

# SAN JOSÉ CANNABIS EQUITY ASSESSMENT

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## TERMS OF REFERENCE

Following are definitions for different terms used in this report. It is important to note the evolution of language over time, and that different studies and data sources may use different terminology.

### Cannabis Terminology

- Cannabis or marijuana: Since 2019, “cannabis” has been the City of San José’s adopted terminology to refer to the cannabis plant, the various medical and non-medical products made from the cannabis plant, the local cannabis industry, the City’s cannabis regulatory program, and other related factors and programs. This change acknowledged the racist origins of the term marijuana and the changes in terminology adopted by the State of California with the legalization of adult-use cannabis. Where the term “marijuana” is used in this report, it is within a historic context or because the terminology was used in an underlying data set (e.g., historic data on marijuana arrests reported to the Department of Justice).
- Cannabis dispensary: The terminology for a retail cannabis shop has changed over time. Where terms such as “medical marijuana collective” or “club” are used in this report, it is a reflection of the regulations in place at the time or the words used by the industry.
- Cannabis equity: Cannabis equity programs seek to provide opportunities for those more likely to have been disproportionately arrested/incarcerated or otherwise impacted by previous cannabis prohibition to have access to employment and entrepreneurship in the emerging legal cannabis industry.
- Cannabis prohibition: This term refers to the era when cannabis was illegal in the State of California, primarily from the 1913 through 2018. At the federal level, cannabis continues to be classified as a controlled substance, as described below.

### Demographic Terminology

Following are some terms used in this report to describe race and ethnicity as the assessment looks at how different communities were impacted by cannabis prohibition. Within each collective term, there may be different groups who have diverse experiences with cannabis prohibition and divergent outcomes that may not show up in data that is aggregated. Unfortunately, little disaggregated data is available.

It is important to note that race is a social construct, and each individual or community may choose to define themselves in different ways. This report seeks to be consistent in its use of terms, however, source documents and data may use differing terminology.

- Asian/Pacific Islander: This collective term has developed and evolved since the 1960s, and includes individuals whose heritage traces to east, central, and

southeast Asia, and the Pacific Islands, including such diverse countries as Vietnam, China, Japan, India, Cambodia, Pakistan, and the regions of Polynesia, Micronesia, and Melanesia.

- **Black/African ancestry:** Black and African ancestry is considered to include community members whose heritage traces to sub-Saharan Africa or Oceania. Community members may use other terms, such as African, African-American, Afro-Caribbean, etc. Many of the data sources in this report use the term Black.
- **Communities of Color or People of Color:** Often the preferred collective term for referring to non-White racial groups. Racial justice advocates have been using the term “people of color” (not to be confused with the pejorative “colored people”) since the late 1970s as an inclusive and unifying frame across different racial groups that are not White, to address racial inequities. While “people of color” can be a useful collective term, and describes people with their own attributes (as opposed to what they are not, e.g., “non-White”), wherever possible, this report attempts to identify people through their own racial/ethnic group, as each has its own distinct experience and meaning.
- **Indigenous:** Indigenous is a global term referring to people from indigenous tribes in the U.S., Canada, Latin America, Australia, and other places. Other terms used may include American Indian, Native American, Native Hawaiian, Native Alaskan, as well as local tribal designations.
- **Latin/o/a/x:** Individuals who identify as a person of Latin American descent. Some data may be referred to Hispanic or Latino/a/x, depending on the original data source, or as Hispanic/Latino/a/x. The term Hispanic is no longer used by some individuals or groups due to its connection to Spain, which colonized much of Latin America.

## EXECUTIVE SUMMARY

On November 9, 2016, California voters approved Proposition 64, legalizing the adult-use of cannabis in California. As the law took effect in 2017 and the medical cannabis industry expanded to adult-use, concerns were raised about how Black/African Ancestry, Hispanic or Latino/a/x, Asian/Pacific Islander, Indigenous communities (collectively referred to in this report as “communities of color”), women, and low-income communities would be able to enter the emerging legal cannabis industry.

Historically, communities of color and low-income communities throughout the state had experienced disproportionate rates of arrest and incarceration for cannabis possession and sales, despite studies showing that cannabis consumption rates were comparable across all races, ethnicities, and income levels. Many began wondering: How could those most harmed by the War on Drugs,<sup>1</sup> enforcement actions, and incarceration benefit from the opportunities afforded in this new industry, particularly when entrepreneurs of color and low-income business owners continue to face barriers and challenges to starting businesses, including accessing capital or having access to generational wealth?

Communities throughout California responded to this challenge by creating cannabis social equity programs. These programs are designed to facilitate the inclusion and support of individuals and communities in the cannabis industry who are from populations negatively or disproportionately impacted by cannabis criminalization. They seek to provide opportunities for those disproportionately likely to have been arrested/incarcerated or otherwise impacted by previous cannabis policies to have access to employment and entrepreneurship in the new cannabis industry.

By 2018, four California communities had established cannabis equity programs: Los Angeles, Oakland, Sacramento, and San Francisco. In 2019, the State of California passed legislation creating a statewide cannabis equity program, providing grants to cities and counties to create local equity programs.

On March 5, 2019, the San José City Council placed the creation of a Cannabis Equity Applicant Program on the Council Policy Priority list. On March 26, 2019, the City Council approved a preliminary Cannabis Equity Ordinance, which created definitions

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<sup>1</sup> The War on Drugs era and policies implemented then will be discussed below.

for Cannabis Equity Owners and Cannabis Equity Employees under San José’s cannabis program.<sup>2</sup>

At that time (and at present), the City’s cannabis program was open to new applications from manufacturing, testing, or distribution businesses. New retail (storefront dispensary or delivery-only) registrations are not allowed, although the City Council is scheduled to consider updates concurrently with receiving this report. Among the recommendations approved by the Council’s Community and Economic Development Committee on June 4, 2021<sup>3</sup> is adding 10 new retail registrations for businesses owned by cannabis equity entrepreneurs. Of these, a maximum of five could be storefront dispensaries (with or without a delivery component). The remaining registrations would be for delivery-only businesses. (Note: the City currently has no limits on the number of equity-owned or non-equity-owned manufacturing, distribution, or testing businesses.) Concurrent with receipt of this report, the City Council also will consider recommendations from the Administration for implementing a cannabis equity program, including an assessment of available funding and staff capacity, particularly in light of the City’s ongoing response and recovery efforts related to the COVID-19 pandemic and related economic impacts.

To guide implementation of a potential Cannabis Equity Program, the City Manager’s Office of Administration, Policy, and Intergovernmental Relations has developed this Cannabis Equity Assessment. The goal of this report is to:

- 1) Understand the City’s history with cannabis prohibition, including understanding where disproportionate harm occurred under past enforcement practices and acknowledging the City’s role in perpetuating systemic inequities precipitated by mass incarceration policies and the War on Drugs;
- 2) Identify an equity constituency and recommend updates to the existing Cannabis Equity Ordinance; and
- 3) Provide recommendations to the Council for implementing a cannabis equity program that would outline a path forward.

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<sup>2</sup> Chapter 6.88 - MEDICAL AND NON-MEDICAL CANNABIS | Code of Ordinances | San José, CA | Municode Library, Pub. L. No. Ord. 30234., § 3.5, 6.88.395 CANNABIS EQUITY ASSISTANCE PROGRAM (2019).

[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT6BULIRE\\_CH6.88MENDICA\\_PT3.5CAEQASPR](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT6BULIRE_CH6.88MENDICA_PT3.5CAEQASPR).

<sup>3</sup> Legislative file, Community and Economic Development Committee, June 4, 2021.

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=4975752&GUID=4252DF5C-C2F1-4AAE-93F1-D2D9CED78729&Options=&Search=>

The Administration is committed to embedding social and racial equity into all of its policies. The City of San José is one of the most diverse cities in the United States. This diversity benefits all, however, policies have not traditionally uplifted all residents equitably. Cannabis prohibition, in particular, resulted in negative outcomes for San José's Black and Latino/a/x communities, mirroring national and state trends in mass incarceration policies. The findings included in this report underscore the need to continue developing equitable policies and maintain meaningful conversations with communities affected to create intentional, lasting, and holistic policies that redress the harms caused by cannabis prohibition.

### Key Findings -- San José History

Between 2009 and 2018, the total number of cannabis arrests has declined significantly in San José, while cannabis arrest rates for people of color have mirrored national trends.

- Total felony and misdemeanor marijuana arrests in San José totaled 1689 in 2009. By 2018 they had declined to 111.
- Individuals of Black/African ancestry comprised a greater share of marijuana arrests than their share of the population during this period. The Black population has remained steady since 2009 at about 3%, while the Black share of total marijuana arrests ranged from a high of 15.6% in 2010 to a low of 8.4% in 2012.
- The same is true for the Latino/a/x population. The Latino/a/x share of the population ranged between 32% and 33% since 2009, while the Latino/a/x share of total marijuana arrests has ranged between a high of 64.8% in 2017 to a low of 49% in 2011.

Looking at San José Police Department calls for service data from 2004 to 2017, staff found that:

- Most cannabis-related arrests and citations happened in low-income neighborhoods.
- Most cannabis-related arrests and citations happened disproportionately in census tracts with majority Black, Indigenous, and people of color constituencies.
- Living in a low-income census tract was associated with a slightly greater chance of being subject to a cannabis-related arrest.



## Recommendations for a San José Cannabis Equity Program

To redress the harm caused by cannabis prohibition and enforcement, the City of San José should consider taking a range of actions:

### *Immediate Actions*

- Enact zoning and regulatory changes to provide opportunities for equity ownership. This includes City Council consideration of recommendations to allow new cannabis registrations for equity-owned retail and delivery-only businesses and to expand the “Green Zone” where cannabis retail businesses are allowed.
- Update eligibility requirements in the City’s Cannabis Equity Ordinance to better serve those who were disproportionately harmed by past practices, as outlined in this assessment.
- Create a small business development training programming for potential cannabis equity business owner applicants. Technical assistance should be available to equity applicants before opening registration.
- Build awareness and connect with communities disproportionately affected by cannabis prohibition and the War on Drugs through proactive engagement and outreach.
- Partner to raise awareness of expungement opportunities for those wishing to work in the cannabis industry.
- Restrict equity-ownership transfers to prevent predatory ownership arrangements.
- Advocate for resources to increase access to capital.

### *Actions for Further Consideration*

Dependent on staffing and funding availability, potential future opportunities for a cannabis equity program could include:

- Exploring the creation of a cannabis equity incubation program, particularly for equity owners of manufacturing, distribution, and testing businesses, as well as encouraging the development of shared spaces for micro-manufacturers, as allowed under the current ordinance.
- Creating workforce training for communities harmed by cannabis prohibition-era policies who wish enter the cannabis industry.
- Exploring fee waivers or incentives for equity-owned cannabis businesses.

- Developing efforts to encourage unauthorized operators to transition from the unlicensed market to legal operation.
- Improving the disaggregation of data, particularly for Asian communities.
- Exploring, potentially in partnership with public health agencies, ways to monitor and measure the public health implications of cannabis, particularly in low-income communities, communities of color, the LGBTQIA community, and others who have historically been disproportionately marketed to and targeted by the tobacco industry, the alcohol industry, the fast-food industry, and other sectors impacting public health.

## SAN JOSÉ CANNABIS EQUITY ASSESSMENT

In issuing this report, the City of San José acknowledges that during the era of cannabis prohibition, enforcement strategies and neighborhood-based interventions impacted certain communities and populations more than others. Impacts included higher arrest and incarceration rates, as outlined below. We also acknowledge the limitations of available data and hope the work done here will allow us to own our history and shape recommendations for how the City might work with the community to redress that history. This work is one small part of a larger citywide effort around racial equity.

### SAN JOSÉ – COMMUNITY OVERVIEW AND RACIAL EQUITY

The City of San José, the Capital of Silicon Valley, is located in Santa Clara County and is home to over one million residents, making it the third largest city in California.<sup>4</sup> The City has had a history of being a cultural center for the San Francisco Bay Area, as well as an innovation hub. San José sits on indigenous land and has a vibrant indigenous history that preceded its establishment and continues to this day,<sup>5</sup> as formally acknowledged by the City Council on October 19, 2021 in approving a resolution creating Indigenous Peoples’ Day in San José.<sup>6</sup>

San José prides itself on its cultural diversity. The City is home to people from all over the world, with nearly 38% of residents being born outside the U.S. As shown in Table 1 (below), the most recent Census data shows that approximately 38% of San Joseans are Asian, 31% are Hispanic or Latino/a/x, 23% are White, 3.5% are more than one race, 2.7% are Black, and less than 1% are American Indian/Alaska Native or Native Hawaiian/Pacific Islander.

This diversity, however, does not mean there have not been challenges for people in our City, particularly for low-income residents and people of color. In fact, historic practices of redlining and racial discrimination prevented Black/African-ancestry individuals and

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<sup>4</sup> “U.S. Census Bureau QuickFacts: San José City, California; United States.” Accessed September 16, 2021. <https://www.census.gov/quickfacts/fact/table/sanjosecitycalifornia,US/PST045219>.

<sup>5</sup> The Indian Health Center of Santa Clara Valley’s History. “Muwekma Ohlone Tribal Land Acknowledgment For The City of San José and Surrounding Region Thámien Ancestral Muwekma Ohlone Territory.” Accessed September 20, 2021. <https://www.indianhealthcenter.org/about-us/our-history/>.

<sup>6</sup> Resolution adopted by City Council on October 19, 2021. <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5160722&GUID=7FB7A9-AFFA-4D39-B1BA-3EF06C0D47AA&Options=ID|Text|&Search=indigenous>

families from living in much of San José for years, which is why San José’s Black population is so much smaller than other large cities in California and the nation.<sup>7</sup>

**Table 1: City of San José Demographic Summary**

<b>Demographic Category</b>	<b>Population</b>	<b>Percent of Population</b>
Total:	1,013,240	
Hispanic or Latino	316,266	31.21%
Not Hispanic or Latino:	696,974	68.79%
Population of one race:	660,699	65.21%
White alone	236,095	23.3%
Black or African American alone	27,422	2.71%
American Indian and Alaska Native alone	1,921	0.19%
Asian alone	386,993	38.19%
Native Hawaiian and Other Pacific Islander alone	3,460	0.34%
Some Other Race alone	4,808	0.47%
Population of two or more races:	36,275	3.58%

Source: U.S. Census Bureau, 2020 Census Redistricting Data

San José is committed to building a more just and equitable city for all residents. In 2019, the San José City Council hosted two study sessions on equity, where experts from the Government Alliance on Racial Equity presented a policy framework to the Council, city officials, and community members. This work is continued by the Office of Racial Equity, established in 2020, which is responsible for advancing systems change through a citywide racial equity framework that will examine and improve San José’s internal policies, programs, and practices to eradicate any structural and/or institutional racism in the City of San José. This includes a focus on enabling the organization, at all levels and in all departments, to identify ways to improve outcomes for residents who are of Black/African ancestry, Indigenous, Latino/a/x, Asian/Pacific Islander, as well as for other people of color.

<sup>7</sup> For a brief history of redlining and housing discrimination in San José, see Ending Displacement: A Community Strategy Report from the San José Anti-Displacement Policy Team, January 2020, online at <https://www.sanjoseca.gov/home/showdocument?id=50333>

On February 1, 2022, the City Council established a definition of racial equity<sup>8</sup> to guide the City's work in the area:

*Both a process and an outcome, racial equity is designed to center anti-racism, eliminate systemic racial inequities, and acknowledge the historical and existing practices that have led to discrimination and injustices to Black, Indigenous, Latino/a/x, Asian, and Pacific Islander communities. The racial equity process explicitly prioritizes communities that have been economically deprived and underserved, and establishes a practice for creating psychologically safe spaces for racial groups that have been most negatively impacted by the City's policies and practices. It is action that prioritizes liberation and measurable change, and focuses on lived experiences of all impacted racial groups. As an outcome, racial equity is achieved when race can no longer be used to predict life outcomes, and everyone can prosper and thrive. It requires the setting of goals and measures to track progress, with the recognition that strategies must be targeted to close the gaps.*

In the staff report, the Administration stated that “the City of San José leads with race but does not end with race. Leading with race means acknowledging the pervasive and deep disparities faced by people of color. It is also important to recognize the marginalization and oppression of many other communities such as LGBTQIA, people with disabilities, the linguistically diverse, and many others who may experience systemic inequity. Many people and communities live at the intersection of these identities. By leading with race, the City of San José can be better equipped to transform systems and institutions impacting other marginalized groups.”<sup>9</sup>

The adoption of a racial equity definition guides this report in understanding its intersection with the War on Drugs. The War on Drugs negatively impacted low-income communities and communities of color throughout the country. Cannabis equity, the subject of this assessment, is focused on rectifying the harms caused by cannabis prohibition and the War on Drugs. As part of its Cannabis Equity Grant Program for Local Jurisdictions, the State of California defines a cannabis equity program as “a program adopted or operated by a local jurisdiction that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or

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<sup>8</sup> Staff report: <https://sanjose.legistar.com/View.ashx?M=F&ID=10406670&GUID=D4F3D2EE-B58E-4CD4-8062-528DDA454A41>

<sup>9</sup> Ibid.

disproportionately impacted by cannabis criminalization as evidenced by the local jurisdiction’s equity assessment.”<sup>10</sup>

This document provides a cannabis equity assessment for San José. In the following pages we will review the history of the War on Drugs and resulting impact on communities of color, provide a demographic and geographic analysis of historical cannabis arrest data in San José, review Cannabis Equity Programs in other jurisdictions, and, finally, provide policy recommendations based on the foregoing analysis. The policy recommendations include both a specific focus on development and implementation of a cannabis equity program in San José as well as a broader look at other City efforts that could help rectify historical inequities caused by cannabis criminalization and move closer to ending racial disproportionalities.

## CANNABIS PROHIBITION AND THE WAR ON DRUGS

### Federal

The first federal regulation of cannabis in the United States was imposed by the Marihuana Tax Act of 1937.<sup>11</sup> Following the International Opium Convention and previous efforts to legally limit the use of cannabis, the Marihuana Tax Act levied taxes on possession and distribution of cannabis.<sup>12</sup> In 1970, Congress’s passage of the Controlled Substances Act officially prohibited the use of cannabis.<sup>13</sup>

In 1971, then-President Richard Nixon announced the War on Drugs, which ushered in the development of foreign and domestic policies to limit the use of psychoactive drugs. Domestically, this meant the formal prohibition of cannabis in the Controlled Substances Act, making it a schedule I controlled substance. Schedule I substances are deemed to have a high risk for abuse and no accepted medical use. The War on Drugs also ushered in an era of tougher sentences for drug offenses and the proliferation of mandated incarceration terms, known as “three strikes laws,” through the period

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<sup>10</sup> Koch, Will. “Cannabis Equity Grants Program for Local Jurisdictions - Grant Solicitation.” Governor’s Office of Business and Economic Development (GO-Biz), February 2020.

<sup>11</sup>“Marijuana Tax Act Law and Legal Definition | USLegal, Inc.” Accessed September 16, 2021. <https://definitions.uslegal.com/m/marijuana-tax-act%20/>.

<sup>12</sup>United Nations : Office on Drugs and Crime. “The 1912 Hague International Opium Convention.” Accessed September 16, 2021. [//www.unodc.org/unodc/en/frontpage/the-1912-hague-international-opium-convention.html](http://www.unodc.org/unodc/en/frontpage/the-1912-hague-international-opium-convention.html).

<sup>13</sup> Lampe, Joanna R. “The Controlled Substances Act (CSA): A Legal Overview for the 117th Congress,” n.d., 40.

between the 1970s to the early 2000s. Studies of this era’s tough-on-crime policies suggest that they largely failed in stemming illicit drug use and created conditions for the mass incarceration of Black and Latino/a/x Americans. It was not until 2009 that the drug policy began to shift at the federal level, when the Obama Administration directed U.S. Attorneys in western states not to focus enforcement resources on cannabis use that complied with state law. The following year, the Fair Sentencing Act reduced mandatory minimum sentences for drug crimes, and in 2013 the “Cole Memo” followed up on the 2009 direction by instructing U.S. Attorneys not to focus federal enforcement resources on states that had legalized medical or other uses of marijuana.<sup>14</sup>

## State of California

Following other states during the early 1900s, the State of California passed an amendment to the Poison Act in 1913 that criminalized cannabis.<sup>15</sup> Before its formal prohibition, sentiment in prominent news media of the time warned of Mexican laborers smoking “marijuana”, stirring public opinion against its use.<sup>16</sup> The first recorded enforcement of cannabis prohibition came the year following prohibition in the Mexican-American Sonoratown neighborhood of Los Angeles.<sup>17</sup> Penalties for cannabis would increase in subsequent years, with prison sentences for possession increasing by six to 10 years.<sup>18</sup> During this period, possession and sales were punished with the same sentencing parameters.

It was not until the Moscone Act in 1975 that marijuana sentences would change, with those convicted receiving longer sentences for higher amounts (to deter distribution) and shorter sentences for smaller amounts (conceivably for consumption).<sup>19</sup> Decriminalization would continue for nearly 30 years until the passage of Proposition 215 in 1996, which allowed for medical marijuana use as prescribed by a patient’s physician. In 2006, Proposition 36 was approved, which provided that first- and second-time drug offenders would be sent to drug treatment centers instead of facing criminal prosecution. The cities of Oakland and San Francisco also passed local measures to deprioritize marijuana enforcement.<sup>20</sup> In 2010, the State reduced the charge for

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<sup>14</sup> Drug Policy Alliance. “A Brief History of the Drug War.” Accessed September 16, 2021.

<https://drugpolicy.org/issues/brief-history-drug-war>.

<sup>15</sup> Gieringer, Dale H. “The Origins of Cannabis Prohibition in California,” n.d., 38.

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

possession of an ounce or less of cannabis from a misdemeanor to an infraction. Finally, in 2016, California voters approved Proposition 64 which legalized the possession, sale, and distribution of recreational (or adult-use) of cannabis.<sup>21</sup> Proposition 64 also set regulations for adult use.<sup>22</sup>

On September 26, 2018, then-Governor Edmund G. Brown signed Senate Bill 1294, which authorized the State of California’s Bureau of Cannabis Control to provide technical assistance and funding to local jurisdictions seeking to establish cannabis equity programs.

### San José

After the passage of Proposition 215, the City of San José first adopted a medical cannabis zoning and regulatory program on March 25, 1997.<sup>23</sup> According to the National Organization for the Reform of Marijuana Laws, the City was the first in the nation to regulate medical cannabis dispensaries. The organization’s newsletter quoted then-Mayor Susan Hammer as saying, “We certainly understand the mandate of the people of California. We are going to regulate the land use for this activity just like we regulate the land use for other activities [like] bars, restaurants, and gas stations.”<sup>24</sup>

That summer, the City’s program—and its lone medical cannabis dispensary, the Santa Clara County Medical Cannabis Center—were featured in the *New York Times Magazine*, which stated “Today, playing by the book in San José means breaking the law in Washington: under Federal law, which is undisturbed by Proposition 215, the crime of cultivating 100 marijuana plants carries a five-year mandatory minimum sentence.”<sup>25</sup>

Within a year, the cooperative relationship between the San José Police Department and the dispensary described in the *Times* article had changed. On March 23, 1998, San José Police arrested co-founder Peter Baez on multiple charges. The medical cannabis dispensary closed on May 8, 1998. Then-City Attorney Joan Gallo told the Metro

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<sup>21</sup>“Proposition 64 - The Control, Regulate and Tax Adult Use of Marijuana Act.” Accessed September 16, 2021. <https://post.ca.gov/proposition-64-the-control-regulate-and-tax-adult-use-of-marijuana-act>.

<sup>22</sup> Ibid

<sup>23</sup> National Drug Strategy Network, News Briefs, May-June 1997. <http://ndsn.org/mayjun97/sanjose.html>

<sup>24</sup> National Organization for the Reform of Marijuana Laws, April 24, 1997, <https://norml.org/news/1997/04/24/meanwhile-san-jose-city-council-opts-to-regulate-medical-marijuana-clubs/>. Accessed online January 22, 2022.

<sup>25</sup> “Living With Medical Marijuana,” *New York Times Magazine*, July 20, 1997, Michael Pollan <https://www.nytimes.com/1997/07/20/magazine/living-with-medical-marijuana.html>. Accessed online January 22, 2022.



newspaper, “With the federal government taking the unreasonable position that it is taking, it is going to be very difficult for anybody to operate a legal marijuana dispensary.”<sup>26</sup>

In 2001, when the City updated its Zoning Code, the medical cannabis provisions were later deleted from the Municipal Code given the unchanging federal stance.<sup>27</sup> Then, in 2009, following the Obama Administration’s decision to deprioritize cannabis enforcement in certain states, the City Council began discussing regulatory options, and cannabis entrepreneurs quickly moved to open medical marijuana dispensaries, clubs, and delivery businesses in San José despite there being no legal framework to do so.<sup>28</sup>

On June 22, 2010, the Council voted unanimously to prioritize shutting down any of the approximately 60 operators citywide that were operating within 500 feet of schools and day care centers and to explore cannabis taxes and regulation in the future.<sup>29</sup> The City Council placed Measure U, which authorized a tax of up to 10% of gross receipts on cannabis businesses, on the November 2, 2010 ballot. It passed with a 78% yes vote.<sup>30</sup>

In 2011, the City Council approved zoning and regulatory ordinances for medical cannabis collectives, however, these were suspended on October 28, 2011, and the regulatory ordinance was repealed on February 14, 2012 after a petition for referendum was filed to overturn the laws.<sup>31</sup>

The City Council and City administrators worked over the next few years to create a regulatory program that was robust, fair, and considered the needs of medical cannabis

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<sup>26</sup> May 28, 1998, “Crucifying St. Peter,” Eric Johnson, Metro Newspaper.

<http://www.metroactive.com/papers/metro/05.28.98/cover/med-marijuana-9821.html> accessed online January 22, 2022.

<sup>27</sup> July 20, 2010 memorandum from Director of Planning, Building and Code Enforcement to the Rules and Open Government Committee, “Workload Assessment for a Medical Marijuana Ordinance.” Accessed online January 22, 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/24583/636689945325730000>

<sup>28</sup> Ibid.

<sup>29</sup> Tracy Seipel, “San Jose takes first steps to limit medical marijuana clubs,” San Jose Mercury News, June 22, 2010. <https://www.mercurynews.com/2010/06/22/san-jose-takes-first-steps-to-limit-medical-marijuana-clubs/>. Accessed online January 22, 2022.

<sup>30</sup> San José Marijuana Tax, Measure U, Ballotpedia.

[https://ballotpedia.org/San\\_Jose\\_Marijuana\\_Tax\\_Measure\\_U\\_\(November\\_2010\)](https://ballotpedia.org/San_Jose_Marijuana_Tax_Measure_U_(November_2010))

Accessed online January 22, 2022.

<sup>31</sup> City of San José archived website: <http://www3.sanjoseca.gov/medicalmarijuana.asp>. Accessed on January 22, 2022.

patients, neighborhood residents, youth, and the emerging medical cannabis industry. A key challenge at the time was the lack of a State regulatory program or guidance.<sup>32</sup>

In June 2014, the City of San José adopted its medical cannabis program. The program provided a path to legalization for the approximately 120 existing dispensaries and clubs, and the City did not consider prior cannabis convictions to be a barrier to ownership or employment in the industry; no cannabis equity programmatic components were analyzed at that time as the City had not yet embarked on its citywide work on racial equity. There was much discussion of alternative zoning options and neighborhood impacts, occurring over multiple Council meetings.

Residents raised concern about allowing the collectives too close to homes and schools, and business interests raised concern about collectives locating in certain business districts. The industrial zoning districts were chosen (excluding a large swath of parcels in North San José, Edenvale, and the International Business Park), creating what the industry calls the “Green Zone.” As a result, cannabis dispensaries are only located in four of the 10 Council districts,<sup>33</sup> and nine of the 16 are in District 7, where more than half of the community is designated high to highest priority Equity Priority Communities by the Metropolitan Transportation Commission (MTC) (formerly Communities of Concern). The new zoning recommendations for cannabis retail (discussed later in this report) are expected to alleviate some of that overconcentration.

Approximately 65 operators initially applied to open medical dispensaries in San José, and by the December 2015 deadline, 16 operators had successfully received a Notice of Completed Registration with the City to operate as a medical cannabis collective. According to City staff who worked on the initial program, challenges included the need to locate at (or relocate to) compliant sites in industrial zones, vertical integration requirements (requiring the medical collectives to grow and produce the cannabis they sold), the costs of tenant improvements on the new sites, as well as a state regulatory landscape that was new and ever-changing. Staff reported that these challenges were bigger hurdles for owners/operators who had less formal business experience, experience with building and zoning codes or regulatory frameworks, experience hiring contractors and architects, and less access to capital to procure these services.

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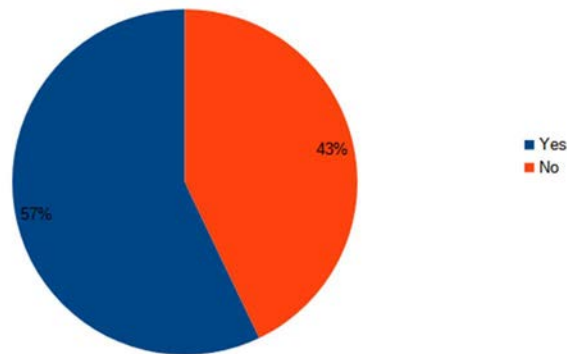
<sup>32</sup> Interviews with City staff, 2021.

<sup>33</sup> Between December 2015 and January 2022, dispensaries were located in the following Council districts: nine in District 7, four in District 3, two in District 4, and one in District 10. With redistricting in February 2022 changing borders, the totals will be: nine in District 7, five in District 3, one in District 2, and one in District 6.

As the State of California developed its regulatory program, the City’s new program went through a number of iterations, including addressing concerns regarding vertical integration and other requirements. On June 2, 2016, 64.56% of the voters of San José rejected a measure that would have overturned the City’s program and allowed a minimum of 50 cannabis businesses in San José. This measure had been placed on the ballot through a petition drive.<sup>34</sup>

As shown in the chart below, the following November, 57% of San José voters supported Proposition 64, which legalized adult-use (or non-medical/recreational) cannabis in California. While some provisions of Proposition 64 took effect immediately, the provisions requiring the State to license cannabis retailers and allow them to operate did not take effect until January 1, 2018. On November 14, 2017,<sup>35</sup> the San José City Council voted to allow the existing registered dispensaries to provide non-medical cannabis to those aged 21 and older beginning January 1, 2018. In addition, the City Council authorized registered dispensaries to deliver cannabis products to their customers’ homes or businesses.<sup>36</sup> To date, 12 of the 16 have obtained registration to deliver cannabis.

**Graph 1: Proposition 64 Vote in San José**



Source: California Secretary of State, “General Election - Statement of Vote, November 8, 2016: California Secretary of State.” <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-8-2016/statement-vote>.

<sup>34</sup> San José, California, Medical Marijuana Collectives Initiative, Measure C (June 2016). Ballotpedia. [https://ballotpedia.org/San\\_Jose,\\_California,\\_Medical\\_Marijuana\\_Collectives\\_Initiative,\\_Measure\\_C\\_\(June\\_2016\)](https://ballotpedia.org/San_Jose,_California,_Medical_Marijuana_Collectives_Initiative,_Measure_C_(June_2016)) Accessed online January 22, 2022.

<sup>35</sup> Legislative file for November 14, 2017 Council meeting: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=3203004&GUID=75F05F98-5B2B-4DB0-A428-DE19ECB3E053&Options=&Search=>. Accessed online January 2

<sup>36</sup> Meeting of San José City Council (2017, November 14). Council Chambers. Retrieved from <https://sanjose.legistar.com/View.ashx?M=M&ID=561254&GUID=56C16667-9EFA-4EC0-B97A-BF74F632A4DA>

On January 15, 2019, the City Council expanded the cannabis program, approving zoning and regulatory ordinances to allow manufacturing, distribution, and testing labs in the City.<sup>37</sup> At that time, the San José Cannabis Equity Working Group released a position paper calling for the City of San José to enact a cannabis equity program.

A few weeks later, during its annual Council Policy Priority Setting Session on March 5, 2019, the City Council prioritized two cannabis items: 1) additional expansion of the program, including allowing the existing dispensaries to open second locations and conducting a comprehensive review of which zoning districts cannabis retailers would be allowed to operate in, and 2) creating a cannabis equity program.<sup>38</sup> The work on these two issues was interrupted by the City's response to the COVID-19 pandemic, however, both items are expected to be brought to the City Council in early 2022.

Concurrently, staff worked with the San José Cannabis Equity Working Group and brought forward a draft Cannabis Equity Ordinance, which the City Council approved on March 26, 2019.<sup>39</sup> The provisions of this ordinance have been available to potential equity applicants interested in opening a manufacturing, distribution, or testing lab, but the City's Division of Cannabis Regulation and Office of Economic Development report receiving minimal inquiries. More proactive work in this area was impacted by staffing challenges and the City and community response to COVID-19, as well as the pandemic recession.

Additionally, in 2019, the City was awarded two grants from the State of California to develop and fund its cannabis equity work:

- From the Bureau of Cannabis Regulation, \$560,082 under the Cannabis Equity Act of 2018 grant program. This funding has been available for equity applicants in manufacturing, testing, and distribution for technical assistance from a contractor working with the Office of Economic Development and Cultural Affairs. Additionally, should Council approve the zoning and regulatory changes allowing new equity-owned dispensaries and the Cannabis Equity Pilot Program, these monies can be used to fund the pilot program, including

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<sup>37</sup> Legislative file: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=3787065&GUID=5CA18B4F-65EA-4F7D-820A-E57EBBC18561&Options=&Search=>

<sup>38</sup> Legislative file: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=3865380&GUID=FAC8B6D6-B599-47C3-9E17-F28983DA140A&Options=&Search=>

<sup>39</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=3886116&GUID=62EFE6EF-8041-4135-9AA0-49F85A22758F&Options=&Search=>

technical assistance, payment of registration fees, and possibly, holding a job fair/learning session for equity employees. Funds expire June 30, 2022.<sup>40</sup>

- From the Governor’s Office of Business and Economic Development, \$149,300. These funds are used to fund this Cannabis Assessment, update the City’s Cannabis Equity Ordinance as needed, and draft a program design for a cannabis equity program, including budget and staffing model.<sup>41</sup>

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<sup>40</sup> This grant has been extended through June 30, 2022 due to the pandemic.

<sup>41</sup> This grant has been extended through February 28, 2022 due to the pandemic.

## IMPACTS ON COMMUNITIES OF COLOR

### Literature Review

Racial disparities in the United States criminal justice system have been the subject of exploration by many research studies. In preparing this Cannabis Equity Assessment, the following studies, among others, were reviewed:

- A report submitted to the United Nations by the Sentencing Project (a human rights non-profit that promotes the minimization of imprisonment and criminalization) uncovered widespread disproportionate arrest rates, in trial court proceedings, incarceration rates, and in sentencing by race.<sup>42</sup>
- Some recent studies have looked at law enforcement actions at the intersection of race and cannabis-related offenses in California and in the City of San José. In 2010, the Drug Policy Alliance published two reports that observed arrest rates for Black and Latino/a/x residents of California over a period between 2006 to 2008. On average, the reports confirmed that arrest rates were higher for both groups when compared to other population groups.<sup>43 44</sup>
- The Public Policy Institute of California published a study that reviewed data from the California Department of Justice’s monthly arrests and citations registers in a pre- and post-analysis of the effect of Proposition 47 passing in 2014.<sup>45</sup> This data revealed arrest rates dropped for all groups after the passage of Proposition 47 and revealed disproportionately higher rates persisted for people who were Black and Latino/a/x.
- A University of Texas at El Paso study conducted a regression analysis of traffic stops by San José law enforcement that confirmed national trends, suggesting Black and Latino/a/x motorists were stopped more often than would be expected

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<sup>42</sup> “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System.” The Sentencing Project, March 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

<sup>43</sup> Levine, Harry, Jon Gettman, and Loren Siegel. “Arresting Blacks for Marijuana in California.” *Drug Policy Alliance & William C. Velasquez Institute*, October 2010, 22.

<sup>44</sup> Levine, Harry, Jon Gettman, and Loren Siegel. “Arresting Latinos for Marijuana in California: Possession Arrests in 33 Cities, 2006-08.” *Drug Policy Alliance & William C. Velasquez Institute*, October 2010, 20.

<sup>45</sup> Bird, Mia, Magnus Lofstrom, Brandon Martin, Steven Raphael, and Viet Nguyen. “The Impact of Proposition 47 on Crime and Recidivism.” Public Policy Institute of California, June 2018.

given the population in San José.<sup>46</sup> In this study, Black and Latino/a/x drivers were 2.1 and 2.3 times more likely to be issued a criminal citation and up to 2 times more likely to be searched as compared with whites.<sup>47</sup>

- A team of Stanford University researchers conducted a logistic regression analysis of traffic stops to observe potential racial bias in stops and searches. The study revealed evidence of discriminations throughout the 29 municipal police departments and 21 state patrol agencies throughout the United States.<sup>48</sup> The same study included data from the San José Police Department from a period between August 2013 and March of 2018. This data was used in the Administration’s assessment of marijuana arrest rates.

This information, as well as other research cited below, is critical to this Cannabis Equity Assessment because of the significant collateral consequences associated with a criminal arrests and convictions. According to the Sentencing Project, “People with criminal records face a host of obstacles to re-enter society even after they have fully completed their term of incarceration or community supervision. These include barriers to securing steady employment and housing, to accessing the social safety net and federal student aid, and to exercising the right to vote.”<sup>49</sup>

### Racial Inequities in the United States Justice System

Significant racial disparities exist in the criminal justice system, as shown in multiple studies.

According to The Sentencing Project, “African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences. African-American adults are 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely. As of 2001, one of every three black boys born in that year could expect to go to prison in his lifetime, as could one of every six Latinos— compared to

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<sup>46</sup> Smith, Michael, Jeff Rojek, Robert Tillyer, and Caleb Lloyd. “San José Police Department Traffic and Pedestrian Stop Study.” Center for Law and Human Behavior, University of Texas El Paso, January 18, 2017. <https://www.sjpd.org/home/showpublisheddocument/278/637240330671300000>.

<sup>47</sup> Ibid

<sup>48</sup> openpolicing.stanford.edu. “The Stanford Open Policing Project.” Accessed September 16, 2021. <https://openpolicing.stanford.edu/>.

<sup>49</sup> “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System.” The Sentencing Project, March 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

one of every seventeen white boys. Racial and ethnic disparities among women are less substantial than among men but remain prevalent.”<sup>50</sup>

Studies suggest this disparity is a result of implicit bias in reporting of crimes and in outcome of police interaction with Black and Latino/a/x people.<sup>51</sup>

### Racial Inequities and Federal Cannabis Prohibition

Cannabis prohibition has had a profoundly negative impact on low-income communities and communities of color across the country. The Sentencing Project suggested the War on Drugs “contributed more than any other single factor to the racial disparities in the criminal justice system.”<sup>52</sup> Despite studies suggesting drug use during the period of the War on Drugs was lower on average for Black youth than White, Black Americans were arrested at double the rate of White Americans.<sup>53</sup> Black and Latino/a/x people represent 80% of people incarcerated in federal prisons and 60% in state prisons because of drug offenses.<sup>54</sup> Black women were arrested at double the rate of white women, despite their lower share of the overall population. For Latino/a/x immigrants, marijuana possession was the fourth most frequently cited offense to justify deportations and separation of families.<sup>55</sup>

### Racial Inequities in the California Justice System

In California, the legacy of racial bias in cannabis prohibition comes with the first raid in a Mexican neighborhood in Los Angeles in 1914.<sup>56</sup> In the years since, California has had a troubling history with enforcement in communities of color. For example, the

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<sup>50</sup> Ibid.

<sup>51</sup> King, Ryan S, and Marc Mauer. “The War on Marijuana: The Transformation of the War on Drugs in the 1990s.” *Harm Reduction Journal* 3, no. 1 (December 2006): 6. <https://doi.org/10.1186/1477-7517-3-6>.

<sup>52</sup> “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System.” The Sentencing Project, March 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

<sup>53</sup> King, Ryan S, and Marc Mauer. “The War on Marijuana: The Transformation of the War on Drugs in the 1990s.” *Harm Reduction Journal* 3, no. 1 (December 2006): 6. <https://doi.org/10.1186/1477-7517-3-6>.

<sup>54</sup> “Marijuana Incarceration in California Jails,” December 16, 2016.

<https://drugpolicy.org/resource/marijuana-incarceration-california-jails>.

<sup>55</sup> Brady, Kathy, Angie Junck, and Nikki Marquez. “Immigration Impact: The Adult Use of Marijuana Act.” Immigrant Legal Resource Center, September 28, 2016.

<https://drugpolicy.org/resource/immigration-impact-adult-use-marijuana-act>.

<sup>56</sup> Gieringer, Dale H. “The Origins of Cannabis Prohibition in California.” *Contemporary Drug Problems* 26, no. 2 (Summer 1999): 38.



Drug Policy Alliance found, of the 850,000 people arrested for marijuana possession within a twenty-year period (1990 - 2010), a disproportionate number were Black and Latino/a/x.<sup>57</sup> In 2015, according to state arrest data, Black people were four times more likely than whites to be arrested for a marijuana-related offense.<sup>58</sup> Despite Department of Justice reprioritizing cannabis enforcement in certain states (including California) and Senate Bill 1447 which lowered marijuana possession from a misdemeanor to an infraction at the state level, racial disproportionality persisted in marijuana-related arrests.<sup>59</sup>

In 2018, in creating the statewide cannabis equity grant program in SB 1294, the state legislature found:

“During the era of cannabis prohibition in California, the burdens of arrests, convictions, and long-term collateral consequences arising from a conviction fell disproportionately on Black and Latinx people, even though people of all races used and sold cannabis at nearly identical rates. The California Department of Justice data shows that from 2006 to 2015, inclusive, Black Californians were two times more likely to be arrested for cannabis misdemeanors and five times more likely to be arrested for cannabis felonies than White Californians. During the same period, Latinx Californians were 35 percent more likely to be arrested for cannabis crimes than White Californians. The collateral consequences associated with cannabis law violations, coupled with generational poverty and a lack of access to resources, make it extraordinarily difficult for persons with convictions to enter the newly regulated industry.”

### Racial Inequities in San José Arrests

The Drug Policy Alliance looked at cannabis possession arrests in 25 California cities between 2006 and 2008 and found police in San José arrested Black people for marijuana possession at more than five times the rate of Whites.<sup>60</sup> San José police arrested 619 Black people per 100,000 Blacks compared to 121 White people per 100,000 Whites. This rate was observed to be the second-highest recorded among other major cities in the

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<sup>57</sup> Levine, Harry, Jon Gettman, and Loren Siegel. “Arresting Blacks for Marijuana in California.” *Drug Policy Alliance & William C. Velasquez Institute*, October 2010, 22.

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Ibid.

State of California and occurred despite Black residents making up less than 3% of San José's population.<sup>61</sup>

Another report from the same organization also underscored the adverse effect of cannabis arrests on Latino/a/x families living in San José. Between 2006 and 2008, San José arrested individuals who were Latino/a/x for marijuana possession at more than twice the rate of Whites.<sup>62</sup> Latino/a/x people were 31.5% of the city's population but they were 54.7% of marijuana possession arrests.<sup>63</sup> This arrest rate was the fifth-highest during the study period observed, with a 2.2 times greater rate than Whites.<sup>64</sup> It is important to note also that though Latino/a/x arrests seem to mirror the demographic, this number may be lower than reality, as some studies have found Latino/a/x are more likely to self-report as white.<sup>65</sup>

The San José Police Department webpage makes arrest data available to the public (currently from 2011 to 2020).<sup>66</sup> Staff accessed marijuana arrest data in February 2020 and developed the below graphs (note: at that time data from 2009 and 2010 was available online). Both graphs 2 and 3 depict the number of marijuana-related arrests in San José between the years of 2009 and 2018 (the year adult-use cannabis retailers began operating in California).

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<sup>61</sup> Ibid.

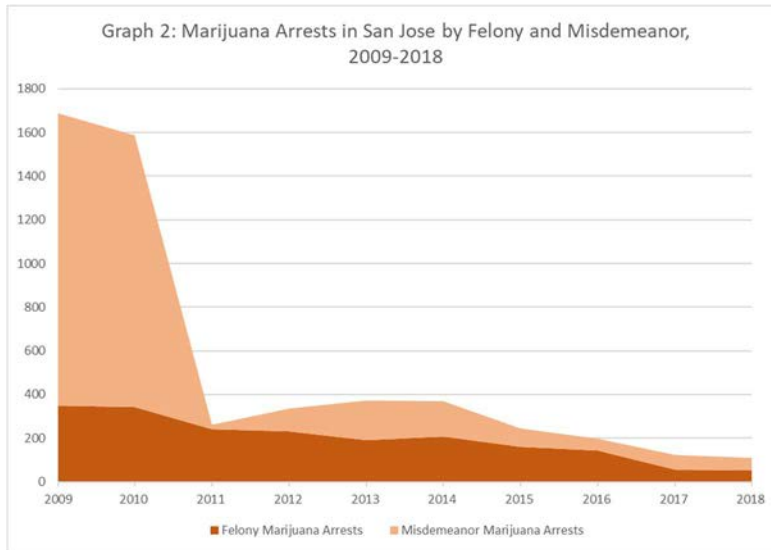
<sup>62</sup> Levine, Harry, Jon Gettman, and Loren Siegel. "Arresting Latinos for Marijuana in California: Possession Arrests in 33 Cities, 2006-08." *Drug Policy Alliance & William C. Velasquez Institute*, October 2010, 20.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

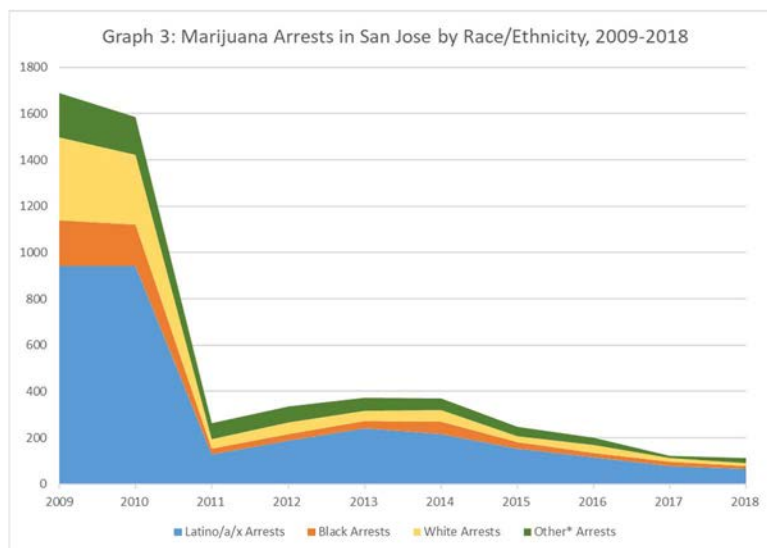
<sup>65</sup> Alford, Natasha S. "Why Some Black Puerto Ricans Choose 'White' on the Census." *The New York Times*, February 9, 2020, sec. U.S. <https://www.nytimes.com/2020/02/09/us/puerto-rico-census-Black-race.html>.

<sup>66</sup> San José Police Department, <https://www.sjpd.org/records/crime-stats-maps/crime-statistics-annual>



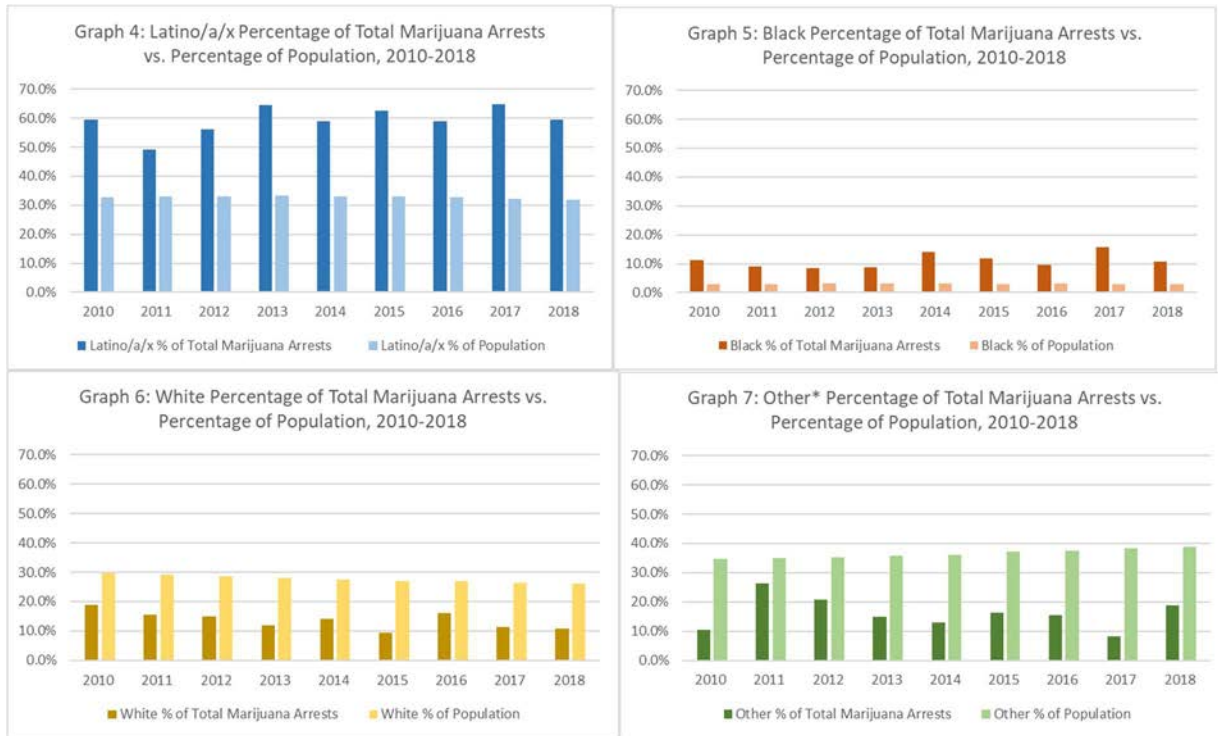
Graph 2 (above) shows total marijuana arrests broken out by felony and misdemeanor arrests and Graph 3 (below) shows the same data broken out by race/ethnicity.

As shown in Graph 2, felony and misdemeanor marijuana arrests fell significantly between 2009 and 2018, including a dramatic drop in misdemeanor arrests between 2010 and 2011 (as enforcement regulations changed) and a more gradual decline in felony arrests between 2010 and 2018.



Graph 3 shows that the largest share of marijuana arrests occurred in the Latino/a/x community with smaller shares in other population groups. This data is further explored in graphs 4 through 7.

The below graphs show the relationship between the share of marijuana arrests for each racial/ethnic group and that group’s share of San José’s population for the years 2010 through 2018.



\*Other may include all other races including Asian/Pacific Islander, Native American and Indigenous, and individuals of more than one race. The chart above is based on data reported to the California Department of Justice in accordance with CA-DOJ criteria.

However, graphs 4 through 7 show that Latino/a/x and Black individuals were more likely to be arrested for marijuana offenses in San José, disproportionate to their share of the population. Conversely, White and “Other” populations experienced disproportionately fewer arrests.

The data above provides a snapshot of who was arrested for marijuana possession in San José during this timeframe. Additional analysis was conducted to understand where arrests took place to explore potential neighborhood level impacts.

### Neighborhood-Level Impacts

To understand the impact on people in San José who were arrested or cited for marijuana-related offenses during the period of the War on Drugs, staff conducted an internal assessment of arrest data and a geospatial analysis of arrest locations over a

period between 2004 and 2018. Analysts compiled publicly available data from two sources and reviewed as described below:

1. Calls for Service data (San José Police Department): Staff obtained calls for service data via the City's open data portal.<sup>67</sup> The data contained service calls between the years of 2004 to 2017. Fields included type of offense, location of offense, and outcome. The data did not include demographic information regarding the subjects cited or arrested, such as race, age, or gender. The Administration compared the data to arrest rates reported on the California Department of Justice's published demographic data for the City during this period. The total amount extracted for the Administration's analysis were 4,115 out of 5,154 calls.
2. Traffic Stop Data (Stanford University): Staff retrieved San José Police Department traffic stop data from the Stanford Open Policing Project website for a period from August 2013 through March 2018.<sup>68</sup> The Stanford Open Policing Project distilled years of traffic stop data obtained via records requests from law enforcement across the United States. There were 296 marijuana-related stops used from the Stanford study.

## Geospatial Analysis

In February 2020, the City's Enterprise Geographic Information Systems team conducted a geospatial analysis of the data collected,<sup>69</sup> as shown below. The online map includes location of police incident, type (citation or arrest), date and for stop data, racial demographic, with layers that map census blocks, schools, and other information. More deeply shaded census blocks had the higher numbers of incidents per 1,000 residents, with six having more than 61 incidents per 1,000 residents. In January 2022, the team added additional layers to the map, including MTC Equity Priority Communities, allowing for additional analysis described below.

The analysis reveals concentrations of incidents overlapping with some low-income census blocks. The majority of these blocks are also predominantly people of color, with some having a majority of Latino/a/x and others with Asian majorities. Given the small number of Black individuals living in San José, staff observed no concentration in

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<sup>67</sup> "Police-Calls-for-Service - San José CA Open Data Portal." Accessed September 16, 2021.

<https://data.sanjoseca.gov/dataset/police-calls-for-service>.

<sup>68</sup> [openpolicing.stanford.edu](https://openpolicing.stanford.edu/). "The Stanford Open Policing Project." Accessed September 16, 2021.

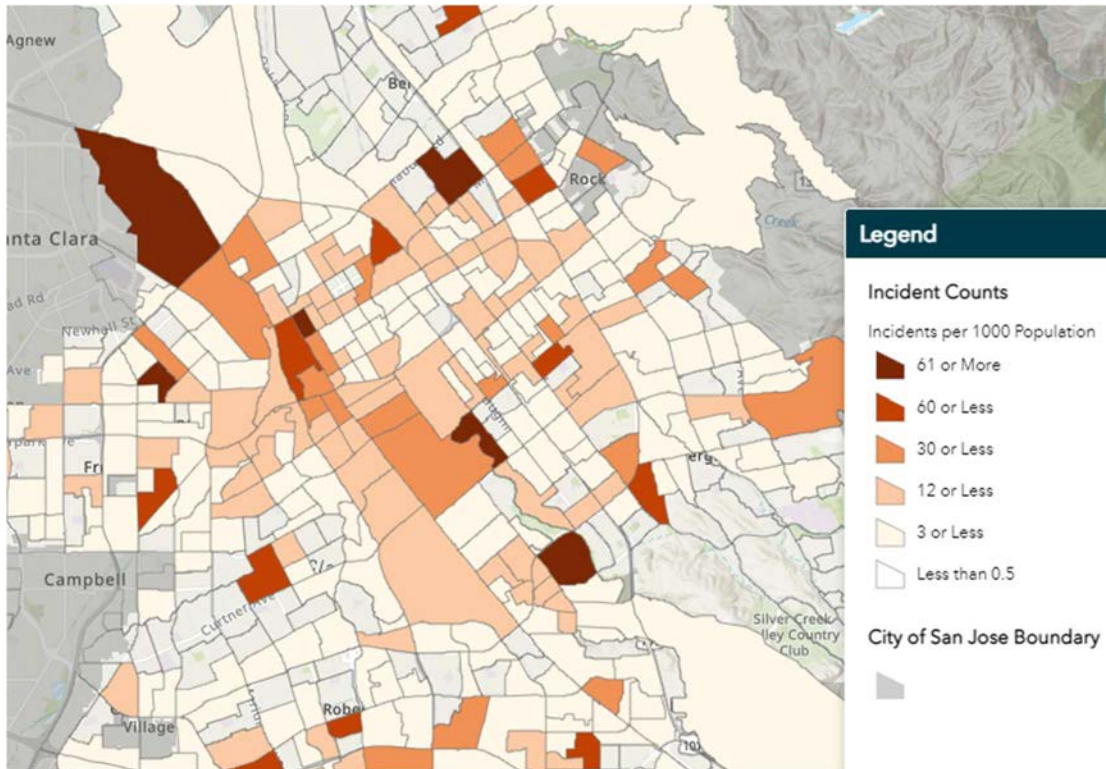
<https://openpolicing.stanford.edu/>.

<sup>69</sup> This map may be found online at:

<https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=23bfa0c12a5b4922867a2e5ac9f7376b>.

incidents but did observe disproportionate incidence rates compared to census block population averages.

**Map 1: Cannabis-Related Police Incidents in San José, 2004-2017\***



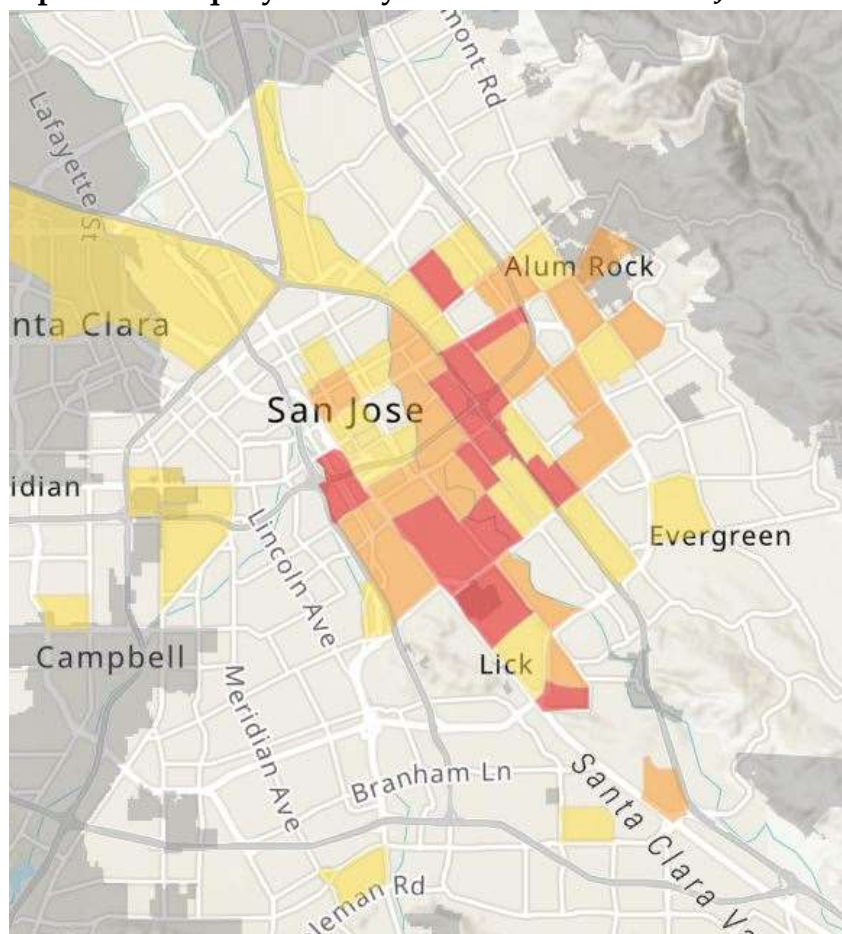
\*Calls for Service data, 2004-2017. Traffic Stop data, Aug. 2013 to March 2018.

This data did have limitations, as outlined in Appendix 2, including sample size, policy interventions during the time period observed, underreporting/overrepresentation, location of arrest, and aggregation of Asian data.

In identifying key census blocks with higher rates of cannabis enforcement, staff identified overlaps with several other key maps that staff uses for neighborhood-based work. Staff found the majority of these census blocks were located in:

- Metropolitan Transportation Commission Equity Priority Communities (formerly Communities of Concern). According to MTC, these census tracts "have a significant concentration of underserved populations, such as households with low incomes and people of color."<sup>70</sup> Additional demographic factors used to determine these communities include income, rent burden, seniors age 75 and older, disability, zero-vehicle households, limited English proficiency, single-parent households, and more.<sup>71</sup> See Map 2 below.

**Map 2: MTC Equity Priority Communities in San José**

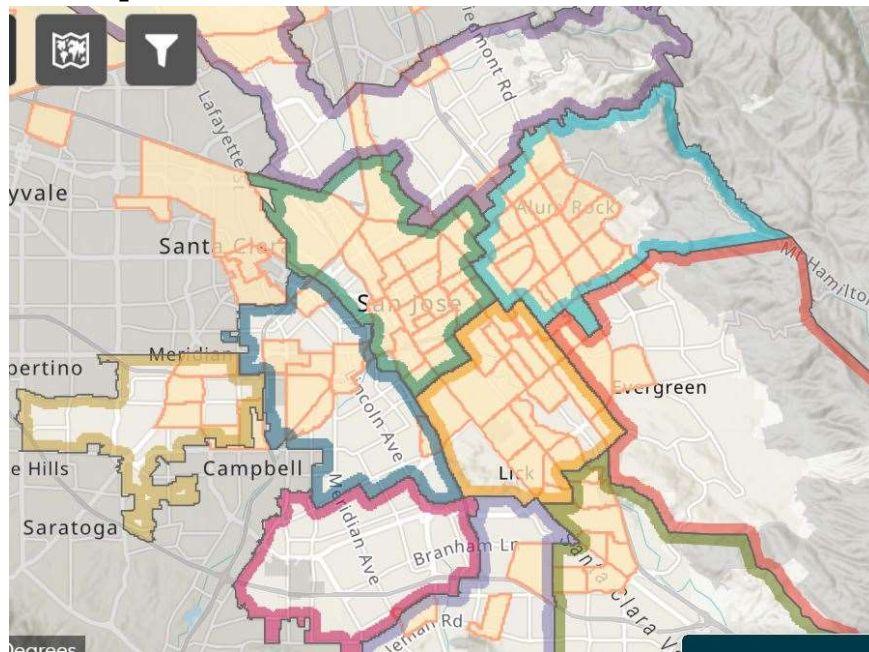


<sup>70</sup> <https://mtc.ca.gov/planning/transportation/access-equity-mobility/equity-priority-communities>

<sup>71</sup> <https://bayareametro.github.io/Spatial-Analysis-Mapping-Projects/Project-Documentation/Equity-Priority-Communities/>

- Community Development Block Grant Low-Moderate Income Census Tracts (see Map 3 below). These are census tracts in which more than half of the households are low-income (defined as earning less than 50% of AMI) or moderate income (below 80% of AMI). See Map 3 below.

**Map 3: Low-Moderate Income Census Tracts**



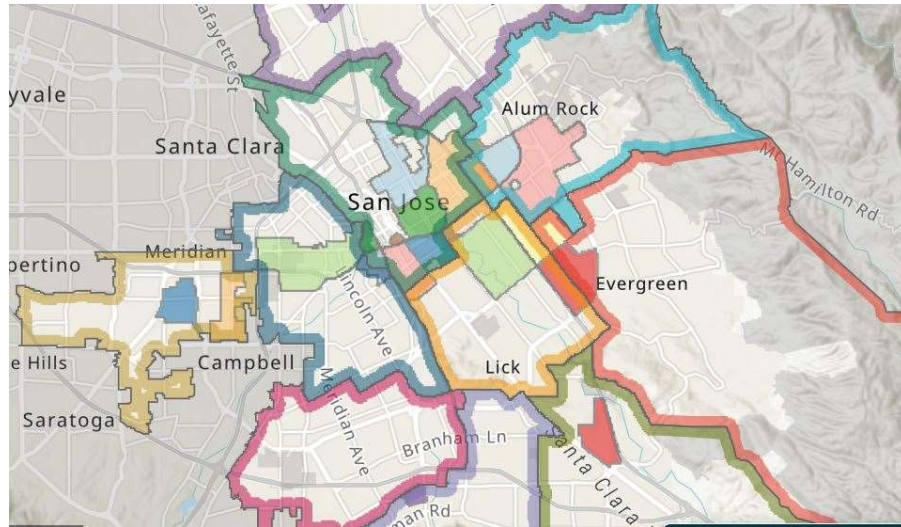
- Neighborhoods that were previously part of the City’s Strong Neighborhoods Initiative (SNI) program (see Map 4 below). The SNI program, operated with funding and staffing from the San José Redevelopment Agency from 2000 until 2010, when staffing was dramatically reduced due to the Great Recession. (Note: in 2012, the State of California mandated the dissolution of all redevelopment agencies.) During the SNI decade, the program worked to empower 19 low-income neighborhoods across the City and invested approximately \$104 million in neighborhood improvements.<sup>72</sup> A full list of SNI neighborhoods, their neighborhood improvement plans, and maps are available on the website of the City’s Department of Planning, Building and Code Enforcement.<sup>73</sup> See Map 4 below.

<sup>72</sup> “San José’s Strong Neighborhoods Initiative Empowers Residents,” Institute for Local Government. <https://www.ca-ilg.org/case-story/san-joses-strong-neighborhoods-initiative-empowers-residents>

<sup>73</sup> <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/citywide-planning/area-plans/strong-neighborhoods-initiative>



**Map 4: Former Strong Neighborhoods Initiative Neighborhoods**



- Neighborhoods that were hardest hit by the COVID-19 pandemic (both illness and death) and pandemic-related job loss and recession, and targeted for relief program outreach, vaccination campaigns, and other emergency operation efforts.<sup>74</sup>

### San José Neighborhood Programs and Community Interventions

The SNI program built on prior efforts in San José. While this report will not attempt a comprehensive history of policy actions, redevelopment efforts, and neighborhood programs that may have uplifted or harmed San José communities, it is important to note the intersection of key programs with the War on Drugs era.

In the late 1980s, San José launched Project Crackdown, a neighborhood intervention program that focused on crime and drug activity. Neighborhoods in Project Crackdown included: Boynton, Capitol-Goss, Dobern, Edenvale, Hoffman-Via Monte, Poco Way, Santee, South Campus, and Washington.<sup>75</sup> The City also operated a shorter-term program called Project Blossom that was focused on Code Enforcement and blight elimination.

<sup>74</sup> For more information, see the City's 195+ "Flash Reports" regarding COVID-19 response online at: <https://www.sanjoseca.gov/news-stories/news-stories>.

<sup>75</sup> Information gathered from interviews with City employees and review of SNI neighborhood revitalization plans

While largely lauded in media reports, the program was not without criticism. In 1996, sociologist Christian Zloniski conducted research in one Project Crackdown neighborhood given the pseudonym of “Benfield.”

He reported:

“San José’s city programs in Benfield produced mixed reactions among its residents. Many were happy that the government had finally stepped in to address their most serious community problems. They also felt safer because police patrols in the barrio were having a deterrent effect on drug dealers, a change that people with children especially appreciate. Residents also valued the city government’s objective of dealing with the problem of poor housing, high rents, and abusive landlords. The early community meetings organized by city workers were crowded with Benfield residents eager to learn about the government programs for the barrio and to cooperate with them.

“After this warm reception, however, some police activities in the neighborhood began to cause increasing discomfort among people in Benfield. Many felt that innocent residents, especially young men, were being harassed by the police. Young men usually hang out evenings in the streets, parking lots, and alleys to socialize. Since these are also the favorite places of many drug dealers in Benfield, teenagers who had nothing to do with drugs were often harassed by the police who viewed any teenage group hanging out in the streets with suspicion.”<sup>76</sup>

In 1991, then-Mayor Susan Hammer launched the Mayor’s Gang Prevention Task Force, which continues to this day. The task force includes a cross-section of local residents, government agencies, non-profits, faith-based organizations, and local law enforcement. Its continuum of services includes prevention, intervention, suppression, and rehabilitation services to help youth avoid and leave gang involvement.<sup>77</sup> From the beginning, the program has been housed in the Department of Parks, Recreation and Neighborhood Services to build community trust and to emphasize the importance of leading this work from a prevention and early intervention approach.<sup>78</sup>

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<sup>76</sup> Working but Poor: Mexican Immigrant Workers in a Low-Income Enclave in San José November 1996 [https://escholarship.org/content/qt4g5598p1/qt4g5598p1\\_noSplash\\_974708d0830096f1255a17790e0b2b0a.pdf](https://escholarship.org/content/qt4g5598p1/qt4g5598p1_noSplash_974708d0830096f1255a17790e0b2b0a.pdf)

<sup>77</sup> <https://www.sanjoseca.gov/your-government/departments-offices/mayor-and-city-council/mayor-s-office/our-work/public-safety/mayor-s-gang-prevention-task-force>

<sup>78</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/49895/637141613249900000>

## CREATING A CANNABIS EQUITY PROGRAM

The first cannabis equity programs in California were created in Los Angeles, Oakland, Sacramento, and San Francisco by 2018. According to the San José Cannabis Equity Working Group, the goals of these programs are to provide “economic opportunity and resources” to communities most harmed by cannabis prohibition, and to “ensure equitable, sustainable, diverse local markets.”<sup>79</sup> In its 2019 policy proposal to the City Council, the Working Group stated, “Equity programs ultimately provide economic opportunity to those most often excluded from the wealth of the region: traditional working class populations, local small-scale agriculture and agricultural workers, populations of color, women, LGBTQ populations, and those with criminal records (including but not exclusively reentry populations).”<sup>80</sup>

The industry’s own data shows the inequality in the California cannabis industry. A November 2021 report from the California Cannabis Industry Association reported, “While cannabis sales continue to grow month over month, this doesn't necessarily translate throughout all producers. According to Headset data, the top 10 brands in California make up nearly 27% of overall cannabis sales. The top 5 brands in the state contributed just over \$824 million, an average of about \$165 million per brand. The smallest brands (ranked 100 and above out of 700+) made up in aggregate about \$1.3 billion of the \$2.7 billion in sales, with an average brand making around \$1 million over the last 365 days. It should be noted that dozens of the smallest brands see monthly sales less than \$50,000.”<sup>81</sup>

### The Existing Cannabis Industry in San José

Since 2015, San José has had 16 registered dispensaries. Twelve of these are also registered to provide delivery services to their clients. The cannabis industry has become a major source of tax revenue for the City of San José. The City’s 2021-2022 Adopted Operating Budget projects that the City will collect \$17.5 million in cannabis

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<sup>79</sup> “Policy Proposal: San José Cannabis Equity Program,” January 10, 2019, San José Cannabis Equity Working Group.”

<sup>80</sup> Ibid.

<sup>81</sup> “California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California’s Social Equity Programs.” November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>

business tax revenue in the fiscal year ending June 30, 2022.<sup>82</sup> In 2020-2021, cannabis business taxes collected totaled \$18.7 million, an increase of \$2.8 million over 2019-2020 collected revenues.<sup>83</sup>

Of the existing registered businesses in San José, nine responded to the State's annual demographic survey. Of these, two reported having Asian applicant/licensees, two reported having African-American applicant/licensees, and one reported having a Hispanic/Latino applicant/licensee in their organizational structure.<sup>84</sup> It should be noted that participation in surveys around demographics of ownership, management, and employee population is voluntarily and not all of San José's registered dispensaries have chosen to share this information. However, the available data, while incomplete, would mirror state and national reports showing the lack of diversity in ownership in the cannabis industry.<sup>85 86</sup>

### The Current Climate for Small Businesses in San José

San José is home to 55,000 small businesses (defined as a business with 250 or fewer employees), more than half of which are immigrant-owned and more than 60% of which are owned by people of color.<sup>87</sup> In addition, there are more than 30,000 sole proprietorships or single-person businesses.<sup>88</sup>

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<sup>82</sup> "2021-2022 Adopted Operating Budget | City of San José." Accessed January 23, 2022.

<https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/budget/budget-documents/2021-2022-budget-documents/2021-2022-adopted-operating-budget>

<sup>83</sup> City of San José 2020-2021 Annual Report. Accessed January 23, 2022.

<https://www.sanjoseca.gov/home/showpublisheddocument/77797/637686860296430000>

<sup>84</sup> "Cannabis Equity Grants Annual Report to the State Legislature," July 2021, Governor's Office of Business and Economic Development, <https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf>

<sup>85</sup> "How Big Weed Shut Out People of Color and Became a Rich White Business." Accessed September 16, 2021. <https://www.insider.com/how-big-weed-became-rich-white-business-2019-12>.

<sup>86</sup> September 11, Published and 2017. "Chart: Percentage of Cannabis Business Owners and Founders by Race." MJBizDaily, September 11, 2017. <https://mjbizdaily.com/chart-19-cannabis-businesses-owned-founded-racial-minorities/>.

<sup>87</sup> "2020 Small Business Grants Update." Memorandum from Nanci Klein, Director, Office of Economic Development and Cultural Affairs, to the San José City Council, January 29, 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument?id=68890>

<sup>88</sup> Ibid.

These small businesses represent more than 97% of all active businesses and generate nearly 43% of all employment in San José.<sup>89</sup> Just as critical, these businesses often represent important cultural and neighborhood anchors in San José’s underserved communities.<sup>90</sup>

During the pandemic, the City’s Economic Development team transitioned to Emergency Operations, working to aid San José’s most vulnerable small businesses. Outreach and relief efforts were multi-lingual and targeted to small businesses in the San José zip codes that have been the most impacted by the pandemic-induced recession and have experienced the highest rates of COVID-19 in the County. These zip codes included 95111, 95112, 95113, 95116, 95122, and 95127. These six zip codes are home to numerous small business owners of color, immigrant-owned businesses, women-owned businesses, and micro-businesses.<sup>91</sup> They also intersect and overlap with many of the neighborhoods identified as disproportionately impacted by cannabis prohibition and the War on Drugs.

### Barriers to Entry in the Cannabis Industry

In Senate Bill 1294, which created funding for local cannabis equity programs, the California Legislature acknowledged the barriers to entering the regulated and legal cannabis market, saying:

“Cannabis prohibition had a devastating impact on communities across California and across the United States. Persons convicted of a cannabis offense and their families suffer the long-term consequences of prohibition. These individuals have a more difficult time entering the newly created adult-use cannabis industry due, in part, to a lack of access to capital, business space, technical support, and regulatory compliance assistance.”

Following is a discussion of these barriers and additional challenges unique to opening a cannabis business in San José.

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> “2020 Small Business Grants Update.” Memorandum from Nanci Klein, Director, Office of Economic Development and Cultural Affairs, to the San José City Council, January 29, 2021.

<https://www.sanjoseca.gov/home/showpublisheddocument?id=68890>

Opening a licensed cannabis business in the United States can range from \$100,000 to \$500,000, according to a recent report on cannabis equity from the cannabis-education website Leafly.<sup>92</sup> The report breaks down costs for application fees, licensing fees, annual registration fees, real estate, utilities, renovations, security, marketing, staffing, and inventory, for low-, medium- and high-priced markets. In San Francisco, which like San José has higher costs for real estate, labor, and construction, start-up costs for a cannabis dispensary reportedly range from \$1.5 million to \$3 million.<sup>93</sup>

On top of this, the federal government regulates the banking industry and continues to place significant restrictions making it difficult for cannabis businesses to do business with traditional banks and credit unions. This persists despite the fact that some form of cannabis industry (medical or both medical/adult use) is now legal in 38 states and the District of Columbia. These restrictions mean cannabis entrepreneurs cannot access small business loans, lines of credit, business credit cards, or federal Small Business Administration financing.<sup>94</sup>

The types of financing available to the cannabis industry — personal wealth, home equity, family and friends, and venture capital or angel investors — are significantly less available to Black and Latino/a/x-owned businesses.<sup>95</sup> According to the Leafly “Seeds of Change” report, “In 2019, the US Federal Reserve reported that the median net worth of a white family was \$188,200, while the median net worth of a Black family was \$24,100. Hispanic families’ median net worth was \$36,100.”<sup>96</sup>

Accessing capital to start up a business is doubly challenging if one has been formerly incarcerated. Additionally, available financing may come at a steep price. In a recent meeting with San José’s registered dispensaries, one participant cited interest rates of 12% to 30% on available financing, rates that are significantly above the usury cap of

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<sup>92</sup> “Seeds of Change: Strategies to create an equitable cannabis industry,” Janessa Bailey for Leafly. <https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf>

<sup>93</sup> “Finally: A Black-Owned, Equity-Program Cannabis Dispensary in San Francisco,” Alexander Lekhtman, Filter magazine, December 12, 2019. <https://filtermag.org/san-francisco-Black-equity-marijuana/>.

<sup>94</sup> “Seeds of Change: Strategies to create an equitable cannabis industry,” Janessa Bailey for Leafly. <https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf>

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

10% in California’s Constitution (which, it should be noted, only applies to personal loans).<sup>97</sup>

In November 2021, the California Cannabis Industry Association’s Diversity, Inclusion, and Social Equity Committee released a report on cannabis equity programs in California that included interviews with equity operators. They found:

“The most common theme among equity operators across California is the barrier of obtaining funding necessary to properly launch a business and afford a space large enough to maintain an operation. Even when equity applicants were awarded licenses, they expressed a failure of social equity programs to provide resources to help educate operators on fundraising, or any consultative support during the fundraising process. This support system is needed to ensure operators have the answers to the complex financial and legal questions that accompany raising requisite funds.

“Equity operators expressed being unsure which investors to trust and how to properly advocate for themselves during contract negotiations. Because of constraints like the requirement to have a property before applying for a license, they are forced to rush to find capital without knowing if they were entering predatory investment contracts.”<sup>98</sup>

Predatory investing has emerged as a significant concern as other jurisdictions have created cannabis equity programs. These have included “vulture investors,” who use an equity applicant as a front-person or paper applicant but have no intention of giving them an actual ownership role. Cannabis equity applicants have been targeted in jurisdictions like Los Angeles and San Francisco, being misled into business partnerships that exclude eligible applicants from business operations or ownership altogether.<sup>99</sup>

In the above-mentioned meeting with San José registered dispensaries, a representative of one business shared he had been approached by an operator who claimed to have

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<sup>97</sup> <https://www.latimes.com/business/story/2021-07-30/column-california-usury-law>

<sup>98</sup> “California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California’s Social Equity Programs.” November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>

<sup>99</sup> Irwin, Veronica. “Cannabis Equity Applicants Still Face Barriers.” SF Weekly, September 14, 2020. <https://www.sfweekly.com/culture/cannabis-culture/cannabis-equity-applicants-still-face-barriers/>.

multiple approved equity licenses available in Los Angeles. In this situation, the equity licensee would serve as a front-person should the business want to open locations in Los Angeles. The San José business declined the offer. Additionally, industry representatives said they receive inquiries regularly from large multi-state operators asking if they know of equity applicants they can partner with in San José. In a 2020 *SF Weekly* article, the first two equity retailers opening in San Francisco were both in partnership with major cannabis brands.<sup>100</sup>

#### *Business Space and Lack of Adequate Locations*

Currently the 16 dispensaries in San José are required to locate in industrial zoning districts. In March of 2019, the City Council directed staff to review existing cannabis zoning districts, including the existing overconcentration of retailers in Council District 7, which is home to more than half of the existing dispensaries. The City Council will consider recommendations for allowing cannabis retailers to locate in certain commercial districts, as well as beginning to allow new zoning for delivery-only retailers and opening retail registration to 10 equity owners at the same time this assessment is brought forward for consideration.

In 2014, before submitting an application for registration, the City required an applicant to identify a compliant business space and submit a lease or letter of intent to lease from the property owner or their representative. At the time, the vacancy rate for industrial properties was less than 5%, according to the City's Office of Economic Development and Cultural Affairs. Staff working on the cannabis program recalled reports of a "land rush," as the approximately 65 registrants vied for available parcels. There were anecdotal reports of price gouging, rents doubling and tripling over what industrial tenants had paid, and displacement of long-time small businesses in favor of cannabis businesses. At the same time, small cannabis businesses reported to staff that they lacked the capital to pay for rent and fund the tenant improvements necessary to bring the buildings up to code, particularly with the City's vertical integration requirements.

It should be noted that City staff made efforts to meet applicants' needs as the initial registration process unfolded. The City allowed existing unregulated retailers to continue operating without being subject to code enforcement so long as they were going through the registration process, obtaining building permits and making tenant improvements on their new or non-compliant location, paying cannabis business taxes,

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<sup>100</sup> "Finally: A Black-Owned, Equity-Program Cannabis Dispensary in San Francisco," Alexander Lekhtman, Filter magazine, December 12, 2019. <https://filtermag.org/san-francisco-Black-equity-marijuana/>.



and meeting milestones and deadlines. This provided the business owner with the ability to continue earning revenue while working towards regulation.

Additional efforts included: Using the Building Division's Special Tenant Improvement Process (or STI) for building and other permits. This program brings all of the City staff together in one room to review plans and permitting needs and is typically reserved for large-scale industrial projects and those paying for expedited services. The City did not charge extra for this service, and staff from the Police Department and City Manager's Office attended all meetings to provide consistency and additional assistance to the applicants. Finally, according to staff, the cultivation requirement for vertical integration was allowed to be met initially by having a single cannabis plant growing on the premises and dispensaries were given a timeframe to use their existing stock, which was later extended with City Council approval.

Still, staff reported, the challenges were greater for smaller, less capitalized, and less experienced business owners. At each milestone deadline, the number of eligible applicants decreased, until only 16 of the original 65 were successful. Staff reports the challenges of developing a regulated cannabis program during a time when there was no State regulatory scheme has resulted in many lessons learned about best practices, which will inform a future cannabis equity program, as stated in an April 2020 memorandum to the City Council: "Requiring applicants lease or own their site prior to obtaining licensing approval have resulted in significant costs equity applicants cannot afford, especially if there are long delays in approvals. (Note: this is a lesson San José learned during its first round of registration in 2015. San José updated its application process for the currently open categories of manufacturing, distribution, and testing labs and no longer requires site designation in the first phase of the application process.)"<sup>101</sup>

#### *Limited Availability of Registrations*

As discussed above, the City's initial registration process provided a path to legalization for the unregulated industry that emerged in the City between 2009 and 2014, as well as opening the door to new businesses. The City did not place a limit on the number of potential registrants in 2014, but instead provided a 90-day registration window in which to submit an application to operate a medical cannabis collective. In November 2017, when the Council approved expanding the City's cannabis program to add adult-use and delivery, the Police Department recommended limiting these activities to the existing retailers citing concerns about the newness of the State's

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<sup>101</sup> "City Council Policy Priority #9: Cannabis Equity Applicant," Informational Memorandum, April 28, 2020. <https://www.sanjoseca.gov/home/showdocument?id=57838>

regulatory program and staff capacity to regulate additional retailers, among other concerns.

Since that original application window in 2014, San José has not been open to new retail businesses. This has created major obstacle for prospective equity retailers as the only way to enter the San José marketplace currently is to buy an existing dispensary, which requires significant capital. According to the Division of Cannabis Regulation, since the initial registration cycle, three of the original 16 retailers have changed hands and operate under a new brand identity. (Note: Additional businesses have added or changed corporate managers or ownership partners, but not completely changed hands.) None of the new owners have indicated to the Division of Cannabis Regulation they are equity owners. One of the three was previously Latino/a/x-owned and is no longer.

The City is currently and has been open for applications in manufacturing, testing, and distribution since 2019, however, in meetings with the San José Cannabis Equity Working Group, attendees reported that most local potential equity applicants are interested in storefront and delivery-only retail operations, although some might be interested in micro-manufacturing should a shared kitchen or manufacturing site open in San José.

#### *Technical Assistance & Regulatory Assistance*

Many cities offer resources for small-business owners, including providing services or funding non-profit partners who can provide technical assistance tailored to the needs of small-business owners who are Black, Latino/a/x, Asian, women, LGBTQ, veterans, and/or low-income. These resources often include courses or workshops on:

- Developing a business plan,
- Obtaining financing (typically SBA loans or small-business lines of credit from banks or credit unions, but also through micro-financing),
- Marketing the business,
- Hiring and labor compliance,
- Regulatory and permitting issues (for example, a restaurant owner would need to understand health department permitting and food safety requirements), and
- Legal issues, such as setting up a sole proprietorship or limited liability corporation.

In San José, the Office of Economic Development and Cultural Affairs has partnerships with ethnic chambers and other organizations through its BusinessOwnerSpace.com (or BOSS) network. The City also has Spanish-speaking and Vietnamese-speaking small

business allies housed in the Planning, Building and Code Enforcement Department to aid small-business owners as they navigate building out their space and opening their business. During the pandemic, the City's small-business services ramped up as discussed above to address the impacts of the pandemic, and economic recovery work will continue in the months and years ahead.

It is important to note that the cannabis industry doesn't neatly fit into traditional technical assistance models, given its lack of traditional funding sources and local and State regulatory oversight. In fact, in addition to the federal restrictions on banking and funding SBA loans for cannabis, many federal grant programs also include restrictions on assisting cannabis businesses. This means non-profits (or the City's work2future program and/or Office of Economic Development and Cultural Affairs) cannot use those federal funds to conduct small-business technical assistance and workforce development programs for cannabis entrepreneurs.

In early 2019, in anticipation of receiving State grant funding for cannabis equity work, the City surveyed 11 of its BOSS partners and found only four were currently working with cannabis businesses. Seven said they were unable to provide assistance or had limits on the assistance they could provide due to federal restrictions. Only the four already working with cannabis businesses were interested in doing so in the future. (It should be noted the City does have a technical assistance partner available with expertise in small manufacturing to consult with equity applicants in manufacturing, testing, and distribution, but has had no applicants in this space.)

Cannabis businesses also need unique legal and technical assistance with a complex regulatory compliance world. Mary Pryor, the founder and CEO of Cannaculture, wrote recently, "with so many roles in the industry requiring access to capital and an understanding of complex regulations, many people are simply unable to compete."<sup>102</sup>

One San Francisco equity owner has created the San Francisco Equity Group to help other applicants with the process.<sup>103</sup>

In San José, the Division of Cannabis Regulation assists with understanding operational compliance while a business is navigating the registration process. However, there are areas where a business owner must get legal counsel or technical expertise (for example,

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<sup>102</sup> Pryor, Mary. "What Will It Take to Build a Truly Equitable Cannabis Industry? | SELF." Accessed September 16, 2021. <https://www.self.com/story/equity-cannabis-industry-op-ed>.

<sup>103</sup> Irwin, Veronica. "Cannabis Equity Applicants Still Face Barriers." SF Weekly, September 14, 2020. <https://www.sfweekly.com/culture/cannabis-culture/cannabis-equity-applicants-still-face-barriers/>.

drawing up plans for tenant improvements). The cost and complexity of the process can be prohibitive in entering the industry.

#### *Competition from Unauthorized Market*

Statewide, 80% of all marijuana transactions in 2019 were illicit<sup>104</sup> and San José's local registered dispensaries continue to raise concerns about unlicensed operators who use social media platforms to reach customers. The Division of Cannabis Regulation and the Code Enforcement Division continue to receive complaints about storefront operations (often posing as a vape shop or other unregulated business). In 2014, the City provided unregistered businesses with a path to legalization, however, the number of proposed equity licenses currently proposed would limit that path.

#### *Industry Uncertainty*

Experts suggest general industry growth,<sup>105</sup> though some businesses have recently faced layoffs in their labor force.<sup>106 107</sup> Market uncertainty may discourage potential new businesses from starting until there is more market stability/access to capital due to federal decriminalization or changes in banking regulations.

#### *Awareness of Equity Programs*

Reluctance to work with government to bring unauthorized operations into compliance is expressed in other cities, as well as San José's. This reluctance stems from mistrust created by cannabis prohibition and mass incarceration policies that hurt prospective equity applicants disproportionately. This barrier in addition to outreach into communities that would benefit is a challenge for policymakers. Outreach and business assistance must reach these traditionally harder to reach populations while being supportive and responsive enough to the needs of cannabis entrepreneurs.

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<sup>104</sup> Schroyer, John, and Eli McVey. "California Market Report: Illicit Market Woes." Snapshot. Marijuana Business Daily, February 21, 2021. <https://mjbizdaily.com/wp-content/uploads/2020/03/CA-market-report-2020-FINAL.pdf>.

<sup>105</sup> Long, Andrew. "US Cannabis Sales Could Top \$30 Billion by 2022." MJBizDaily, July 14, 2021. <https://mjbizdaily.com/us-cannabis-sales-could-top-30-billion-by-2022/>.

<sup>106</sup> November 12, Published and 2019. "Cannacraft and Grupo Flor Cannabis Companies Confirm Layoffs." MJBizDaily, November 12, 2019. <https://mjbizdaily.com/two-more-california-cannabis-companies-disclose-layoffs/>.

<sup>107</sup> Benzinga. "Cannabis Job Outlook In 2021 Is 'Strong' Despite Suffering Layoffs Throughout 2020," December 31, 2020. <https://www.benzinga.com/markets/cannabis/20/12/18912714/cannabis-job-outlook-in-2021-is-strong-despite-suffering-layoffs-throughout-2020>.

In many communities, past arrests and convictions related to cannabis can be a barrier to employment or entrepreneurship in the regulated cannabis entry. That has never been the case in San José, which as early as 2014, adopted program regulations that did not include cannabis offenses as disqualifications for employee or manager badges or ownership approvals. Division of Cannabis Regulation practice is to refer applicants with other types of convictions on their record to local expungement programs.

Still, in early conversations with the San José Cannabis Equity Working Group members, staff realized many local residents believe incorrectly that their cannabis convictions prevent them from working in the cannabis industry.

One significant barrier for some San José residents has been U.S. Customs and Immigration Services considering cannabis use or employment that is legal at the state level as a disqualifying or negative factor in immigration proceedings, which can have severe consequences for someone seeking citizenship or asylum, as well as for their families. According to the Immigrant Legal Resource Center, “(N)oncitizens who admit that they have used marijuana, or been employed in the legitimate cannabis industry, can be denied naturalization for lack of good moral character. ...Admitting to having possessed marijuana can disqualify an applicant for cancellation of removal, cause any non-citizen, including a permanent resident, to be excluded at the border; and destroy eligibility for family immigration.”<sup>108</sup>

Finally, the industry is overwhelmingly male-owned, as is the cannabis workforce. Institutionalized sexism is pervasive in the cannabis industry. Sexual harassment and exploitation often go unreported because of the industry’s history of secrecy and “culture of silence.” Additionally, the industry’s larger marketing strategy and culture often depict women as attractive objects to promote and advertise products.<sup>109</sup> As discussed below, Mendocino County (where there has been significant news coverage of harassment and sexual assault in the cultivation industry) includes survivorship in its cannabis equity eligibility criteria.

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<sup>108</sup> “Warning for Immigrants About Medical and Legalized Marijuana,” May 5, 2021, Immigrant Legal Resource Center. <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

<sup>109</sup> Majano, R. I. (2020). Cultivating a Safe Work Environment: Measuring and Addressing Sexual Harassment in Cannabis Dispensaries. UCLA. ProQuest ID: Majano\_ucla\_0031N\_18962. Merritt ID: ark:/13030/m5964rpt. Retrieved from <https://escholarship.org/uc/item/59z54442>

## Best Practices in Cannabis Equity

Staff has engaged with organizations and individuals working to advance cannabis equity both locally and statewide and heard several concerns about program practices that have not worked. Even California cities with long-established cannabis equity programs have very few success stories. And in the worst cases, equity entrepreneurs have been exploited by disreputable landlords, financiers, or partners. Some have lost savings, spent months paying rent for an empty space without income coming in as they worked to navigate the licensing and business start-up process. Others have been brought on as the “equity face” of a business which is actually run by individuals ineligible for the equity process. In the worst scenarios, the equity owner may not be engaged in business decisions or have access to profits.<sup>110</sup>

Staff wants to avoid these issues in San José. It is our goal to ensure our cannabis equity program has integrity and authenticity. Our program should serve San José residents who were disproportionately impacted by past cannabis prohibition. The hard truth is that there is no magic formula for creating a successful cannabis equity program. Staff researched and talked with staff at existing programs throughout California, reviewed recent industry reports on cannabis equity and the policy proposals from the San José Cannabis Equity Working Group, and met with industry and community stakeholders.

Reports range from modest optimism to recommendations for significant improvements to outright skepticism. Despite programs being in place in some cities since 2018, few equity-owned businesses have opened and been successful in the State of California. Some of those who have did so in partnership with large cannabis brands. As outlined above, opening a cannabis business is not easy and requires significant capital. Without solving the question of access to capital, equity applicants will continue to be challenged to own and operate independent small businesses.

### *Best Practices in Other Jurisdictions*

Appendix 2 provides detailed information about cannabis equity programs in other California cities, as well as programs in other states. Cannabis Equity programs across California jurisdictions generally consist of special license designations, incubation, and other incentives for employment and business development. Each jurisdiction mixes incentives with mandates for some components:

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<sup>110</sup> Irwin, Veronica. “Cannabis Equity Applicants Still Face Barriers.” SF Weekly, September 14, 2020. <https://www.sfweekly.com/culture/cannabis-culture/cannabis-equity-applicants-still-face-barriers/>.

- **Equity licenses or registrations.** Many cities have special license designations with eligibility requirements related to being an individual impacted by the War on Drugs. Jurisdictions typically have a mix of “must have” eligibility requirements and optional requirements that satisfy a criterion for equity constituency. These requirements largely derive from each jurisdiction’s cannabis equity assessment and are tailored to local needs. For example, in Mendocino and Humboldt counties, the programs include a connection to eradication and enforcement efforts related to cannabis cultivation. In Mendocino County, one eligibility component is being “a person who experienced sexual assault, exploitation, domestic violence, and/or human trafficking while participating in the cannabis industry.”<sup>111</sup> Through interviews, staff has not found a single approach to applicant review that has been universally adopted, and in some cases, applications are loosely vetted and/or reviewed by some form of honor system.
- **Incubation programs.** These programs require existing non-equity cannabis businesses to “incubate” and help equity businesses grow by providing space or mentorship to equity applicants, either as a requirement of licensure or expansion, or to access certain benefits (such as lowered fees). The main components of these programs are a mixture of technical assistance and rent-free space. San Francisco’s program includes requirements for community benefits agreements for incubators. Establishing an incubation program would need to be explored in partnership with the existing local industry, who would be called upon to serve as the incubators for equity applicants.
- **Direct incentives or tax advantages.** These include waivers or reductions of local permitting fees and annual operating fees for equity owners. They also may include incentives for general cannabis businesses to hire equity employees or serve as an incubator partner for an equity business. Oakland, for example, has different tax rates for equity-owned businesses as well as tax rebates for meeting certain equity conditions.
- **Hiring and workforce programs.** Long Beach mandates all license holders to source about a third of worked staff time be from equity constituencies impacted by the War on Drugs. Other jurisdictions have a form of this that is not mandated but may provide tax or fee incentivizes. Considering the expansive temporal and geographic nature of the War on Drugs and the very limited nature of licenses for a local equity business, some argue that hiring

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<sup>111</sup> “Cannabis Equity Grants Annual Report to the State Legislature,” July 2021, Governor’s Office of Business and Economic Development, <https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf>

- requirements could have a larger impact on historically disadvantaged communities to help redress the lasting negative economic impacts.
- **Legal and technical assistance.** In the California Cannabis Industry Association report, feedback from equity program participants was mixed as to the success of technical assistance programs, however where programs were tailored and not one-time, they appear to be the most relevant. Pro bono legal help was something participants said was sorely needed.<sup>112</sup>

The following is more information on cannabis equity programs in the jurisdictions with the longest-running equity programs in California. More detail is provided in Appendix 4.

### *Los Angeles*

Los Angeles defines equity eligibility in a tier structure. Depending on the type/tier, equity applicants are eligible for waived fees, technical assistance, expungement assistance, business and compliance training, and access to the Industry Investment Fund (if established). Tier 1 social equity applicants must own 51% of the business *and* be low-income and have a prior cannabis arrest or conviction *or* be low-income and live for 5 years cumulatively in a disproportionately impacted area. Tier 2 social equity applicants must own 33% of the business *and* be low-income and have five years cumulative residency in a disproportionately impacted area *or* live 10 years minimum in a disproportionately impacted area.

Los Angeles allows social equity owners upon death to transfer their license to a family member. However, to prevent paper applications, Los Angeles requires that social equity licensees hold onto the license for a period of three years before they are allowed to sell their stake. If they wish to exit the business before then, the other owners must find another social equity individual who meets the criteria of the original owner to take their place.

The California Cannabis Industry Association reports that, as of October 1, 2021, of approximately 200 retail social equity applicants in Los Angeles, only 26 had received

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<sup>112</sup> “California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California’s Social Equity Programs.” November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>



temporary permits and only one had opened.<sup>113</sup> Additionally, some applicants have been reluctant to apply for Los Angeles’s \$25,000 grant program because the funds count as personal, rather than business income, which can jeopardize other income-dependent benefits or have tax implications.<sup>114</sup>

### *San Francisco*

In San Francisco, applicants must meet three of six eligibility requirements and meet an asset screen. Equity applicants do not pay the City’s initial licensing fee. Through the City and County’s Cannabis Incubator program, equity owners are eligible for technical assistance (free rent, business development support) from another cannabis business or licensed Cannabis Incubator. Equity applicants are also entitled to priority permit processing. Using grant funds from the State, San Francisco provides direct grant funding (up to \$100,000 for sole proprietors and single-member LLCs), which can be used for rent and start-up costs, as well as funding technical assistance providers and legal services for equity applicants.

San Francisco prohibits equity owners from transferring more than a 50% ownership interest for five years (from the date the of acknowledgment of receipt of application). This timeframe was shortened on October 29, 2021; ownership transfers previously were restricted for a 10-year period,<sup>115</sup> however, at that time, San Francisco also required that if an equity owner’s share of ownership was decreased more than 20%, the business has to provide additional equity benefits.<sup>116</sup> San Francisco currently has 36 equity permit-holders.<sup>117</sup> Additionally, approximately 70 individuals are employed in the local cannabis industry through San Francisco’s First Source Hiring Program.<sup>118</sup>

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<sup>113</sup> “California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California’s Social Equity Programs.” November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>

<sup>114</sup> Ibid.

<sup>115</sup> Ordinance #210421, <https://sfgov.legistar.com/LegislationDetail.aspx?ID=4921596&GUID=13F8C952-ADFF-44DF-97EB-F2AAD6EC7721&Options=&Search=>

<sup>116</sup> “Board of Supervisors Unanimously Approves Cannabis Equity Legislation Introduced by Mayor London Breed,” October 6, 2021. <https://sfmayor.org/article/board-supervisors-unanimously-approves-cannabis-equity-legislation-introduced-mayor-london>

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

## *Oakland*

Oakland targets equity ownership to low-income Oakland residents who have either lived for 10 of the past 20 years in designated police beats with a historically high rate of cannabis arrests or was convicted after 1996 of a cannabis crime committed in Oakland.<sup>119</sup> Equity applicants are eligible for participation in the Equity Assistance program, which includes industry-specific technical assistance, business ownership technical assistance, no interest business start-up loans, and waivers from city permitting fees. Oakland reportedly intends to use some of its state grant funds to develop a shared commercial kitchen for equity manufacturers.<sup>120</sup>

Oakland also has an incubator program where an applicant for a general cannabis license provides an equity applicant with a rent-free space to operate their business for three years. In return, the business with a general license receives permitting priority relative to other businesses in their pool of applicants. The City of Oakland actively matches equity applicants with incubating general partners. Additionally, Oakland offers differing tax rates for cannabis equity businesses. Equity cannabis businesses have lower tax rates depending on their annual gross receipts. Oakland currently has a moratorium in place on transferring ownership of equity businesses to non-equity owners.

## *Sacramento*

The City of Sacramento's Cannabis Opportunity Reinvestment and Equity (CORE) program is administered by the Sacramento Asian Chamber of Commerce and the Greater Sacramento Urban League. The program consists of a business reimbursement program which provides an opportunity for CORE applicants to receive up to \$25,000 in reimbursement for certain qualifying start-up expenses. Sacramento also operates a tiered program. Depending on the type of license and equity tier, equity applicants are eligible for services offered by the business support center including the expungement of criminal records, priority assistance with conditional use permit and business operations permit processing, and fee waivers or deferral. CORE participants are also

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<sup>119</sup> "Cannabis Equity Grants Annual Report to the State Legislature," July 2021, Governor's Office of Business and Economic Development, <https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf>

<sup>120</sup> "California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California's Social Equity Programs." November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>

eligible for fee waivers and are exempt from the Neighborhood Responsibility Plan fee of 1% on gross receipts.<sup>121</sup> (Note: this fee is currently facing litigation from some in the Sacramento industry.<sup>122</sup>)

### *Best Practices and Recommendations from Other Organizations*

There is much work happening nationally and statewide to advance equity in the cannabis industry. Below is a snapshot of recommendations from the national “Seeds of Change” report (Leafly), the national Minority Cannabis Business Association, the California Cannabis Industry Association’s Diversity, Inclusion, and Social Equity Committee report, and the San José Cannabis Equity Working Group policy proposal. This information is provided to give some additional context around the efforts in progress nationally, with the understanding that not all of these recommendations will align with San José’s history, community needs, or cannabis program design.

### “Seeds of Change” (Leafly) Recommendations<sup>123</sup>

- 1) Mandate automatic expungement of cannabis records.
- 2) Establish equitable cannabis licensing systems.
- 3) Safeguard the rights and access of medical patients.
- 4) Allow home growing and regulate it reasonably.
- 5) Dedicate cannabis tax revenue to healing, not harm.
- 6) Gather robust data and share it widely.
- 7) Reduce stigma through proactive programs.
- 8) Support cannabis career development opportunities.

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<sup>121</sup> “Cannabis Equity Grants Annual Report to the State Legislature,” July 2021, Governor’s Office of Business and Economic Development, <https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf>

<sup>122</sup> “Sacramento Sued Over Its Neighborhood Responsibility Plan,” California City News, June 2021, <https://www.californiacitynews.org/2021/06/sacramento-sued-over-its-neighborhood-responsibility-plan.html>

<sup>123</sup> “Seeds of Change: Strategies to create an equitable cannabis industry,” Janessa Bailey for Leafly. <https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf>

Minority Cannabis Business Association<sup>124</sup> (provides 10 model social equity ordinances. Note: these items are national, not California-specific)

- 1) Cannabis Social Equity Licensing Program.
- 2) Equity in Cannabis Industry Employment Opportunities.
- 3) Cannabis Industry Community Benefits Agreements.
- 4) Reinvestment of Local Cannabis Fees and Taxes into Communities.
- 5) Reducing Barriers to Entry into the Cannabis Industry.
- 6) Data Collection to Build an Equitable Cannabis Industry.
- 7) Permitting Cannabis Consumption Lounges.
- 8) Resentencing and Record Expungement for Cannabis Offenses.
- 9) Making Cannabis Offenses the Lowest Law Enforcement Priority.
- 10) Eliminating Suspicionless Drug Testing.

California Cannabis Industry Association Recommendations<sup>125</sup>

- 1) Create a comprehensive State definition of cannabis equity to create consistency across jurisdictions.
- 2) Increase access to capital, including additional State relief and grant funding for equity operators.
- 3) Increase transparency and accountability around State equity grants.
- 4) Jurisdictions providing technical assistance should partner with established and respected organizations that specialize in business planning and equity rights and create mentorship programs with industry specialists.

San José Cannabis Equity Working Group (see Appendix 5 for the full report)

- 1) Expand cannabis operation permitting in San José.
- 2) Consider expanding the “Green Zone” (zoning districts where cannabis operations are allowed).
- 3) Offer general benefits to qualified equity applicants (priority permit processing, waiver of application and inspection fees, access to incubation program).

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<sup>124</sup> Minority Cannabis Business Association, 10 Model Municipal Social Equity Ordinances <https://minoritycannabis.org/wp-content/uploads/2021/10/July-1-2019-MCBA-s-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>

<sup>125</sup> “California Cannabis Equity Accountability Report: An Analysis of the Health and Success of California’s Social Equity Programs.” November 8, 2021. California Cannabis Industry Association, Diversity, Inclusion, and Social Equity Committee. <https://growthzonesitesprod.azureedge.net/wp-content/uploads/sites/421/2021/11/Accountability-Project-FINAL.pdf>

- 4) Create and implement a publicly funded “Equity Incubation Program” that provides technical assistance, resources, and training for owners and training and living wage job placement for equity employees.

## RECOMMENDATIONS

Taking into consideration the aforementioned historical context and current landscape of the cannabis industry and equity programs in California, the following is recommended for the City of San José.

### Immediate Actions

#### *Update Equity Program Eligibility*

Best practices are for equity program eligibility to be aligned with findings from the jurisdiction's cannabis equity assessment. The current San José equity applicant requirements were developed quickly in 2019 and are not tied to an equity assessment.

The arrest analysis in this report provides some information about disproportionality in arrests in the Black community and for many years in the Latino/a/x community. The geospatial analysis in this study showed that concentrations of citations and arrests for cannabis offenses overlap with a number of low-income census blocks and in census blocks where majority Latino/a/x or Asian communities lived. Staff's overlap analysis shows that these census blocks correlate with the MTC Equity Priority Communities (formerly Communities of Concern).

State law place restrictions on government agencies providing preferential treatment based on race, ethnicity, or national origin. As a result, a cannabis equity eligibility ordinance cannot be limited by race, ethnicity, or national origin. Most California jurisdictions instead use impacted neighborhoods as the starting point for eligibility, either through designated zip codes, police beats, or census tracts. Given the other programmatic efforts in which City departments are using the MTC Equity Priority Communities, the detailed equity analysis that has gone into designating those communities, and the user-friendliness of the maps (versus using census blocks or tracts), staff is recommending using the MTC Equity Priority Communities as the geographic starting place for an updated cannabis equity ordinance.

It is recommended staff bring an updated ordinance to the City Council in conjunction with this report, including the following updates:

#### For **equity employees**:

- Requiring an employee be a current resident of an MTC Equity Priority Community in the City of San José; and

- In the year prior to employment in the cannabis industry, the individual resided in a household with an income at or below 80% of the Area Median Income for San José; and meets one of the following criteria:
  - Has lived or attended a public elementary, middle, or high school (or schools) for at least four years in an MTC Equity Priority Community in the City of San José; or
  - Has been arrested for a cannabis crime in California; or
  - Had a parent, legal guardian, child, or sibling arrested for a cannabis crime in California, or
  - Is a person who experienced sexual assault, exploitation, domestic violence, and/or human trafficking while participating in the California cannabis industry.

**For equity owners:**

- Requiring an equity owner be a current resident of an MTC Equity Priority Community in the City of San José; and
- Has successfully completed all required pre-application requirements (note: this could include participation in technical assistance coursework; and
- In the year prior to submitting the application as an equity owner, the individual resided in a household with an income at or below 150% of the Area Median Income for Santa Clara County; and
- Has lived or attended public elementary, middle, or high school (or schools) for at least four years in an MTC Equity Priority Community in the City of San José; and meets one of the following criteria:
  - Has worked in the cannabis industry in San José for at least two years between 2009 and the present; or
  - Has been arrested for a cannabis crime in California; or
  - Had a parent, legal guardian, child, or sibling arrested for a cannabis crime California; or
  - Is a person who experienced sexual assault, exploitation, domestic violence, and/or human trafficking while participating in the California cannabis industry.

It is also recommended San José allow for and encourage partnerships of equity owners, who could together own and operate a small business, building upon each other's individual expertise.

These recommendations are designed to ensure the cannabis equity program serves residents of San José who live in impacted neighborhoods, who were most likely to be affected by the impacts of cannabis prohibition and the War on Drugs, and who are most likely to face barriers to entering the regulated/legal cannabis industry.

#### *Enact Zoning and Regulatory Changes to Provide Opportunities for Equity Ownership*

San José is currently only accepting applications for manufacturing, distribution, and testing businesses. In addition, San José's cannabis program does not include provisions for delivery-only retailers. Cannabis equity advocates have indicated that the highest level of interest among equity applicants is in opening cannabis retail or delivery-only businesses. They also note delivery-only businesses have the lowest start-up costs.

The City Council's Community and Economic and Development Committee recommended creating opportunities for registration of 10 new retail businesses for equity applicants, of which no more than five would be storefront dispensaries. As discussed earlier in this report, City staff is undertaking a comprehensive update of the City's cannabis regulatory program based on this direction. Staff's proposed regulatory update will be brought forward concurrently with this report. If approved, these registration opportunities would set the groundwork for a cannabis equity program.

#### *Create a Small-Business Assistance Program for Cannabis Equity Owners*

This report describes the types of cannabis equity programs jurisdictions have established to assist applicants for cannabis equity registrations with business training programs, industry-specific compliance training, registration and licensing assistance, location assistance, and legal assistance. The City should pursue ways to provide such services to potential cannabis equity applicants, both for the existing registration categories and for any new retail opportunities Council may approve. This program should be developed in partnership with trusted organizations with expertise in small business development and planning in a heavily regulated industry. The program would be subject to a Request for Proposals process with delivery of the training and technical assistance under contract to the City of San Jose.

To help equity entrepreneurs be successful, this assistance should be offered and completion should be required before equity applicants are able to apply for an equity registration. Requiring a commitment to participating in such a program could also prevent "paper" or "straw" equity applicants and help ensure the limited retail registrations are made available to local entrepreneurs who are committed to the work.



### *Build Awareness and Connect with Community through Proactive Engagement and Outreach*

Lack of awareness of existing cannabis equity programs has emerged as a problem across many jurisdictions. The City should work with community-based organizations and leaders in implementing cannabis equity programming, to ensure it best meets the needs of potential applicants and reaches communities that were most impacted by cannabis prohibition and the War on Drugs. Outreach to impacted neighborhoods and communities through trusted intermediaries has been proven to be successful with the City's pandemic relief and recovery efforts, and the cannabis equity program should build on that work.

### *Partner to Increase Awareness of Expungement Efforts*

On April 29, 2020, the Santa Clara County District Attorney's Office expunged more than 13,000 low-level marijuana convictions.<sup>126</sup> This development was an important step for individuals formerly incarcerated for marijuana-related offenses, including residents who reside in the City of San José. While the City does not grant expungements, it can support these efforts by partnering with agencies that do and building awareness of these resources. Additionally, any workforce development program development and outreach should clearly communicate the City does not consider past cannabis arrests or convictions to be a barrier to employment in the local cannabis industry.

### *Restrict Equity Ownership Transfers*

To prevent predatory business relationships, it is recommended San José consider adoption of regulations around transfer of ownership for equity-owned businesses. This could include a time-based prohibition on transferring ownership, along the lines of Oakland's prohibiting the sale of a cannabis equity business for five years from license approval or Los Angeles' three-year restriction.

### *Advocate for Resources to Increase Access to Capital*

Without capital, equity businesses will not be able to launch successfully or will be subject to predatory financing arrangements. To ensure success, the City should join with other jurisdictions to advocate for additional state grant funding to aid these businesses. Additionally, to permanently solve the fundamental capital challenges of the industry, both equity and non-equity, the City should continue to advocate for legal

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<sup>126</sup> Santa Clara County Office of the District Attorney. "Santa Clara County Expunges Thousands of Low-Level Marijuana Convictions - District Attorney - County of Santa Clara." Government. Accessed September 17, 2021.

<https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2020/MJExpungements.aspx>.

cannabis businesses to have access to banking and credit, including SBA loans. The City should also advocate for the ability to use federal workforce development funds and small business assistance funds to aid legal cannabis businesses. Lastly, the City should explore whether local philanthropists that are investing in equity have an interest in funding cannabis equity programming or providing assistance to equity entrepreneurs.

### Recommendations for Further Consideration

The following recommendations would require additional resources and staff work, but may be worth exploring in the future.

#### *Cannabis Equity Incubators and Shared Spaces*

Shared spaces are allowed under the current San José cannabis program. The City should encourage shared spaces, such as commercial kitchens, as allowed under the current cannabis program to expand opportunities for micro-manufacturers. Such spaces could enable opportunities for small equity businesses by sharing costs.

Additionally, the City could consider implementing a cannabis equity incubator program under which non-equity cannabis businesses provide businesses owned by equity applicants with facility space or technical assistance. Such a program could include incentives such as preferred licensing, expedited regulatory processing, or rebates.

Following San Francisco's incubator model, the City could consider requiring applying incubators to submit a plan for how they will support the establishment and growth of the incubatee's business. The City could then help match experienced local cannabis businesses with registration-eligible equity businesses. Requiring a plan and having ongoing monitoring serves dual purposes. It would (a) ensure good-faith incubators are incentivized to grow industry diversity while (b) protecting incubatees from predatory investment/business arrangements.

#### *Workforce Development*

The City could consider opportunities for developing programs to build paths to employment for equity employees in partnership with the local industry. The City could also explore new ways to collect data on equity employment in the industry, as well as consider incentives for hiring and retaining equity employees.

### *Fee Waivers and Incentives for Equity-Owned Businesses*

Any waivers or incentives, other than those funded by existing state grant funds would have to be considered as part of the City’s budget process. Best practices from other jurisdictions include priority assistance with registration and building permit processing, waivers or deferral of city permitting fees, waivers or reduction of initial application fees, subsidy or reduction in annual operating fees, and priority application and registration processing.

### *Bringing Illicit Market into Legal Operation*

The City’s Code Enforcement Division is responsible for enforcement against cannabis businesses that are operating illegally in San José. The Code Enforcement Division should be kept apprised of progress towards implementing a cannabis equity program so that it can make illegal businesses it encounters over the course of its enforcement efforts aware of the opportunity to apply for registration and become legal businesses.

### *Data Disaggregation*

A unique feature of San José is the diversity of its people. Recognizing this diversity, the City should explore ways it could begin disaggregating the Asian/Pacific Islander racial demographic by ethnicity. San José’s Asian/Pacific Islander population includes many different Asian ethnic groups, the largest of which is the Vietnamese community. Disaggregated data can provide useful information about how these different communities have been impacted by a particular practice or policy. Studies have observed measurable outcome differences and harms associated with aggregating Asian ethnicities.<sup>127, 128, 129</sup> In this assessment, there is some data that shows cannabis prohibition and the War on Drugs may have had a greater impact on some Asian ethnic groups more than others, which raises equity concerns. It is the recommendation of this assessment that the City consider new ways of capturing differences within this large part of the population.

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<sup>127</sup> California Law Review. “The Case for Requiring Disaggregation of Asian American and Pacific Islander Data,” March 19, 2021. <https://www.californialawreview.org/the-case-for-requiring-disaggregation-of-asian-american-and-pacific-islander-data/>.

<sup>128</sup> Equitable Growth. “How Data Disaggregation Matters for Asian Americans and Pacific Islanders,” December 14, 2016. <http://www.equitablegrowth.org/how-data-disaggregation-matters-for-asian-americans-and-pacific-islanders/>.

<sup>129</sup> Byon, Anna, and Edited Amanda Janice Roberson. “EVERYONE DESERVES TO BE SEEN.” Southeast Asian Resource Action Center; Institute for Higher Education Policy, May 2020. [https://www.searac.org/wp-content/uploads/2020/05/ihep\\_aapi\\_brief.pdf](https://www.searac.org/wp-content/uploads/2020/05/ihep_aapi_brief.pdf).

Although not discussed in this report, the Administration may want to advocate for the County to monitor trends in public health research and assess impacts pertaining to cannabis legalization. Some studies highlight the potential for greater numbers of vehicular accidents,<sup>130</sup> among other public health concerns.<sup>131 132</sup> More research is needed to fully understand what public health impacts exist related to cannabis legalization. The administration could engage with County Health officials as needed as well as monitor any trends identified by law enforcement and city officials.

## CONCLUSION

Cannabis prohibition and the War on Drugs has had a far and long reaching impact on communities of color throughout the country, including in San José. As the country reckons with its own legacy of sanctioned systemic racism, the duty to be accountable and transparent with these communities is critical for a path forward. Equity in the cannabis industry is an important step towards meeting the needs of individuals and communities affected by the War on Drugs. However, the potential of city policies and programs suggested in this study are only a segment of the greater fabric of reconciliation and restitution.

The entire City organization, led by the Office of Racial Equity, is engaged in understanding and redressing past and present wrongs, and advancing social equity. For cannabis equity work to be genuine and best serve the communities disproportionately impacted in the past, ongoing engagement and transparency will be required as the program is developed and implemented. Assessment and measurement will ensure the City and the community learn what works and where stumbling blocks are encountered and is able to iterate and improve going forward.

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<sup>130</sup> Hall, Wayne, Daniel Stjepanović, Jonathan Caulkins, Michael Lynskey, Janni Leung, Gabrielle Campbell, and Louisa Degenhardt. "Public Health Implications of Legalising the Production and Sale of Cannabis for Medicinal and Recreational Use." *Lancet (London, England)* 394, no. 10208 (October 26, 2019): 1580–90. [https://doi.org/10.1016/S0140-6736\(19\)31789-1](https://doi.org/10.1016/S0140-6736(19)31789-1).

<sup>131</sup> Hall, Wayne, Daniel Stjepanović, Jonathan Caulkins, Michael Lynskey, Janni Leung, Gabrielle Campbell, and Louisa Degenhardt. "Public Health Implications of Legalising the Production and Sale of Cannabis for Medicinal and Recreational Use." *Lancet (London, England)* 394, no. 10208 (October 26, 2019): 1580–90. [https://doi.org/10.1016/S0140-6736\(19\)31789-1](https://doi.org/10.1016/S0140-6736(19)31789-1).

<sup>132</sup> American Public Health Association. "A Public Health Approach to Regulating Commercially Legalized Cannabis." Accessed September 29, 2021. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/a-public-health-approach-to-regulating-commercially-legalized-cannabis>.

Cannabis equity is an emerging field of work and, as this report lays out, there are few true success stories. It is the hope that San José can, in community partnership, write a new chapter with more promising results.

## APPENDIX 1: Current San José Cannabis Equity Ordinance (approved March 26, 2019)

### Part 3.5 CANNABIS EQUITY ASSISTANCE PROGRAM

#### 6.88.395 Eligibility for Equity Assistance Program.

A. To be eligible for the Equity Assistance Program as an equity employee, an individual shall satisfy the following criteria:

1. Be a natural person; and
2. In the last year, have had an annual household income at or below eighty percent (80%) of the Area Median Income (AMI) for Santa Clara County adjusted for household size; and
3. The individual satisfies at least one of the following criteria:
  - a. Has lived in San José for at least four years in a census tract where at least fifty-one percent (51%) of current residents have a household income at or below eight percent (80%) of the AMI for Santa Clara County; or
  - b. Has attended a San José public school, or schools, for at least for years located in a census tract where at least fifty-one (51%) of current residents have a household income at or below 80% of the AMI for Santa Clara County for at least four years; or
  - c. Was arrested or convicted for a crime relating to the sale, possession, use, or cultivation of cannabis, excluding those offenses which would be disqualifying for cannabis licensure under current State law; or
  - d. Had a parent, guardian, child, or sibling convicted of a crime relating to the sale, possession, use, or cultivation of cannabis in the City of San José, excluding those offenses which would be disqualifying for cannabis licensure under current State law.

B. To be eligible for the Equity Assistance Program as an equity business owner, an individual shall satisfy the criteria in subsection A above and the individual shall also have a minimum of fifty-one percent (51 %) ownership of the entity applying for a Cannabis Business Registration.

C. Review of eligibility criteria.

1. Proof of income shall be supported with federal tax returns and at least one (1) of the following documents: two (2) months of pay stubs, current profit and loss statement, balance sheet, or proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKs, or Supplemental Security Income or Social Security Disability (SSI/SSDI).

2. Residency shall include proof of residency in any combination of qualifying San José census tracts pursuant to Section 6.88.395.A.3 for a minimum of four (4) years. A minimum of two (2) of the documents listed below, evidencing a minimum of four (4) years of residency, shall be considered acceptable proof of residency. All residency documents must list the first and last name of the equity business owner applicant or the equity employee applicant, and the San José residence address in a qualifying San José census tract pursuant to Section 6.88.395.A.3:

- a. California Driver's record or Driver's License; or
- b. California identification card record; or
- c. Property tax billing and payments; or
- d. Verified copies of State or federal income tax returns where a San José address within a qualifying San José census tract pursuant to Section 6.88.395.A.3 is listed as a primary address; or
- e. School records; or
- f. Medical records; or
- g. Banking records; or
- h. Utility, cable, or internet company billing and payment covering any month in each of the four (4) years.

3. Proof of conviction should be demonstrated through federal or State court records indicating the disposition of the criminal matter.

**6.88.396 Assistance Available to Equity Employees and Equity Business Owners.**

Individuals applying as equity employees at a Cannabis Business or applying for a Cannabis Business Registration as an equity business owner applicant, may be eligible to receive technical assistance, training for prospective employees, and other services dependent upon funding.

**6.88.397 Regulations for Equity Assistance Program.**

The City Manager shall promulgate regulations pursuant to Section 6.88.315 to further establish an application process and procedures for the Equity Assistance Program.

## APPENDIX 2: Limitations on Assessment Data

### Limitations

#### *Sample Size*

As reported in previous sections, some data was missing due to reporting inaccuracies. Further, the period observed for stops in the Stanford study was less than the period observed through service calls. The Administration was also unable to obtain arrest data during the height of cannabis prohibition enforcement (1970s – 1990s).

#### *Policy Interventions During Time Period Observed*

Two major policy interventions happened during the period of recorded data for this study. At the federal level, the Cole Memo (2013) instructed law enforcement to lower marijuana offenses and SB 1447 lowered marijuana-related possession charges from a misdemeanor to an infraction. This would suggest the arrest rates observed in the Administration’s analysis were likely lower than the onset of the War on Drugs and Reagan era “tough-on-crime” policies.

#### *Underreporting/Overrepresentation*

Studies have uncovered a phenomena of Latino/a/x subjects generally being underreported in police data. Latino/a/xs have been reported to have reported as white, thus, potentially undercounting the true number of Latino/a/x incidents.

#### *Location of Arrest*

Literature infers that arrests in communities have a harmful impact on those peripheral to law enforcement actions. Our analysis captures this phenomenon but it may not fully explain the relationship between arrests and the neighborhoods they occur in. Home addresses of subjects arrested were unavailable for this analysis, so place of occurrence and residence of subject arrested/cited may be different.

#### *Asian Data Aggregation*

This analysis observes higher than normal arrest rates in census blocks that have a majority Asian population. Aggregation of Asian data may fail to capture the full picture of arrest/citation rates, as some studies suggest there are different inequities in Asian ethnic subgroups than others. This aggregation would tend to mask the arrest/citation rates for among subgroups seen in our analysis.



## APPENDIX 3: 2019 Policy Proposal from the San José Cannabis Equity Working Group

<b>Policy Proposal:</b>	San José Cannabis Equity Program
<b>Date:</b>	January 10, 2019
<b>Primary Sponsor:</b> <sup>133</sup>	San José Cannabis Equity Working Group [SJCEWG]
<b>Org. Co-Sponsors:</b>	SJSU Human Rights Collaborative, NAACP SV/SJ, Silicon Valley DeBug
<b>Official Supporters:</b>	See <a href="#">page 11</a> .
<b>Appendices:</b>	<a href="#">Appendix A</a> : Defining Equity Populations in CA and San José <a href="#">Appendix B</a> : Considering a San José Equity Operator Stamp

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### Introduction: The San José Cannabis Equity Working Group [SJCEWG]

The **San José Cannabis Equity Working Group** is a collection of local cannabis industry professionals and partnered community organizations pursuing (1) the establishment of a “**cannabis equity program**” for recreational cannabis cultivation, manufacturing, distribution, testing, and sale in the City of San José and (2) effective implementation of **cannabis record clearance** under the [Adult Use of Marijuana Act \[AUMA\]](#) and [CA AB 1793](#) in Santa Clara County.

The SJCEWG represents decades of experience in all areas of medical cannabis production, and is purposefully diverse in terms of race, ethnicity, gender, and sexual orientation. Further, the SJCEWG should be seen as representing local, smaller scale business owners in comparison to the larger, corporate and/or venture capital financed commercial enterprises now entering legal markets throughout the U.S.

### Cannabis Equity Programs in CA: Brief History and Definition of Common Terms

**Equity programs** were recently established in most of California’s major metropolitan areas (Los Angeles, San Francisco, Oakland, and Sacramento) in order to (1) *provide economic opportunity and resources* to the California communities most targeted and devastated by decades of failed criminal prohibition, and (2) *ensure equitable, sustainable, diverse local markets* that treat cannabis as an

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<sup>133</sup> Author: William Armaline, Ph.D., Director, SJSU Human Rights Collaborative.

agricultural crop and cultural product unique to local communities in California. Equity programs ultimately provide economic opportunity to those most often excluded from the wealth of the region: traditional working class populations, local small-scale agriculture and agricultural workers, populations of color, women, LGBTQ populations, and those with criminal records (including but not exclusively reentry populations). Further, along with “[community reinvestment grants](#)” established by the AUMA, *the recreational cannabis market can be a valuable source of revenue to support more effective approaches to drug policy* in the City of San José and Santa Clara County.

In addition:

- *The equity program movement began with the activism of working class women of color* (organizations like [Supernova Women](#) and [The Hood Incubator](#), for instance) with backgrounds in the cannabis industry. They recognized an opportunity in the AUMA to fight for their own social and economic rights to access a now legal cannabis market that they helped to create in the first place.<sup>134</sup> This movement has since gained significant traction and backers from all arenas, including state agencies, County Boards of Supervisors, City Councils, drug policy NGOs, and cannabis industry leaders.
- *Support for city Equity Programs is now unquestionable at the state level, following the recent passage of [CA SB 1294](#) that will dedicate at least \$10 million to offer administrative and resource assistance to city equity programs and direct assistance to individual equity applicants for [state licensing](#) and other business needs. The language of CA SB 1294 reiterates the purpose of cannabis equity programs: “[to] ensure that persons most harmed by cannabis criminalization and poverty be offered assistance to enter the multibillion-dollar industry as entrepreneurs or as employees with high-quality, well-paying jobs.”*

An **equity applicant** is a member of an **equity population**, identified by available data and research as most historically disenfranchised by failed cannabis prohibition and the broader “war on drugs,” who is potentially (1) seeking necessary permits to operate a legal cannabis business, or (2) seeking living wage employment in the local cannabis industry. In California cities including San José, this population is often local, working class, disproportionately people of color (African Americans and Latinx populations in particular), and have prior cannabis related arrests and/or convictions.

A **general applicant** refers to an individual who would qualify for a typical cannabis license/permit, but is not a member of an equity population, and would not enjoy the benefits as such.

### [The San José Cannabis Equity Program: Improving on Existing Models](#)

As one of the last major metropolitan areas in California to consider an equity program, San José has the benefit of hindsight to glean best practices from existing programs throughout the state. Further, since several members of the SJCEWG were intimately involved with the creation of equity programs in (for example) [San Francisco](#) and [Oakland](#), the following proposal reflects considerable relevant experience.

- **Like other programs across the state**, the San José Cannabis Equity Program proposes to *create a fast track, fee-free path for equity populations* to receive the necessary state licensing and local permitting (city) necessary to become a legal cannabis business operator. The San José

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<sup>134</sup> For more on the contemporary history of this movement, please see a recent series by the Huffington Post here: [https://www.huffingtonpost.com/entry/women-racial-justice-legal-marijuana\\_us\\_5a5df6d5e4b04f3c55a5db01](https://www.huffingtonpost.com/entry/women-racial-justice-legal-marijuana_us_5a5df6d5e4b04f3c55a5db01).

program will also *reserve a certain number of available permits for equity applicants* to ensure their representation in the emergent recreational market.

- **Unlike other programs across the state**, the San José Cannabis Equity Program (1) will *avoid disruptive “bottlenecks” and delays* by making ample permits available, not requiring all permit applicants wait for equity permits to be distributed, and not pursuing an individual-to-individual incubation model; and (2) will instead *implement an **Equity Incubation Program***, funded by 10% of the city [Marijuana Business Tax](#), that will both *train and provide critical services for equity applicants* seeking to become business owners and *provide training and living-wage job placement for equity populations* seeking employment in the growing cannabis industry.

### San José Cannabis Equity Program Specifics: What is it? How will it work?

[Note: The following is a strategic illustration—a vision of how an equity program might work in San José and a model for other city governments transitioning from prohibition to to the legal regulation and taxation of cannabis. The specifics presented below, such as the exact number of cannabis operator permits or the specific appropriate income level defining equity populations, should be considered in appropriate forums of relevant experts, industry representatives (including equity populations), and policy makers weighing context, needs, benefits, and limitations.]

(1) *Expand Cannabis Operation Permitting in San José*

For the Equity Program to function, the city of San José will need to **expand beyond the 16 licensed dispensaries currently in operation.**

- Noting that for its geographic size and population San José has relatively few points of sale for recreational and medical cannabis,<sup>135</sup> the city should make an additional **16 new permits available for vertically integrated (“seed to sale”) dispensaries, reserving three of these permits for equity applicants.**
- Second, noting the remarkably few options for cannabis delivery<sup>136</sup> for the largest city in Northern California and 10<sup>th</sup> largest city in the U.S., the city of San José should make an additional **30 new permits available for delivery operators, reserving half (15) of these permits for equity applicants.** Expanding delivery services is critical, since they are the most likely entry point for equity applicants (considering the comparative capital overhead of a “brick and mortar” dispensary or lab testing facility), and are the most effective tools to provide the most debilitated patients and least privileged recreational consumers with access to cannabis.

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<sup>135</sup> It is worth noting here that the city of Denver (in another state with legal, regulated recreational cannabis sales) has a population of only 682,000, but allows for over 100 licensed cannabis dispensaries within city limits. San Jose has a total population of 1,025,000, but will only allow for 16 total licensed dispensaries, with only six of these licensed for delivery services.

<sup>136</sup> Only 6 of the current 16 legally permitted dispensaries in San José also have permits for delivery services.

- Third, while equity programs tend to focus on dispensary and delivery operations, the City of San José should make **several new permits available for cannabis manufacture, distribution, and lab testing**, where equity applicants would be encouraged to apply and still enjoy priority permitting and fee waivers in that process. In order for the expanding recreational market to function with the necessary safety measures in place for public consumption, there must be ample local capacity for regulated lab testing, manufacture, and distribution of cannabis products.
- Finally, the City should consider employing a **San José Equity Operator Stamp** to ensure compliance, equity operator identification, and product safety. See more information on the possibility of an Equity Operator Stamp in [Appendix B](#).

## *(2) Consider Expanding the “Green Zone”*

Though the San José Cannabis Equity Program as proposed here does not articulate a specific zoning plan, it may be necessary for the city to expand the current, largely industrial “green zone” currently available for the proposed permitting expansion to be feasible. **The city should consider expanding this “green zone”** with the following in mind:

- According to CA state law, a City Ordinance passed prior to July 1, 2019 that would issue permits for legal cannabis operators is **exempt from municipal CEQA review**.<sup>137</sup> Such a review would also be arguably redundant, considering the necessity for CEQA review documents or the appropriate exemption form for state licensing (via the CA Bureau of Cannabis Control).<sup>138</sup>
- Despite common concerns about the “corrupting” aspect of legalizing recreational cannabis, research demonstrates the following:
  - **The number of California High School students who use cannabis continues to decline** (a 3-4% drop in the last two years for ninth and eleventh graders, for example), **as does**

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<sup>137</sup> [California Business & Professions Code § 26055\(h\)](#) reads as follows:

“(h) Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2019.”

<sup>138</sup> Find the CA BCC regulations (specifically, Article 2, § 5010. Compliance with the California Environmental Quality Act (CEQA)) and CEQA forms here: [https://www.bcc.ca.gov/law\\_regs/index.html](https://www.bcc.ca.gov/law_regs/index.html).

**the rate of use for high school students who have tried cannabis.**<sup>139</sup> This matches national data showing a trend of decline in teen cannabis use going as far back as 2002—spanning the periods of medical (now 21 states) and recreational (now 9 states) legalization.

- Expanding legal cannabis markets tends to **reduce the size and scope of the black market, and consumers are willing to choose legal cannabis over illicit sources**, even given a marginal increase in price.<sup>140</sup>
  
- Available data suggests that **states and municipalities allowing for the production and sale of medical or recreational cannabis do not experience increases in crime**. In fact, data from Washington state suggests that nearly all categories of crime dropped when the legal recreational market was introduced.<sup>141</sup> More strikingly, a recent study of states along the southern border (including California) found that violent crime rates plunged an average of 13% when legal markets were introduced.<sup>142</sup> Last, going back to 1996, the opening of storefront cannabis dispensaries is not statistically tied to violent crime rates in counties across California,<sup>143</sup> whereas stores for the purposes of selling alcohol or tobacco were associated with substantial increases in violent and property crimes.<sup>144</sup>
  
- Most of the new permits proposed in the Equity Program would not involve the most concerning (environmental impact and public safety, youth impacts in particular) activities (cultivation and retail sales) for city zoning. In short, to the extent that there are significant zoning concerns, these are primarily for the vertically integrated, storefront dispensaries.

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<sup>139</sup> See the 16<sup>th</sup> Biennial State of California Healthy Kids Survey here: [https://data.calschls.org/resources/Biennial\\_State\\_1517.pdf](https://data.calschls.org/resources/Biennial_State_1517.pdf).

<sup>140</sup> See more on these studies here: <https://www.marijuanaandthelaw.com/legal-marijuana-reduces-illicit-market-demand/>.

<sup>141</sup> See this (Washington) study and similar studies summarized here: <http://norml.org/marijuana/fact-sheets/item/marijuana-regulation-and-crime-rates>.

<sup>142</sup> Gavrilova, E., T. Kameda, and F. Zoutman. (2017). Is legal pot crippling Mexican drug trafficking organizations? The effect of medical marijuana laws on U.S. crime." *The Economic Journal*. DOI: <https://onlinelibrary.wiley.com/doi/full/10.1111/eoj.12521>.

<sup>143</sup> See the study here: <http://ftp.iza.org/dp11567.pdf>.

<sup>144</sup> Subica, A., J. Douglas, N. Kepple, S. Villanueva, and C. Grills. (2018). The geography of crime and violence surrounding tobacco shops, medical marijuana dispensaries, and off-sale alcohol outlets in a large, urban low-income community of color. *Preventative Medicine*, Vol. 108: 8-16. <https://doi.org/10.1016/j.ypmed.2017.12.020>.

### (3) Offer General Benefits to Qualified Equity Applicants

General benefits to all who qualify as equity applicants include:

- (a) “Fast tracked” priority permit processing
- (b) Waiver of city application and inspection fees
- (c) Access to all Equity Incubation Program ([pg. 5](#)) resources for potential cannabis business operators and industry employees.

#### Equity Applicant Qualifications

- (1) In order to apply for local cannabis operator permits in San José (business ownership) as an equity applicant, one *must make less than 200% of the Santa Clara County Area Median Income [AMI]<sup>145</sup>* **and** meet one of the criteria below.
- (2) In order to apply for job training and placement through the Equity Incubation Program ([pg. 5](#)) as an equity applicant, one *must make less than 100% of the SCC AMI* **and** meet one of the following criteria:
  - Attended a San José Public School<sup>146</sup> **or** lived in census tracts with incomes less than the poverty rate for a period of at least 4 years between 1971-2017.
  - Received a drug arrest prior to 2018.
  - Has a parent, child, or sibling convicted of a drug crime (felony or misdemeanor) between 1971-2017.

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<sup>145</sup> (a) This can be demonstrated from any single annual tax return from the three years prior to submitting their application.

(b) Sample AMI thresholds for Santa Clara County (2016):

- \$59,350 for a single-person household
- \$67,800 for a two-person household
- \$76,300 for a three-person household
- \$84,750 for a four-person household
- \$91,550 for a five-person household
- \$98,350 for a six-person household
- \$105,100 for a seven-person household
- \$113,700 for an eight-person household
- \$111,900 for a nine-person household

<sup>146</sup> Note: This would include public k-12, public community/junior college, and/or public 4-year university. This will function to include local area graduates and reduce “talent/brain drain,” noting the incredible difficulty for students to afford to remain in Santa Clara County following graduation.

### How is “Ownership” Defined?

While equity applicants/operators may work with business partners, **they must be the primary owner of the permitted cannabis business entity.** “Owners” refer to those who (1) own 50% or more of *for-profit entities*, or (2) constitute a majority of the Board of Directors for a *non-profit entity* or constitute a majority member interest in their *collective*.

#### *(4) Create and Implement an “Equity Incubation Program”*

The City of San José has the unique opportunity to take a different path when it comes to cannabis industry incubation. Rather than offering an individual incubator license (as in [San Francisco](#) for example), the San José Cannabis Equity Working group proposes a **publicly funded Equity Incubation Program** that will:

- Provide **resources and training for equity permit applicants** (potential business owners).  
Such resources would include CPA (accounting) and tax consulting services, legal support, business planning support, assistance in developing necessary labor standards and agreements, and assistance in all stages of the state licensing and city permitting processes, including renewal. The purpose of this aspect of the Equity Incubator Program would be to maximize successful equity applications and the success of equity businesses.  
The Equity Incubation Program would also work with the statewide equity program task force. As previously mentioned, such a statewide task force is proposed in [SB 1294](#) to provide low and no interest loans to equity applicants and make certain local equity programs are consistent with state law.
- Provide **training and living wage job placement** for equity populations seeking employment in the growing local cannabis industry.  
Even now, legal cannabis businesses in San José express a need for educated, qualified applicants for a diverse range of living wage jobs in the cannabis industry.<sup>147</sup> These roles include security, business management, accounting/finance, customer service, food preparation/manufacturing, transportation, delivery, horticulture/agriculture, and biochemistry. These employment needs will absolutely expand if the local recreational cannabis market grows as predicted.  
San José’s Equity Incubation Program would help to train and place qualified applicants from equity populations in jobs throughout the expanding local cannabis industry. *This vastly expands the economic human rights impact of San José’s Equity Program, where far more people are likely to work in the growing recreational market than to own businesses.* Beyond helping more people, *this approach ensures that the local cannabis industry functions to continually offer local, living wage employment in addition to tax revenues that feed public needs.*

#### **How would the Equity Incubation Program work?**

The San José City Council would appoint a **Cannabis Equity Commission** that could oversee the two functions of the Equity Program: implementation of equity applicant permitting and the

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<sup>147</sup> For general information on cannabis industry employment see the following from Forbes Magazine (<https://www.forbes.com/sites/mikeadams/2018/04/10/marijuana-industry-needs-more-budtenders-heres-how-to-get-the-job/#398480601b41>, <https://www.forbes.com/sites/heathercabot/2018/02/13/do-you-need-a-degree-to-work-in-marijuana/#2f662d175115>) and CNBC (<https://www.cnbc.com/2017/04/20/5-high-paying-marijuana-jobs-in-the-legal-cannabis-industry.html>).

Equity Incubation Program. Specifically, they would work with the necessary City and County agencies to:

- 1) Work with the appropriate SJPD and City staff to **implement a clear, efficient process for equity applicants to apply for permits and receive the appropriate general benefits.**
- 2) As the first part of the Incubation Program, **organize the necessary support resources** (accounting/finance, legal support, industry mentorship) **and educational programming** for potential equity permit applicants.
- 3) As the second part of the Incubation Program, **design and implement a training curriculum and job placement program** for qualified equity employment applicants. Notably, this would include defining a “living wage job” and appropriate standards for union or other formal labor agreements in the industry according to standards and in relation to our unique cost of living.
- 4) Work with area industry leaders and public colleges/universities to **develop and implement sufficient outreach to potential equity permit and employment applicants.** Such activities might include formal job fairs and partnered job programs.
- 5) Design and implement the necessary **impact assessments** to measure the outcomes and effects of equity applicant permitting and incubation. These tools can be used to assess and improve upon the City’s Equity Program over time.

Membership of the Cannabis Equity Commission might include (for instance):

- 1-2 San José City Council Members
- 1 SCC BOS Member
- Rep., San José Cannabis Equity Working Group (equity permit applicant)
- Rep., SJPD Division of Marijuana Control
- Rep., SCC Public Health Department
- Reps., Minority Chambers of Commerce
- Rep., SJSU HRI (research, policy, and job placement/training)
- Rep., SCC Public Defenders Office (prisoner reentry and record clearance)
- Rep., SCC Office of Diversity and Inclusion
- Rep., NAACP SJ/SV
- Rep., La Raza Roundtable
- Rep., South Bay Labor Council

#### How will all of these activities (Equity Permitting, Equity Incubation Program) be funded?

The San José Equity Program and Cannabis Equity Commission **would be publicly funded from 10% of the San José city [Marijuana Business Tax](#)**, that so far has no determined goal for expenditure or re-investment. Dedicating 10% of these annual tax revenues would provide for an annual budget of over \$1M that could be expected to grow with the expansion of the recreational market and general tax revenues. The Cannabis Equity Commission would control this budget, that could easily support necessary staffing and programming costs. Such a funding arrangement is in line with international human rights standards on drug policy transitions from prohibition to regulation, reflects a restorative justice approach to drug policy reform, and still leaves the lion’s share of tax revenues (90%) for other public needs, such as education, infrastructure, and public safety.



## ORGANIZATIONAL SUPPORT

The San José Cannabis Equity Program enjoys the support of regulators, community organizations, and industry professionals throughout the state.



## Appendix A: Defining Equity Populations in California and San José

### Equity Programs and the Transition from Prohibition to Regulation

According to a recent report to the San Francisco Human Rights Commission and San Francisco Office of Cannabis to advise their own equity program, *international best practices and human rights standards on drug policy specifically call for sensible transition strategies from criminal prohibition to the regulation of illicit drugs*.<sup>148</sup> Coercive criminal justice approaches to drug use, drug addiction, and drug overdose death must be replaced with a robust public health approach that offers medical health, mental health, and harm reduction services to those in need. Such a transition can and should be resourced in part from the revenues of new regulated markets. Under the AUMA, this is one explicit purpose of “community reinvestment grants” that will come from state cannabis tax revenues. Further, cities can create and direct their own tax revenues, such as the San José Marijuana Business Tax, in the restorative nature they see fit within noted guidelines.

The point of an equity program is to direct some of the economic opportunities and revenues created by the legalization of recreational cannabis to:

- (1) Recognize and address the decades of harm suffered by working class communities of color who were most targeted for surveillance, arrest, and incarceration in the failed “war on drugs.” This is done through (a) ensuring that a portion of new cannabis licenses go to “equity applicants”—those from a local population most affected by failed attempts at prohibition; and (b) directing public revenues from recreational sales (through “community reinvestment grants” and local taxation) for community restoration and the implementation of restorative drug policy.
- (2) Ensure an equitable economic environment where all of our local communities can participate in and thus benefit from the recreational cannabis market, while also preserving cannabis as a cultural product of CA.

For a more extensive justification and explanation of equity programs, and an illustration of how the SJSU Human Rights Collaborative has so far worked with partners (CJCJ, SF Cannabis Equity Working Group, SF Human Rights Commission, SF Office of Cannabis) to inform San Francisco’s Cannabis Equity Program, please see the following materials:

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<sup>148</sup> Armaline and Males. (2017). San Francisco’s Drug Arrests Drop 90% through 2016; Disproportionate Arrests of African Americans Persist. *CJCJ*. See in SF HRC Cannabis Equity Report, Appendix A here: [https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017\\_Equity\\_Report.pdf](https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017_Equity_Report.pdf).

### **Cannabis Equity Report**

City and County of San Francisco

11/01/17

SF Office of Cannabis

SF Human Rights Commission

Controller's Office

[https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017\\_Equity\\_Report.pdf](https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017_Equity_Report.pdf)

Specifically, please see the report, "San Francisco's Drug Arrests Drop 90% through 2016; Disproportionate Arrests of African Americans Persist" (*CJCJ* and *SJSU HRI*, October 2017). This report provided the data used in the Cannabis Equity Report above (listed therein as Appendix A) and general arguments for San Francisco's Equity Program via the SF Human Rights Commission and Equity Program Working Group.

### Defining Equity Populations in CA Cities

Existing equity programs are largely grounded in data that illustrate the neighborhoods and populations that were most harmed by the criminal prohibition of cannabis, such that equity applicants can be defined and dedicated resources distributed appropriately. As noted in the materials listed above, these populations, particularly in California's major metro areas, are overwhelmingly working class people and people of color, African Americans and Latinx populations in particular. As an illustration of statewide data:

More than 70 percent of people arrested for marijuana in 2016 were nonwhite, according to the California DOJ's annual [Crime in California report](#). Black people comprised 20 percent of the state's felony marijuana arrests, despite making up 6.5 percent of the population.<sup>149</sup>

Beyond the fact that data suggests Black and Latinx populations are most targeted for criminal drug enforcement at the national, state, and municipal level, Santa Clara County and San José's general populations are primarily people of color, Hispanics [sic.] and Asian Americans [sic.] in particular.<sup>150</sup>

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<sup>149</sup> See full article here: <https://www.leafly.com/news/politics/california-is-still-arresting-too-many-people-of-color-for-cannabis>.

<sup>150</sup> See these and further city/county demographics here: <https://statisticalatlas.com/place/California/San-Jose/Race-and-Ethnicity>.

<u>Santa Clara County</u>		<u>San José</u>	
White	34.7%	White	28%
Hispanic	26.3%	Hispanic	32.6%
Black	2.6%	Black	3.1%
Asian	32.6%	Asian	32.8%
Mixed	3.1%	Mixed	2.9%
Other	0.8%	Other	0.7%

Like much of the legal recreational and medical cannabis markets in the U.S., the *legal markets in SCC and San José are vastly dominated by white business owners and financial interests.*<sup>151</sup> An equity program in San José would help to *diversify the local legal cannabis industry*, so it more closely represents local demographics.

However, one might note that none of the equity programs define equity populations in explicitly racial terms. This is because of legal restrictions on making such categorical requirements in publicly funded activities. As a result, **equity populations are defined via income, geography, and public school enrollment in order to target working class communities of color**, noting that the point of equity programs is to have both individual *and* community level impacts.

Further equity programs can *provide economic opportunity* to working and middle class community members outside of the tech industry in what is now the 2<sup>nd</sup> most expensive housing market in the U.S. The average household income required to buy a home in San José is \$216,181 in a market where the average and median home price hovers above \$1M.<sup>152</sup> This is the most expensive (and one of the fastest rising) urban housing market in the nation, second only to San Francisco, and well above New York City. The San José rental market is equally challenging for working families, where the average rent for a two-bedroom apartment is \$2,607, requiring an annual income of over \$100k.<sup>153</sup> Given the current housing and general cost of living crises in the city and county, the economic opportunities to be had from the California cannabis market (now approaching \$5B) must be partially reserved for those struggling to survive in our local communities. Equity programs can assist and reserve business permitting for our most disenfranchised communities, and set wage and hiring practices for equity and incubator businesses.

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<sup>151</sup> See the widely cited investigative report by BuzzFeed News here, finding that only 1% of all legal cannabis businesses in the U.S. were owned by African Americans:

[https://www.buzzfeed.com/amandachicagolewis/americas-white-only-weed-boom?utm\\_term=.ppPxpvr4P9#.na8myg3ML7](https://www.buzzfeed.com/amandachicagolewis/americas-white-only-weed-boom?utm_term=.ppPxpvr4P9#.na8myg3ML7).

<sup>152</sup> Reported by the *San Jose Mercury News* in 2017: <https://www.mercurynews.com/2017/11/20/216181-thats-the-household-income-needed-to-buy-a-house-in-san-jose-metro-area-report-says/>.

<sup>153</sup> See city of San Jose Housing Market Updates (by year and quarter) here: <http://www.sanjoseca.gov/index.aspx?NID=1283>.

## Appendix B: Considering a San José Equity Operator Stamp

As a logistical consideration, the SJCEWG suggests that the City of San José pursue the implementation of an “equity stamp” that would:

- (1) **Verify that a product is being sold by a compliant equity operator** (vs. counterfeit operators or products).
- (2) **Connect consumers** (through use of a QR code) **to lab testing results** and other relevant producer information, helping to verify product safety and compliance.
- (3) **Allow consumers to identify and support equity programs** as an act of politically conscious consumption.

Fortunately, companies like SICPA have already developed such a [stamp verification system](#)—already in use in Yolo, Humboldt, and Mendocino Counties and the cities of Rio Dell, Arcata, and Eureka. Where these Northern California counties and cities apply the SICPA stamp system to track cannabis through the production chain in order to prove system-wide compliance and regional origin, San José could work with [SICPA’s generic template](#) to develop a **San José Equity Operator Stamp**.

[SICPA](#) is one of the most respected companies in its global field, where they design and provide special ink for several national currencies (including the U.S. dollar) and provide the stamp system to verify tobacco products within national (such as Canada) markets. In addition, they are well positioned to provide stamp verification systems for cannabis given their experience above and the ability of their software and network to sync with the [Metrc Track and Trace System](#) that will be employed by the state of California for cannabis product chain compliance.

In terms of cost, the San José Equity Operator Stamp via SICPA would involve a flat or ongoing fee to the city (to be negotiated in good faith), a one time \$400 fee for equity operators to be trained in use of the product stamps and SICPA software, and a cost of (approximately) 2-7 cents per stamp for equity operators to purchase the actual stamps (in bulk) for product labeling.

The SJCEWG has so far consulted with SICPA representatives to gather the information above. They are at the ready to meet individually with City Council Members or Staff who may want more information about their services or the potential for a San José Equity Operator Stamp as described here.

## APPENDIX 4: Cannabis Equity Programs in Other Jurisdictions

### San Francisco, CA<sup>154</sup>

#### *Cannabis Equity Program*

The Cannabis Equity program in San Francisco is designed to lower barriers to cannabis licensing for those disproportionately impacted by the War on Drugs. Equity applicants do not pay the licensing fee, and through the City's Cannabis Incubator program, it is eligible for technical assistance (free rent, business development support) from another cannabis business or Cannabis Incubator as designated by the City.

#### *Criteria*

Equity applicants and prospective Equity Incubators in San Francisco must meet two out of five eligibility criteria to be considered for an equity license. They are:

1. Household income restrictions and an arrest from 1971 -2016 for a cannabis-related offense
2. Having a parent, sibling, or child receive a cannabis-related arrest from 1971-2016
3. Losing housing in San Francisco after 1995 through eviction, foreclosure, or subsidy cancellation
4. Attending a SFUSD for five years from 1971-2016, living in census tracts where at least 17% of households had incomes at or below the federal poverty level

Additionally, applicants must have assets below limits set by the city's Office of Cannabis. The owner either (with company's CEO) must own 40% of the business, own at least 51% of business, or on the board of a non-profit cannabis business where most of the board also qualify as equity applicants. Equity Incubators must provide Equity Applicant rent-free commercial space that meets size requirements or 10% of incubator's space which include security services or submit an "Equity Incubator Plan" that describes how the incubator will support the establishment and growth of the incubatee's business. Within three years of opening, the Equity Incubator must also hire local residents to perform 30% of all work hours, require its employees to meet most of the equity conditions, and provide a community investment plan with the businesses and resident within 500 feet.

All cannabis business applicants must provide the City of San Francisco with a Community benefits Agreement, describing how the applicant will provide employment to people disproportionately affected by cannabis prohibition.

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<sup>154</sup> San Francisco Office of Cannabis. "Office of Cannabis." Government. Accessed September 17, 2021. <https://officeofcannabis.sfgov.org/equity>.

Oakland, CA<sup>155</sup>

### *Cannabis Equity Program*

Oakland has an incubator program where an applicant for a general cannabis license provides an equity applicant with a rent-free space to operate their business for three years. In return, the business with a general license receives permitting priority relative to other businesses in their pool of applicants. The City of Oakland actively matches equity applicants with incubating general partners their and online search program, initiated by the equity applicant. Additionally, Oakland offers differing tax rates for cannabis equity businesses. Equity cannabis businesses have lower tax rates depending on their annual gross receipts.

2021 Cannabis Business Tax Rates					
	Retail (store-front & delivery)	Indoor Cultivation	Outdoor Cultivation	Manufacturing Packaging & Storage	Distribution
<b>General (Non-Equity) Cannabis Business</b>					
\$0 - \$500K	0.12%	0.12%	0.12%	0.12%	0.12%
\$500K+ - \$5M	5.00%	5.00%	5.00%	5.00%	4.50%
Over \$5M	5.00% (medical) 8.00% (non-medical) (Non-Marginal)	5.00% (Non-Marginal)	5.00%	5.00%	4.50%
<b>Equity Cannabis Business</b>					
\$0 - \$1.5M	0.12%	0.12%	0.12%	0.12%	0.12%
\$1.5M+ - \$5M	5.00%	5.00%	5.00%	5.00%	4.50%
Over \$5M	5.00% (medical) 8.00% (non-medical) (Non-Marginal)	5.00% (Non-Marginal)	5.00%	5.00%	4.50%

Source: City of Oakland, 2021 Cannabis Business Tax Rebate Program

### *Criteria*

Oakland equity applicants must have an annual income at or below 80% of Oakland’s average medium income AND has a cannabis conviction in Oakland OR has resided for ten of the last twenty years, in police beats that experienced a disproportionately higher amount of cannabis-related law activity.

### *Tax Rebate Program*

In addition to the City’s cannabis equity program and incubation program, Oakland offers a tax rebate for businesses fulfilling certain conditions. These conditions include rebates for local equity hiring, product sourcing from an equity business, \$20 an hour minimum worker wages, and incubation.

Businesses that meet the conditions of each rebate can receive up to 3.5% of tax rebates.

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<sup>155</sup> City of Oakland. “Cannabis Equity Program.” Government. Accessed September 17, 2021.

<https://www.oaklandca.gov/topics/equity-program>.

2021 Cannabis Business Tax Rebate Programs			
Rebate Program	Rebate Conditions	Qualifying Period	Rebate Amount
Local Hiring Rebate (5.04.481.B.2.a.)	I. 30% of workforce consists of "Equity Employees"	182 Days	0.50%
	II. 25% of workforce consists of Equity Employees in "Essential Roles"	182 Days	0.50%
	III. 20% of workforce consists of Equity Employees in "Managerial Roles"	182 Days	0.50%
Equity Supply Chain (5.04.481.B.2.b.)	I. 30% of value of cannabis products delivered to the business were delivered by an Equity Business	365 Days	0.50%
	II. 25% of value of cannabis products delivered to the business were originally cultivated or manufactured by an Equity Business	365 Days	0.50%
Workforce Quality of Life (5.04.481.B.2.c.)	I. \$20/hr. with health benefits or \$25/hr. without health benefits for all employees employed	365 Days	0.50%
	II. 80% of total employees are full-time employees	365 Days	0.25%
Incubation (5.04.481.B.2.d.)	I. Provide free rent to Equity Business beyond the initial three-year period	Year 4th	1.50%
	II. Provide free rent to Equity Business in the tax year but does not seek "permitting priority"	365 Days	1.50%
<b>IMPORTANT NOTE:</b> In no case will a business be entitled to any rebates that would reduce the overall tax rate of less than 3.5% for 2021 Tax Year or 2020 Tax Year for those cannabis businesses established in 2020; In other words, a cannabis business would be subject to pay the floor/minimum tax rate of 3.5% regardless of the number or the amount of the tax rebates.			

Source: City of Oakland, 2021 Cannabis Business Tax Rebate Program

## Los Angeles, CA<sup>156</sup>

### *Cannabis Equity Program*

Los Angeles' Social Equity Program gives assistance according to a tiered list of criteria. Components of the program are as follows:

- Tier 1 participants receive business, licensing, and compliance assistance; expedited renewal processing; program site specific conditions; the potential for fee deferrals if the City adopts a fee deferral program; and access to an Industry Investment Fund, if established.
- Tier 2 participants receive business, licensing, and compliance assistance; expedited renewal processing; and program site specific conditions.
- Tier 3 participants receive expedited renewal processing.

### *Criteria*

Los Angeles has a three-tiered cannabis equity applicant criteria. They are as follows:

- "Tier 1" applicants must be either low income and have a prior California cannabis conviction or, low income and have resided for at least five years in a

<sup>156</sup> City of Los Angeles Department of Cannabis Regulation. "About the Program | Cannabis Regulation." Government. Accessed September 17, 2021. <https://cannabis.lacity.org/social-equity-program/about-program/about-program>.



disproportionately impacted area and own at least 51% equity share of the business.

- “Tier 2” applicants must be either low income and have resided for at least five years in a disproportionately impacted area or, have resided for at least ten years in a disproportionately impacted area. Tier 2 participants must own at least 33 1/3 % equity share of the business and must enter into a Social Equity Agreement with the City to provide business, licensing, and compliance assistance to Tier 1 participants.
- “Tier 3” applicants must enter into a Social Equity Agreement with the City to provide capital, leased space, and business, licensing, and compliance assistance to a Tier 1 or Tier 2 applicant.

### *Social Equity Employees*

In Los Angeles, cannabis license holders must make an effort to hire applicants who meet social equity criteria, such as being low income and having a prior California cannabis conviction or low income and have resided for at least five years in a disproportionately impacted area.

### *Ownership*

Los Angeles has a unique classification for ownership under its cannabis equity program. They define equity ownership status as “equity shares.” Terms of ownership include unconditional ownership, conditions for profits, dividends, and distributions, voting rights and control, and succession plan. Ownership classification was amended in 2020 to further define equity owner qualifications.

### *Long Beach, CA<sup>157</sup>*

#### *Cannabis Equity Program*

Eligible equity applicants can attend free application workshops, obtain fee waivers amounting up to \$6,000, expedited application review and facility plan check, and cultivation tax deferrals.

#### *Criteria*

Applicants who live in [designated census tracts](#) and meet the below median income limits are qualified for the City of Long Beach’s cannabis equity program.

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<sup>157</sup> City of Los Angeles Department of Cannabis Regulation. “About the Program | Cannabis Regulation.” Government. Accessed September 17, 2021. <https://cannabis.lacity.org/social-equity-program/about-program/about-program>.

- “In the last year, your annual family income was at or below 80% Los Angeles-Long Beach-Glendale (LA County) Area Median Income (AMI). Your annual family income is adjusted for family size. [See information on income limits.](#)
- Have a net worth below \$250,000
- Satisfy at least 1 of the following 3 criteria:
  - Have lived in a Long Beach census tract for a minimum of 3 years where at least 51% of current residents have a household income at or below 80% of the Los Angeles Area Median Income. [Check map.](#)
  - Was arrested or convicted for a crime relating to the sale, possession, use, or cultivation of cannabis in the City of Long Beach prior to November 8, 2016 that could have been prosecuted as a misdemeanor or citation under California law.
  - Is a Long Beach resident currently receiving unemployment benefits.
- To qualify as an Equity Business, Equity Applicants must have a minimum of 51% ownership of the business applying for an Adult-Use Cannabis Business License. The requirement can be met by one or multiple Equity Applicants collectively.”

#### Sacramento, CA<sup>158</sup>

##### *Cannabis Equity Program*

The City of Sacramento’s “Cannabis Opportunity Reinvestment and Equity” program is administered by the Sacramento Asian Chamber of Commerce (SACC) and the Greater Sacramento Urban League (GSUL). The program consists of a business reimbursement program which provides an opportunity for CORE applicants to receive up to \$25,000 in reimbursement for certain qualifying start-up expenses. Reimbursements can be provided for the following:

- “Building permit fees;
- State application fees;
- Fees for other permits necessary to operate (e.g. Air Resources Board, County Environmental Health Division, Water Districts);
- Rent
  - Applicants who paid for a CUP may qualify for a rent reimbursement up to the total amount of their CUP fees;
  - A shared manufacturing facility Type S license holder may qualify for a rental reimbursement; and

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<sup>158</sup> City of Sacramento. “CANNABIS OPPORTUNITY REINVESTMENT AND EQUITY (CORE) PROGRAM.” Government. Accessed September 17, 2021. <https://www.cityofsacramento.org/City-Manager/Divisions-Programs/Cannabis-Management/Core-Program>.

- o Incubators providing space to a certain number of CORE graduates may qualify for a rental reimbursement.
- Security Deposit
- Security System
- SMUD power upgrade
- Equipment specific to the BOP holder’s business type (e.g. manufacturing equipment, cultivation equipment, secured storage or safes, equipment for delivery vehicles, inventory management system, etc.)
- Business-related training and education”

*Criteria*

The City of Sacramento has a tiered applicant criteria. They are as follows:

**“CLASSIFICATION 1:**

- Lives or have lived in a low-income household in Sacramento AND:
  - a) Have been arrested in Sacramento for cannabis–related crime between 1980-2011 or
  - b) An immediate family member who meets the description above

**CLASSIFICATION 2:**

- Lived in a low income household in the following zip codes for 5 consecutive years between 1980 and 2011: 95811, 95815, 95817, 95820, 95823, 95824, 95826, 95828, 95818, 95838 and 95832.

**CLASSIFICATION 3:**

- Businesses with no less than 51% ownership by Classifications 1& 2 individuals.

**CLASSIFICATION 4:**

- CORE Program Incubator. CORE Incubator means a cannabis business which as a condition for receiving priority processing, either:

1. Hosts a participant; 30% of its workforce are Classification 1 or 2 eligible participants, measured by hours worked; and contracts no less than 51% of its cannabis products or services and ancillary business support with eligible participants; or

2. Is a shared manufacturing cannabis business and donates at least 10% of its hours of operation to allow participant(s) to utilize 100% of its business’ floor space and equipment; or 3. Is a cannabis business that sells, gives or otherwise transfers no less than a 33% equity share in the CORE Incubator’s cannabis business to eligible CORE participants or participants; 30% of its workforce be Classification 1 or 2 eligible; and contracts no less than 30% of its cannabis and ancillary business with Classification 1 or 2 eligible participants.

CORE Incubators shall host, donate to, employ, contract with, sell, give, or transfer to participants that reside within the city district in which the incubator sits. If no such participants exist, incubators shall utilize participants from other applicable areas.

#### **CLASSIFICATION 5:**

- Cannabis Social Enterprise with no less than 51% ownership by Classifications 1& 2 individuals.”

#### Michigan<sup>159</sup>

##### *Cannabis Equity Program*

The State of Michigan’s cannabis equity program is administered by the State’s Marijuana Regulatory Agency. Eligible applicants can receive a reduction of up to 60% off the application fee, the initial license fee, and future renewal fees, which will be calculated as follows for qualifying applicants. Additionally, equity applicants will receive free small business training, matching partnerships with existing dispensaries and education on compliance as needed.

##### *Criteria*

Individuals residing in one of 41 cities and towns listed on the state’s Department of Licensing and Regulatory Affairs and meeting the below requirements are eligible for the state’s social equity program:

- “25% reduction for those who have been a resident of one of the disproportionately impacted communities for the past five years.
- An additional 25% reduction if the individual(s) holding majority ownership have been a resident of one of the disproportionately impacted communities for the past five years *AND have a marijuana-related conviction.*
- An additional 10% reduction if the individual(s) holding majority ownership have been a resident of one of the disproportionately impacted communities for the past five years *AND were registered as primary caregivers for at least two years between 2008 and 2017.”*

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<sup>159</sup> Michigan Marijuana Regulatory Agency. “Social Equity.” Accessed September 17, 2021.

<https://www.michigan.gov/mra/0,9306,7-386-93535---,00.html>.

## Massachusetts<sup>160</sup>

### *Cannabis Equity Program*

The Massachusetts cannabis social equity program provides professional training, technical assistance, and mentoring to equity applicants who meet the state criteria. The program provides assistance in cohorts of applicants. The program's stated goals are to:

- “Reduce barriers to entry in the commercial cannabis industry;
- Provide professional training, technical services, and mentoring for those facing systemic barriers; and
- Promote sustainable, socially, and economically reparative practices in the commercial adult-use marijuana industry in Massachusetts.”

### *Criteria*

Massachusetts' social equity program defines different actors in the cannabis industry. The criteria for each of these classifications is as follows:

1. “Residence in an area of disproportionate impact for at least 5 of the past 10 years and an income that does not exceed 400% of the Federal Poverty Level;
2. A past drug conviction and residence in Massachusetts for at least the preceding 12 months; or
3. Married to or the child of a person with a drug conviction and residence in Massachusetts for at least the preceding 12 months.

Track Overview: These tracks are based on an applicant's specific interests in the cannabis industry, their current skills, and the outcomes they are seeking to gain from the program.

- **Entrepreneur:** Those seeking licensure and ownership
- **Core:** Those interested in cannabis careers at Marijuana Establishments at the managerial and executive level
  - Core Experienced Candidates (2-6 years)
  - Core Professional Candidates (7+ years)
- **Re-Entry & Entry:** Those interested in entry-level positions within Marijuana Establishments
  - Re-entry level Candidates (re-entering society)
  - Entry-level Candidates (0-2 years)
- **Ancillary:** Those with existing skills that are directly transferable to working with or supporting cannabis businesses. Inventors and developers of new cannabis accessories and tools.
  - Trade Professionals

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<sup>160</sup> Cannabis Control Commission Massachusetts. “Equity Programs.” Accessed October 21, 2021. <https://masscannabiscontrol.com/equity-programs/>.

- Managerial Professionals”

## Illinois<sup>161</sup>

### *Cannabis Equity Program*

Applicants eligible for Illinois’ social equity program can receive technical assistance and support (business plan creation, licensing support), receive points on their application score, reduction in license and application fees, and have access to low interest loans.

### *Criteria*

The State of Illinois established a social equity program when its legislature legalized recreational adult use cannabis. An applicant would be eligible for this program if they meet the following criteria:

- “Has at least 51% ownership and control by one or more individuals who:
  - Have lived in a Disproportionately Impacted Area in 5 of the past 10 years (see map below for Disproportionately Impacted Areas).
  - Have been arrested for, convicted of, or adjudicated delinquent for cannabis-related offenses eligible for expungement, including cannabis possession up to 500 grams or intent to deliver up to 30 grams.
  - Have a parent, child, or spouse that has been arrested for, convicted of, or adjudicated delinquent for cannabis-related offenses eligible for expungement, including possession up to 500 grams or intent to deliver up to 30 grams
- Has more than 10 full-time employees, and more than half of those employees:
  - Currently reside in a Disproportionately Impacted Area (see map below for Disproportionately Impacted Areas).
  - Have been arrested for, convicted of, or adjudicated delinquent for cannabis-related offenses eligible for expungement, including cannabis possession up to 500 grams or intent to deliver up to 30 grams.
  - Have a parent, child, or spouse that has been arrested for, convicted of, or adjudicated delinquent for cannabis-related offenses eligible for expungement, including possession up to 500 grams or intent to deliver up to 30 grams.”

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<sup>161</sup> Illinois Department of Commerce & Economic Opportunity. “Illinois Adult-Use Cannabis Social Equity Program - Cannabis Equity.” Government. Accessed September 17, 2021.

<https://www2.illinois.gov/dceo/CannabisEquity/Pages/default.aspx>.

## APPENDIX 5: Sources Referenced in San José Cannabis Equity Assessment

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