependency that can be exploited.<sup>54</sup> Wealthy investors can use programs such as this to take larger ownership stakes in equity businesses, and eventually chip-away at the social equity framework. While this model may be favorable to individual business owners based on preferences and personal goals, it is not conducive to a collectively-equitable cannabis industry.

### **Oakland, California—Predatory Incubator Models**

Oakland, California, in an effort to support the effective start-up of social equity applicants' businesses, has developed a business incubator program whereby property owners can provide social equity licensees with three years of free rent.<sup>55</sup> Equity applicants are also required to tie their application to a non-equity applicant.

### **First-Come, First-Served Licensing**

Awarding cannabis business licenses on a first-come, first-served basis (in order of applications) may seem fair, but this model is rife with inequitable outcomes. Taken at face-value this model for approving licenses seems reasonable, but without proper steps being taken to prevent unfair early-access and proper vetting of applications, equity applicants are left behind. In many marginalized communities, quality high-speed internet access is limited—historical repression results in poorer infrastructure, and poor infrastructure leads to biased application pools under this licensing model.

### **Los Angeles, California—First-Come First-Served Licensing**

Los Angeles's framework of "first-come, first-served" provision of licenses carries concerns for equity applicants. Under this model, applications are considered and approved in the order they were received. However, it has been revealed that some applicants were able to access the application system prior to its official opening—creating an unfair advantage for those applicants, and generating a high-level lawsuit.<sup>56</sup>

### **Broad License Transferability and License Caps**

Extreme caution must also be exercised with regard to the transfer of social equity licenses. In jurisdictions that allow licenses that were originally allocated for social equity applicants to be transferred to or purchased by non-equity operators, the social equity framework collapses. By allowing for future transferability, policymakers create a market ripe for consolidation by large multi-state businesses. Even though social equity license-holders may reap the benefits of selling their license to another operator, this erodes the intentions of social equity programs, and stands to further jeopardize equity in the cannabis marketplace. For each social equity license that is co-opted by multi-state operators, another opportunity to dissolve the War on Drugs and its impact on minority populations is lost.

### **Arizona—The Commoditization of Social Equity Licenses**

Arizona serves as a cautionary tale of well-intentioned policy that was poorly implemented with respect to social equity. After voters approved Proposition 207<sup>57</sup> in 2020 to legalize adult-use cannabis, a long process of rulemaking and subsequent lawsuits defined the parameters of Arizona's social equity program. Notably, the process whereby social equity applicants can receive a license entails entering into a state lottery. To enter this lottery, applicants must have their application attached to a company that is at least 51% owned by a qualified applicant—the rest of the ownership can fall with investors, large cannabis companies, or friends and family. Unfortunately, this provision has given large, multi-state operators and wealthy investors access to social equity licenses—exactly the opposite of a social equity program's intentions. Further, Arizona's program does not prevent licenses from being transferred from a social equity owner to another entity; in effect, this framework allows for large cannabis businesses and investors to back a social equity applicant's bid for a license, and then purchase the license from the applicant after it has been awarded<sup>58</sup>. This creates a situation

where large, capital-intensive businesses can make social equity licensees an “offer they can’t refuse”—this may be desired and significant for some individuals, but loses sight of the core intentions of a social equity program—to correct past injustices by providing long-term business opportunities that build generational wealth and foster investment in disadvantaged communities.

## Policy Recommendations

### **Broaden opportunities for market participation among communities disproportionately impacted by cannabis criminalization through the creation of cannabis social equity programs.**

Dedicated and robust social equity programs for prospective and current cannabis business owners are critical for achieving diversity, equity, and justice within the cannabis industry. These programs should, at a minimum, provide for social equity licenses at a reduced cost, with the addition of technical, financial, and operational support being the most effective framework.

### **A portion of cannabis business licenses should be reserved for social equity applicants, along with state-backed funding mechanisms and technical assistance to assist with the high start-up costs of opening a cannabis business.**

Allowing for carve-outs of available licenses to social equity applicants ensures that minority and justice-impacted individuals will have meaningful representation in the cannabis industry. Given the significant start-up costs for all cannabis business types, especially retail storefronts, state- and/or locally-backed funding mechanisms should be made available to social equity licensees.

### **Define “disproportionately impacted communities” in terms of socioeconomic factors and areas of historically concentrated over-policing and discriminatory cannabis enforcement.**

Within the context of cannabis social equity programs, disproportionately impacted communities that are eligible for social equity licenses should be defined based on historical data that reflects the particular community’s exposure to and impacts resulting from punitive drug laws and disparities in enforcement. This ensures that the benefits of social equity programs are concentrated toward communities and individuals, primarily Black and Brown, that have experienced the highest costs of the War on Drugs.

### **Ensure that licensing criteria include granting approvals for disproportionately impacted communities “by right”, or with merit-based criteria, granting additional merit for disproportionately impacted candidates.**

Regulators should consider the swift approval of licenses for disproportionately impacted communities based significantly on the inherent right of these communities to seek benefits that repair the damages experienced through disparate enforcement of cannabis criminalization and its many consequences. In cases where social equity license applications involve merit-based criteria, additional points should be automatically awarded to those applicants designated as disproportionately impacted by cannabis criminalization.

### **Advance state and local policy frameworks that minimize barriers to entry into the cannabis industry.**

The passage of both cannabis-specific and adjacent public policies plays a key role in determining the accessibility of the industry. These policies include, but are not limited to: zoning restrictions, license caps, license varieties, financial assistance programs, criminal justice reforms, and social equity license exclusivity periods. Each of these policy lanes holds the potential to expand cannabis market accessibility.

### **Eliminate any caps on cannabis business licenses to prevent artificial scarcity for licenses, which inflates the value of licenses and shuts-out small and social equity business owners.**

Arbitrary license caps on cannabis businesses are especially troublesome for social equity applicants, as a restricted license pool favors businesses with more capital and other resources. The number of cannabis

businesses in a given area should be determined by factors such as population density, supply needs, and consumer demand. This deference to natural economic considerations, population, and other competitive factors allows for social equity businesses to operate in an environment that is as close to equal opportunity as possible.

**Allow for a broad range of licensing categories, including those which typically have lower start-up costs, such as delivery services, consumption lounges, and microbusinesses.**

A variety of business models should be made available for social equity applicants. Many models such as delivery services, microbusinesses, craft cultivation, and consumption lounges may entail lower capital requirements and start-up costs, making them more obtainable for some entrepreneurs. These license types can serve as a springboard for social equity applicants to expand their business in more capital-intensive formats like retail storefronts, if they were not able to operate that model previously.

**Provide retroactive criminal justice relief through record clearance and resentencing for cannabis-related offenses.**

One of the most critical pathways to achieving social equity and social justice with respect to cannabis is through the clearance of cannabis-related criminal records, and the resentencing of existing cannabis convictions. By eliminating the burdens of a criminal record that are derived from a substance that is now legal in respective jurisdictions, the disproportionate impact on minority communities resulting from prohibition can begin to be corrected. Many opportunities that exist both inside and outside of the cannabis marketplace cannot be achieved with a criminal history.

**Direct a portion of cannabis tax revenue toward community reinvestment efforts through a participatory grantmaking process, ensuring that the communities impacted by cannabis criminalization have a direct say in how funding is allocated.**

Communities and individuals that exist on the frontlines of unjust cannabis criminalization should reap the rewards of a legal commercial market. Tax revenue generated from legal cannabis sales should be directed to state and local programs, nonprofit organizations, and other advocacy groups that serve to rectify the injustices of cannabis illegality. These avenues could include programs such as criminal recidivism reduction, societal reentry after incarceration, legal clinics and legal representation, economic assistance, and more.

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