



[“Unlocked Potential? Small Businesses in the Cannabis Industry”](#)

Testimony before the Committee on Small Business

By

Shanita Penny, President, Minority Cannabis Business Association

Good afternoon Chairwoman Velazquez and members of the Committee on Small Business. Thank you for your leadership on the effort to provide the regulated cannabis industry with access to Small Business Administration (“SBA”) services and the invitation to discuss unlocking the potential of small businesses in the cannabis industry.

I am Shanita Penny, president of The Minority Cannabis Business Association (MCBA) and Principal of Budding Solutions, a boutique cannabis business consulting firm based in Baltimore, MD. In addition to providing strategy consulting services to multi state operators and startups, I am a partner in two licensed cannabis businesses one in Pottsville, PA and the other in Oakland, CA.

As the President of MCBA, I lead an organization with the mission to create equal access to the cannabis industry as a way to create economic empowerment for our communities. Through policy advocacy, social programs and outreach initiatives we seek to achieve equity for those communities most affected by marijuana prohibition.

MCBA works collaboratively with industry, community and policy makers to influence, create and support equitable cannabis policy; policy that addresses the needs and concerns of the communities devastated by the failed War on Drugs. Equitable cannabis policy encompasses restorative justice, community reinvestment and of course, economic empowerment which I will focus on today.

Equitable economic development and empowerment unlock the full potential of the local economy by dismantling barriers and expanding opportunities for low - income people and communities of color. Through accountable public action and investment, the cannabis industry will help grow quality jobs and increase entrepreneurship, ownership, and wealth.

Nearly 20% of respondents to a 2017 Marijuana Business Daily reader survey identified as minorities, and approximately 10% of those owners are black or Latino. This information was



self-reported and highlights the need for an accurate baseline measurement to assess the actual current state of the industry and the impact that SBA access and banking will have on making the cannabis industry more accessible and equitable.

Legal cannabis presents significant business opportunities as the underground market transitions into a regulated business sector, but onerous capital requirements, restrictions on licensing for those with even minor previous drug related convictions and other factors have limited opportunities and success for minorities and other disadvantaged groups in the legal cannabis industry. The undeniable effects of the drug war are hampering equity in the industry, but together, we can address and repair the harms caused by discriminatory enforcement of marijuana laws and ensure access to and diversity in the emerging legal cannabis industry.

The MCBA has published model policy that serves as a starting point or complement for equitable legislation. Our latest resource for policy makers, a Model Municipal Social Equity Ordinance (“Model Ordinance”) is intended to be used by municipalities that have adopted or are currently considering drafting ordinances to regulate, zone and license local cannabis businesses.

Our robust and participatory crafting process started with the basic framework of the RESPECT Resolution, introduced by Congresswoman Barbara Lee in 2018. In addition to adopting the RESPECT Resolution’s recitals and creating legislative language around the various best practices, we also borrowed liberally from social equity ordinances in development in Los Angeles, Oakland, San Francisco and Sacramento, attempting to improve upon these pioneering works with the benefit of hindsight. I have included a copy of our model ordinance in the appendix of my written testimony.

And while we have worked tirelessly to ensure that cannabis policy is equitable on every level, our efforts have been crippled by a lack of access to and support from agencies like the SBA. Lack of access to capital contributes to the widening ownership equity gap. State and municipal social equity and economic empowerment programs across the country are stalled because they are wasting precious resources, time and money testing various solutions when the answer is literally right in front of me. Like all other small businesses, those wishing to start a state legal cannabis business should be able to access an agency that has since its founding, “delivered millions of loans, loan guarantees, contracts, counseling sessions and other forms of assistance to small businesses,” as it states in the SBA mission.



SBA provides vital tools to the development and support of minority businesses and communities. We believe access to SBA loans and services, with Congressional oversight, would help decrease the equity gap in the cannabis industry and keep cannabis revenues in the communities suffering the greatest economic and social harms of the War on Drugs (“affected communities”).

Application and licensing fees coupled with six-figure to multi-million-dollar start-up costs make starting and growing cannabis businesses challenging for most, but it is especially difficult for state and city equity licensees and without access to capital, they are vulnerable to predatory lending and business practices. These business owners need SBA support and resources to start and grow their businesses not business partners and investors that take advantage of equity programs to enter the market early or tokenize their "partners" for market share. It is an opportunity to build mutually beneficial partnerships between larger cannabis businesses and small businesses to the benefit of the community.

According to the Marijuana Policy Project, “adult-use marijuana business licensing fees vary widely, from as low as \$9/plant for small, outdoor grows in Maine to as high as \$120,000 for the most lucrative operations in California. Application fees also show a great deal of variation, ranging from the \$60 to \$5,000 range.” Medical cannabis dispensary application fees are nonrefundable and generally range from \$1,000 to \$5,000, with registration or annual fees typically between \$5,000 and \$20,000. Business owners in California pay a \$1000 application fee plus \$120,000 annually for the most lucrative operations and Pennsylvania requires a medical marijuana grower/processor license fee of \$200,000 with a \$10,000 annual renewal fee for all companies regardless of the size or value of the operation.

SBA access is also critical to business owners dealing with a newly, regulated, constantly evolving industry. As more mature state programs course correct and improve regulations, small businesses are often left scrambling to remain compliant when packaging or labeling regulations change, businesses must either find new sources of capital to cover the cost of the changes or face significant fines for violations.

However regulatory changes are not the only obstacles to state legal cannabis businesses. Uncontrollable factors, such as insect infestation, crop failure or a natural disaster like California growers experienced last year when wild fires ravaged the state and destroyed or damaged many cannabis gardens can often leave business owners with insurmountable debt, with no way of making up for lost revenue.



As Representative Earl Blumenauer, Chair of the Cannabis Caucus, said at MCBA’s Lobby Day earlier this year, “There will be no comprehensive cannabis legalization bill that does not include strong equity components.”

Even narrowly-tailored legislation like the SAFE Banking Act (H.R. 1595) or the small business legislation we are discussing today must address business and social hardships that disproportionately impact minority business-owners and our communities. Recent amendments to the SAFE Banking Act will help demonstrate the need for equitable access to capital and financial services. Rep. Perlmutter’s amendment added during markup created a requirement that federal regulators collect data and provide an annual report to Congress on the availability of access to financial services for minority-owned cannabis business and that the Government Accountability Office (“GAO”) carry out a study on the barriers to market place entry for minority-owned cannabis businesses.

MCBA’s suggestions to help ensure that SBA products and services are equitably accessible to affected communities are as follows:

**1. Data collection and reporting requirements**

MCBA suggests that Congress require SBA to (a) collect data on the availability and provision of SBA products and services to minority-owned cannabis businesses and (b) issue an annual report containing the data or information to Congress, including any related regulatory or legislative recommendations. Additionally, we suggest that Congress require SBA to collect and report data on the denial of loan and 8(a) program applications on the sole basis of a prior cannabis conviction that would not preclude participation in a state cannabis program.

Such safeguards would provide congressional oversight to help ensure equitable access to SBA services and products including 7(a) and 804 loans, and Community Advantage (“CA”) loans and access to CA lenders in affected communities. As I previously mentioned, similar safeguards were recently included in the amended language of the SAFE Banking Act of 2019 with broad bipartisan support.

Further, we ask that Congress require SBA to consider the data in granting lenders conditional loan guarantees and in determining eligibility for certified and preferred lender programs.



## **2. Barriers to Entering the Cannabis Industry study requirements**

We suggest that Congress direct the Government Accountability Office (“GAO”) to conduct a study on the barriers to marketplace entry, including access to SBA financial services for potential and existing minority-owned cannabis businesses, and issue a report to Congress that includes any related regulatory or legislative recommendations.

This safeguard would help ensure that Congress has sufficient oversight to ensure equitable access to SBA services and products. This suggestion also echoes language found in the current draft of the SAFE Banking Act of 2019.

## **3. Past cannabis convictions should not preclude participation in the 8(a) business development program**

Additionally, MCBA suggests that Congress require that SBA not preclude participation in the 8(a) business development program, or the granting of a federal contract, for *cannabis-related* business based solely on prior cannabis convictions that do not preclude participation in state legal cannabis programs<sup>1</sup>.

With the likely expansion of government cannabis research and the rapid growth of ancillary cannabis businesses with valuable experience and expertise, government contracts with cannabis businesses will become a reality in the near future. As such, we ask that Congress prevent SBA from deeming 8(a) applicants as lacking requisite “good character” due solely to a prior cannabis conviction that would not preclude participation in a state legal cannabis business<sup>2</sup>.

## **4. Ensure adequate access to Community Advantage lenders**

Last, we suggest that SBA lift the moratorium on new Community Advantage (“CA”) lenders to ensure sufficient lenders to provide equitable access to CA loans in affected communities.

In 2018, SBA extended the pilot CA lender program with significant changes that may impact minority access to the limited pool of CA lenders. Among the changes, SBA implemented a moratorium on new lenders, while expanding the definition of “underserved markets” to include “opportunity zones” and rural areas. SBA cited the high-risk of such loans and the “sufficient number of geographically dispersed CA lenders” as the reasons for the changes.

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<sup>1</sup> See California Business & Professions Code, Division 10, Chapter 5, Section 26057. See also California Code of Regulations Title 17, Division 1, Chapter 13, Sections 40130, 40159, 40162, and 40165.

<sup>2</sup> See above.



However, these and other changes will further limit access to these loans defeating the purpose of the program— to increase access to credit in underserved areas, including affected communities.

I am here representing business owners and advocates throughout the country and extend the MCBA network and all of our resources to the committee as you consider this issue. Thank you again for the opportunity to testify today, I look forward to working with you to create equitable cannabis policy that addresses the needs and concerns of often forgotten stakeholders -- small businesses and the communities devastated by the failed War on Drugs.



## APPENDIX



## MCBA Member Testimonials

“NuLeaf Project has seen first-hand the impact capital can have on minority-owned cannabis businesses. Thus far, we have made grants of \$30,000 into licensed cannabis businesses owned by African Americans, the entrepreneur group that, as reported by U.S. Department of Commerce, Minority Business Development Agency, as well as many other sources, has the least access to funding of any other racial or ethnic group. The returns we've seen with NuLeaf Project's investments into these businesses are on track to exceed 200% within the first year. Investments in diverse owned-businesses have been shown to net returns that are greater than investments in white-male owned businesses according to a 2015 McKinsey study. The track record of success for minority entrepreneurs combined with the explosively growing cannabis industry leaves little doubt that investments in minority-owned licensed cannabis businesses is fertile ground for growing entrepreneurial success, adding jobs to the economy, and improving household income for people of color.” – **Jeannette Horton, Co-founder and Executive Director, NuLeaf Project, Portland, Oregon**

“As a small business owner with a focus on social equity, I have witnessed first-hand the hurdles small businesses face. It is challenging to compete in the industry with larger institutions who have an absorbent amount of capital and man power that often positions these companies to monopolize the market. Small businesses need access to sound infrastructure such as capital, safe banking, accelerators, etc. in order to have a viable place in the industry. There is room for everyone, however we need to elevate the importance of inclusion for small businesses and businesses focusing on social equity in the cannabis industry.” - **Maranda Richardson, Founder and CEO Herban Rootz, St. Louis, Missouri**

"As an industry is being built on the struggles of countless people, and mostly people of color, true equity not only tries to continue to fight for solutions that brings us a better future, but also goes back and combats the past harms created by the War on Drugs. Companies like Eaze see that the only way to build a sustainable industry is by embedding social equity work into its DNA; Eaze's three pillars of social impact focus on economic empowerment, patient support, and community sustainability achieved through a variety of community and industry partnerships. By building a business model that focuses on supporting equitable policies, victims of the War on Drugs, and medical patients we can successfully create a company [and a new industry] that values social impact and equity as much as it does growth and profit." - **Ishaq Ali, Social Impact Manager, Eaze Technologies, San Francisco, California**





“According to the federal Minority Business Development Agency, securing financing can be a challenge for minority business owners, who may have lower credit scores and fewer assets to secure [small-business loans](#) than other business owners. SBA’s Partner programs, like the Opportunity Fund (90% of its borrowers are minority business owners), LiftFund (more than 55% of borrowers identified as Hispanic), and [Accion](#) (it draws 60% of its borrowers from minority communities) are great examples and proven initiatives of the SBA working with communities of color and minority business owners.

The SBA’s current approach of prohibiting lending to businesses in the cannabis and hemp industries not only adds to the disparate “financing challenge” already faced by minorities but further disenfranchises communities of color.

Businesses Engaged in any Illegal Activity (13 CFR § 120.110(h)). Chapter 2, Paragraph III.A.8. (Page 101).

This SOP paragraph currently provides that businesses engaged in any activity that is illegal under federal, state or local law are ineligible for SBA financial assistance. SBA is issuing additional guidance to specifically address businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana. The following applies to both 7(a) and 504 loans:

Marijuana-Related Businesses: 1. Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance. 2. Whether a business is eligible is determined by the nature of the business’s specific operations. The following businesses are ineligible:

(a) “Direct Marijuana Business” -- a business that grows, produces, processes, distributes, or sells marijuana or marijuana products, edibles, or derivatives, regardless of the amount of such activity. This applies to personal use and medical use even if the business is legal under local or state law where the applicant business is or will be located.



(b) “Indirect Marijuana Business” -- a business that derived any of its gross revenue for the previous year (or, if a start-up, projects to derive any of its gross revenue for the next year) from sales to Direct Marijuana Businesses of products or services that could reasonably be determined to support the use, growth, enhancement or other development of marijuana. Examples include businesses that provide testing services, or sell grow lights or hydroponic equipment, to one or more Direct Marijuana Businesses. In addition, businesses that sell smoking devices, pipes, bongs, inhalants, or other products that may be used in connection with marijuana are ineligible if the products are primarily intended or designed for such use or if the business markets the products for such use.

(c) Hemp-Related Business” -- a business that grows, produces, processes, distributes or sells products purportedly made from “hemp” is ineligible unless the business can demonstrate that its business activities and products are legal under federal and state law. Examples of legal hemp products include paper, clothing and rope.

The SBA has been and should continue to be an advocate for minority business owners. Today, we ask you to support and enact Federal legislation that affords our small and social equity businesses a chance at this industry.” - **Jessica Velazquez, CPA, Managing Partner, Indiva Advisors LLP, Las Vegas, Nevada**



**Minority Cannabis Business Association  
Model Municipal Social Equity Ordinance  
March 6, 2019**

**PREFACE**

*This Model Municipal Social Equity Ordinance (“**Model Ordinance**”) is intended to be used by municipalities that have adopted ordinances to regulate, zone and license local cannabis businesses, or are currently considering draft ordinances to do so. As such, this Model Ordinance does not include recommended provisions for general license types (other than to add license types that lower barriers to entry or mitigate on-going criminalization of cannabis consumption), nor does it include detailed zoning and land use provisions. The drafters of this model ordinance assume those provisions are already incorporated within the adopting municipality’s general licensing ordinance, and that the general licensing ordinance already reflects the particular circumstances of its local community.*

*We also assumed that the types of licenses which may be available, and the general regulatory framework surrounding cannabis businesses will be largely predetermined by the state in which the adopting local jurisdiction sits. As such, the Model Ordinance contains only those provisions necessary to create a baseline framework for adopting and advancing social equity in the cannabis industry as official public policy -- a “minimum viable product” designed to be broadly adopted and tailored as necessary by each adopting jurisdiction. Prevailing political realities in each jurisdiction will vary, and the Model Ordinance includes bolded and bracketed substantive terms that may be revised as necessary--either to achieve passage of minimum framework and/or create a more robust framework than the baseline presented herein. (Note that certain placeholder terms have also been bracketed where input from the specific local jurisdiction adopting the model ordinance is required--e.g., “[CITY/COUNTY]”, “[INSERT DATE HERE]”, etc.)*

*It is important to note that the MCBA Model Municipal Social Equity Ordinance Drafting Committee (“Drafting Committee,” identified in the footer) started with the basic framework of the RESPECT Resolution, House Resolution 943 introduced by*

**MCBA Model Municipal Social Equity Ordinance Drafting Committee: Khurshid Khoja**, MCBA Policy Committee Co-chair, Principal, Greenbridge Corporate Counsel, NCIA Board Vice Chair; **Chloe Grossman**, MCBA Policy Committee, NCIA Policy Council, Alchemist Holdings Inc.; **Jesse Stout**, Greenbridge Corporate Counsel; **Rodney Holcombe**, Drug Policy Alliance

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*Congresswoman Barbara Lee in 2018, adopting its recitals and creating legislative language around the various best practices recommended by the RESPECT Resolution. We also borrowed liberally from social equity ordinances in development in Los Angeles, Oakland, San Francisco and Sacramento, attempting to improve upon these pioneering works with the benefit of hindsight.*

*The Drafting Committee finalized this version of the Model Ordinance after incorporating input received on two previous working drafts. The First Discussion Draft was previously circulated in October 2018 and presented to the attendees of the MCBA Policy Summit, as well as the members of the MCBA Policy Committee and the MCBA Board of Directors. Their input was incorporated by the Drafting Committee into the Second Discussion Draft. The Second Discussion Draft was circulated for input to the MCBA Board of Directors, the NCIA Policy Council staff, Drug Policy Alliance staff as well as other select stakeholders for additional input before being finalized.*

*Finally, please note that this Model Ordinance is intended to be a living documents, and one that can be continually improved upon. The Drafting Committee invites any and all input on the Model Ordinance, and expects to publish updated versions of the Model Ordinance periodically.*

**EXECUTIVE SUMMARY**

*Section 1: Short Title*

*Section 2: Cannabis Social Equity Program*

- This ordinance defines Equity Program eligibility based on several demographic factors. “Low Income” means below 80% AMI. “Member of an Impacted Family” means arrested or convicted for a cannabis charge. “Resident of a Disproportionately Impacted Area” means someone who lived in an area with disproportionately high cannabis arrests.
- The diversely-representative Cannabis Social Equity Commission will provide ongoing advice to the local government about implementation of the Municipal Social Equity Ordinance and administration of the Cannabis Social Equity Fund.
- The Cannabis Social Equity Fund will financially support Social Equity Program participants through workforce development, Start up costs, consulting services and technical assistance.
- The Social Equity Study will identify “Disproportionately Impacted Areas”, areas with high cannabis arrest rates used for the ordinance’s equity eligibility criteria.
- Individuals may qualify for one of three tiers of the Social Equity Program. Tier 1 and 2 participants must own a percentage of a cannabis business and

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demonstrate a need to participate. They receive waived licensing fees, access to loans/grants, technical assistance, etc. Tier 3 participants must incubate or fund Tier 1 or 2 participants. All participants receive priority licensing.

- Tier 1 and 2 participants will also have access to low-interest (or no-interest) loans for operating capital, Social Equity Fund grants, incubation opportunities from Tier 3 participants, and fee waivers.
- Tier 1, Tier 2, and Tier 3 participants will have their applications reviewed in order of their tier, with General Applicants (non-Equity Program) last. The local government will review applicants' business documents on an ongoing basis to confirm their continuing eligibility.

*Section 3: Good Faith Effort for Equity in Employment*

- Licensees are required to use good-faith efforts in hiring employees who meet the equity eligibility criteria, and certify annually that 25% of their employees meet the criteria or they have used good-faith efforts.

*Section 4: Community Benefits Agreement*

- The local government may add requirements that applicants enter Community Benefit Agreements, which may or may not apply to equity applicants as well. Neighborhood councils may request non-monetary contributions from applicants, and/or funds up to 3% of net profits.

*Section 5: Community Reinvestment Fund*

- A percentage of tax and non-licensing fee revenue shall support a Community Reinvestment Fund to, at a minimum, provide reentry services, job training, and record-change assistance to residents of Disproportionately Impacted Areas.

*Section 6: Record Change Provisions*

- The local government will fund or otherwise facilitate resentencing and expungement to restore the civil rights of prior cannabis arrestees. This can include automation, fee waivers, and funding legal fairs and lawyers to publicize and execute these changes.

*Section 7: No Additional Restrictions Allowed on Entry Into the Cannabis Industry*

- Local governments cannot discriminate based on applicants' substance use treatment history, or convictions unrelated to honesty, and background checks can only be used to check for these convictions.

*Section 8: Data Collection*

- To inform future equity plans, the regulating agency will collect and publish demographic data on licensure applicants and licensees, persons cited, arrested, or convicted for marijuana law violations, and on the cannabis workforce.

*Section 9: Lowest Law Enforcement Priority*

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- The local police will de-prioritize cannabis investigations and arrests. Possession or smell of cannabis will no longer constitute probable cause for investigation or arrest.

*Section 10: Permitting Social Consumption Lounges*

- Local governments can regulate consumption lounges where cannabis may be used on-site, but no more restrictively than state law regulates them.

*Section 11: Eliminating Suspicionless Drug Testing*

- Employers cannot drug-test workers, who are not in safety-sensitive jobs, without reasonable documented cause; random drug-testing is prohibited.

*The text of the model ordinance begins on the next page.*

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Whereas the communities that have been most harmed by cannabis prohibition are benefiting the least from the legal marijuana marketplace;

Whereas a legacy of racial and ethnic injustices, compounded by the disproportionate collateral consequences of 80 years of cannabis prohibition enforcement, now limits participation in the industry;

Whereas 31 States and the District of Columbia have adopted laws allowing legal access to medicinal cannabis, and 9 States and the District of Columbia have adopted laws legalizing cannabis for adult use;

Whereas legal cannabis sales totaled \$8.5 billion in 2017 and are projected to surpass \$50 billion by 2026;

Whereas according to the American Civil Liberties Union (ACLU), enforcing cannabis prohibition laws costs taxpayers about \$3.6 billion a year;

Whereas the continued enforcement of cannabis prohibition laws results in over 600,000 arrests annually, disproportionately impacting people of color who are almost 4 times more likely to be arrested for cannabis possession than their White counterparts, despite equal rates of use across populations;

Whereas people of color have been historically targeted by discriminatory sentencing practices resulting in Black men receiving drug sentences that are 13.1 percent longer than sentences imposed for White men and Latinos being nearly 6.5 times more likely to receive a Federal sentence for cannabis possession than non-Hispanic Whites;

Whereas, in 2013, simple cannabis possession was the fourth most common cause of deportation for any violation and the most common cause of deportation for drug law violations;

Whereas it is estimated that less than 1 percent of the cannabis industry is owned or operated by people of color;

Whereas applicants for cannabis licenses are limited by numerous laws, regulations, and exorbitant permit applications and licensing fees in these States, which can total more than \$700,000;

Whereas historically disproportionate arrest and conviction rates make it particularly difficult for people of color to enter the legal cannabis marketplace, as most States bar these individuals from participating;

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Whereas individuals with cannabis and other convictions types are burdened with collateral consequences that make seeking employment, receiving public benefits, obtaining occupational licenses, and pursuing higher education more difficult;

Whereas individuals with prior convictions are often unaware that remedies exist under state law to expunge cannabis and non-cannabis convictions;

Whereas expunging prior convictions for activity that is now legal or that has been reduced in severity is often too costly for individuals and communities most harmed by the drug war and cannabis prohibition;

Whereas tax revenue generated from the adult-use sales of cannabis could be used to reinvest in communities most harmed by cannabis prohibition, including efforts to create access to capital, job training programs, and with seeking assistance to expunge criminal convictions;

Whereas Federal law severely limits access to loans and capital for cannabis businesses, disproportionately impacting minority small business owners; and

Whereas some States and municipalities have taken proactive steps to mitigate inequalities in the legal cannabis marketplace and ensure equal participation in the industry.

NOW, THEREFORE, THE PEOPLE OF THE [CITY] [AND] [COUNTY] OF \_\_\_\_\_, [STATE] DO ENACT AS FOLLOWS:

**SECTION 1: SHORT TITLE**

This ordinance shall be known and may be cited as the [ENTER MUNICIPALITY NAME] Cannabis Social Equity Act of 20[ ] (hereinafter, this “Act”).

**SECTION 2: CANNABIS SOCIAL EQUITY PROGRAM**

- A. In addition to the definitions in [INSERT CITATION TO GENERAL MUNICIPAL CANNABIS LICENSING ORDINANCE] (the “Local Licensing Ordinance”), the following definitions apply within this Act:
  - 1. “Dependent” has the same meaning ascribed to it by the Internal Revenue Service for individual income tax purposes and is determined by satisfaction of either the qualifying child tests or qualifying relative tests described in the most current version of the annual IRS Tax Guide for Individuals.



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2. “Low Income” means an individual who currently (at the time of licensing) lives in a household with household income that is less than eighty percent (80%) of the current fiscal year median family income for the county of residence, as determined by the United States Department of Housing and Urban Development or its successor agency.<sup>1 2</sup>
3. “Member of an Impacted Family” means an individual who, in the previous tax year, had a parent, legal guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to [EFFECTIVE DATE OF LEGALIZATION MEASURE], was arrested for, convicted of, or adjudged to be a ward of the juvenile court for any non-violent crime under the laws of [STATE] or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of cannabis.<sup>3</sup>
4. “Prior Controlled Substance Record” means to have been arrested for, convicted of, or adjudged to be a ward of the juvenile court for any crime under the laws of [INSERT STATE] or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of a controlled substance prior to [EFFECTIVE DATE OF LEGALIZATION].
5. “Resident of a Disproportionately Impacted Area”<sup>4</sup> means an individual who, prior to [EFFECTIVE DATE OF LEGALIZATION MEASURE], lived for a minimum of **[2-10]** consecutive or non-consecutive year(s) between 1970 to the effective date of legalization in a geographic area or areas that experienced a disproportionately high number of cannabis arrests relative to population, during the individual’s residency in such geographic area, as determined by the Social Equity Study.<sup>5 6</sup>

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<sup>1</sup> A locality should provide the link to HUD’s annual median family income figures as soon as reasonably practicable following annual publication. See here: <https://www.huduser.gov/portal/datasets/il.html>

<sup>2</sup> Some states annually produce alternative low income figures that are adjusted based on factors deemed relevant by the state, such as cost of living, housing costs, and state income tax deductions. Where available, annually published state low income figures that are based on median family income but are further adjusted should be employed in the definition of low income instead of HUD’s median family income figures.

<sup>3</sup> Localities may consider expanding to include family members with any arrest or conviction for any non-violent and/or controlled substance crime.

<sup>4</sup> Localities should adjust this requirement and consider restricting it to a specific time period based on periods of highest arrests, housing displacement or gentrification, or any other factors deemed relevant.

<sup>5</sup> We strongly recommend a data-driven approach to identifying disproportionately impacted areas, so this criterion was purposefully left vague. It should be further specified following the release of findings from a Social Equity Study commissioned by the adopting jurisdiction. The City of Boston, the City of Sacramento, the City of Los Angeles, the City and County of San Francisco, and other prominent social equity jurisdictions have commissioned similar reports that can be used as a guideline for determining scope. Please note that the common approach to defining disproportionately impacted areas is to look at standard deviations in cannabis arrest rates across different geographic units, however the geographic units for which police arrest data is available will vary across localities and will substantially impact how disproportionately impacted areas are defined. Each locality will need to consider different ways to

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6. “Resident of an Impoverished Area” means an individual who maintained a primary residence in census tracts where at least **[X]**% of the households had incomes at or below the federal poverty level during the individual’s residency in such census tract, and who did so for a minimum of **[Y]** consecutive or **[Z]** non-consecutive years.
- B. The [CITY/COUNTY] shall establish a Cannabis Social Equity Commission (“Commission”) to advise the [CITY/COUNTY] on the ongoing implementation of this Act and the administration of the Cannabis Social Equity Fund. The Commission shall include individuals with **[Prior Cannabis Records, individuals from Disproportionately Impacted Areas, members of impacted communities, and social justice advocates]**.
- C. The [CITY/COUNTY] shall establish a Cannabis Social Equity Fund (the “Fund”), which shall consist of monies appropriated or donated for the purpose of supporting the Cannabis Social Equity Program and eligible Program participants. The Fund monies may be used for any purpose directly related to the Program and approved by the Commission. Without limitation, Fund monies may be used to:
1. Provide financial support for Social Equity Program participants, including low- or no-interest loans or small grants for participants’ start-up costs;
  2. Offset local cannabis tax and fee revenue losses associated with offering tax and fee relief for Social Equity Program participants; and
  3. Support programs and services that benefit and contribute to the operational success of Social Equity Program participants, such as programs and services that offer:
    - i. Workforce development;
    - ii. Access to affordable commercial real estate;
    - iii. Access to investment and financing;
    - iv. Access to legal and consulting services;
    - v. Assistance with licensing and regulatory compliance;
    - vi. Technical training related to cannabis operations; and

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conceptualize disproportionately impacted areas and figure out which is most effective in helping the locality achieve the stated goals of its Social Equity Program.

<sup>6</sup> Other conditionally applicable criteria for localities to consider:

Experienced housing instability - Consider in jurisdictions with substantial housing shortage or other relevant housing market conditions. Sample Language: “Since 1995, experienced housing insecurity in San Francisco, as evidenced by eviction, foreclosure, or revocation of housing subsidy” ([SF Police Code \(“SFPC”\) § 1604\(b\)\(4\)\(C\)](#))

Attended public school for some minimum amount of time - Consider in jurisdictions where there is substantial income differentiation between public and private school attendees. Sample Language: “Attended a school under the jurisdiction of the San Francisco Unified School District for five years, either consecutively or in total, during the period 1971-2016” ([SFPC § 1604\(b\)\(4\)\(E\)](#))

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- vii. Pre-qualification and matching of Incubators and Incubatees.
- D. The [CITY/COUNTY] shall commission a Social Equity Study to identify Disproportionately Impacted Areas<sup>7</sup> and utilize the data collected pursuant to Section 8, “Data Collection”, of this Act to further the purposes of this act.
- E. A Social Equity Program participant shall be eligible for one of three tiers.
  - 1. To qualify for Social Equity Program Tier 1, **[at least 51%]** of the applicant’s business must be owned **[and]**<sup>8</sup> **[controlled/operated]** by one or more individuals **[who will hold such interest for at least X years after the applicant’s license is granted (the “Qualifying Period”)]**<sup>9</sup> and who meet one of the following criteria:
    - i. Have a Prior Controlled Substance Conviction and be at least one of the following:
      - 1. Low Income.
      - 2. Member of an Impacted Family.
      - 3. Resident of an Impoverished Area.
      - 4. A Former Resident of a Disproportionately Impacted Area; or
    - ii. A former Resident of a Disproportionately Impacted Area and currently at least two of the following:
      - 1. Low Income.
      - 2. Member of an Impacted Family.
      - 3. Resident of an Impoverished Area.
  - Such individuals are hereinafter referred to as “Qualifying Individuals”.
  - 2. To qualify for Social Equity Program Tier 2, **[a minimum of 33.3%]**<sup>10</sup> of the applicant’s business must be owned **[and]**<sup>11</sup> **[controlled/operated]**<sup>12</sup>

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<sup>7</sup> We strongly advocate for a data-driven approach to determining which communities have been disproportionately impacted and therefore should be targeted for program eligibility and other benefits. However, we recognize that commissioning a Social Equity Study is expensive and may not be feasible for all localities. A less expensive alternative may be to conduct internal analysis of cannabis arrest data to determine a simple standard (e.g., 1.5+ standard deviations above the mean cannabis arrest rate for the City) for identifying “disproportionately impacted” communities.

<sup>8</sup> “And/Or” may be an appropriate language choice if the adopting jurisdiction will allow non-profit organizations to be eligible for Tier 1 or Tier 2 status, since non-profit corporations are non-stock entities that cannot legally have any owners.

<sup>9</sup> In order to prevent applicants from gaming the program, we recommend adding a “Qualifying Period” during which the ownership interest of Qualifying Individuals may not be diluted or divested.

<sup>10</sup> It should be noted again that bracketed terms may be adjusted by the adopting jurisdiction. We recommend a floor of no less than 33%, but adopting jurisdictions may consider a higher floor of at least 51%.

<sup>11</sup> “And/Or” may be an appropriate language choice if the adopting jurisdiction will allow non-profit organizations to be eligible for Tier 1 or Tier 2 status, since non-profit corporations are non-stock entities that cannot legally have any owners.

<sup>12</sup> Where, as in Tier 2, the eligible individuals hold less than a majority of the applicant’s equity, voting “control” is not mathematically possible; in this instance, the term “operated” may be a better choice than controlled.

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by one or more Qualifying Individuals [**who will hold such interest for the Qualifying Period**], and must meet the criteria listed above.

3. Applicants for Social Equity Program Tiers 1 and 2 may not submit licensing applications to operate more than one license per category of commercial cannabis activity (e.g., cultivation, manufacturing retail) in the [CITY/COUNTY].
4. A Tier 3 Social Equity Program licensee shall enter into an Incubation Agreement with a Tier 1 or Tier 2 Social Equity Program participant (an "Incubated Licensee") to provide rent-free space owned or leased by the Tier 3 licensee, with prorated utilities, and compliant security equipment and services ("Incubation Space") for the Incubated Licensee's commercial cannabis business operations for a period of [**X**] years.
  - i. The Tier 3 licensee shall provide Incubation Space that meets all of the following conditions:
    1. The Incubated Licensee can conduct commercial cannabis activities authorized by its license type in the Incubation Space without violating any land use or sensitive use requirements in [INSERT CITATION TO GENERAL MUNICIPAL LICENSING ORDINANCE].
    2. The Incubated Licensee will not incur costs for bringing mechanical, electrical, plumbing, and fire and life safety systems into compliance with [CITY/COUNTY] and State regulations;
    3. The Incubated Licensee has the legal right to occupy and use the Incubation Space for the commercial cannabis activities authorized by its license type.
  - ii. The [CITY/COUNTY] may, at its discretion, approve a fee to be paid by the Tier 3 licensee to one or more Tier 1 and Tier 2 licensees in lieu of Incubation Space. At minimum, the fee shall be equivalent to [**two times**]<sup>13</sup> the highest cost per square foot for a) commercial, b) industrial, or c) manufacturing space within the City adjusted annually based on the US Commercial Real Estate Index ("CREI") multiplied by the required amount of space for incubation multiplied by the required incubation term.

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<sup>13</sup> The intent here is to make the in-lieu fee a more expensive option so that incubation remains an attractive option. The multiplier can be adjusted as appropriate based on real estate pricing in the city or county. For example, if real estate pricing varies greatly across different areas of a city or county, a city- or county-wide multiplier may need to be removed, adjusted down, or broken out by smaller geographic units.

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- iii. The Incubation Agreement shall include reasonable covenants obligating Tier 3 licensees to negotiate in good faith over preferred business relationships with its Incubated Licensee immediately upon the successful licensure of both businesses.<sup>14</sup>
  - iv. The Incubation Agreement shall include reasonable covenants negotiated in good faith obligating Tier 3 licensees not to compete directly with the Incubated Licensee for the term of the Incubation Agreement, to the extent permissible under applicable state and federal competition laws.
5. Additionally, a Tier 3 license shall prepare a staffing plan that demonstrates intent, and methods, to comply with Section 3 of this Act [GOOD-FAITH EFFORTS FOR EQUITY IN EMPLOYMENT], including:
- i. organizational chart, demonstrating the roles and responsibilities of each employee and the reporting structure, and
  - ii. description of applicant's employment outreach and recruitment strategies, including providing employment opportunities to persons who have been disproportionately impacted by the criminalization of Cannabis.
6. The [CITY/COUNTY] shall issue guidance on acceptable forms of evidence of Tier 1, Tier 2, and Tier 3 Social Equity Program eligibility.
- F. Tier 1, Tier 2, **[and Tier 3]** participants in the Social Equity Program shall be eligible to receive the following benefits:
- 1. Priority processing of license applications.
  - 2. Expedited annual license renewal processing.
  - 3. **[Waived application and initial licensing fees.]**<sup>15</sup>
  - 4. Tier 1 and Tier 2 Social Equity Program licensees shall also be eligible for **[one or more of the following]**:
    - i. Low-interest or no-interest business loans awarded by the [CITY/COUNTY] or the [CITY/COUNTY]'s designee.<sup>16 17</sup>

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<sup>14</sup> For the sake of example, a Tier 3 licensee with a distribution facility which incubates a manufacturer may enter into a long term contract for the distribution of the incubated licensee's products for the term of the Incubation Agreement.

<sup>15</sup> If waiving application and first annual licensing fees for all Social Equity Program participants is not feasible for a given jurisdiction, the local cannabis regulatory authority may consider offering at least a 50% reduction in application and first annual licensing fees for Social Equity Program participants as an alternative. Additionally, a jurisdiction may consider requiring a Tier 3 licensee to cover the cost of application and first annual licensing fees for Tier 1 and Tier 2 licensees.

<sup>16</sup> Potential funding sources for low-interest or no-interest loans to consider: cannabis tax revenue, although taxation is typically limited in medical cannabis markets; existing local funds used to support local government programs for economic development, diversity, or other related subjects; fees collected from a subset of cannabis licensees, such as cannabis licensees who do not participate in the Social Equity Program.

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- ii. Municipal grants for start-up costs, funded by the Cannabis Social Equity Fund.
- iii. Opportunities for incubation by a Tier 3 Social Equity Program licensee.
- iv. Access to [CITY/COUNTY] events and information intended to facilitate introductions between licensees and potential investors and/or incubators.
- v. Business, licensing, inspection, and building and land use permitting requirements, and operational compliance assistance and training provided by the [CITY/COUNTY] or the [CITY/COUNTY]'s designee.<sup>18</sup>
- vi. Waived or reduced [CITY/COUNTY] fees related to securing cannabis-related local land use entitlements and permits, building permits and inspections.
- vii. Subject to [neighborhood]<sup>19</sup> approval, an exemption from “buffer zones” under [INSERT CITATION TO SPECIFIC ORDINANCE PROVISION] of the Local Licensing Ordinance mandating distance between premises.
- viii. Waived or reduced annual license renewal fees, as follows:**
  - 1. 75% reduction in first annual license renewal fees;**
  - 2. 50% reduction in second annual license renewal fees;**
  - 3. 25% reduction in third annual license renewal fees;**
  - 4. Additional fee reduction at the Department’s discretion on the basis of demonstrated financial need.<sup>20</sup>**

G. The [CITY/COUNTY] shall review and process applications for cannabis business licenses in the following order:

- 1. First priority: Tier 1 Program applicants.
- 2. Second priority: Tier 2 Program applicants.

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<sup>17</sup> Eligibility standards must be established for the low-interest or no-interest loan program. Localities may wish to consider, but need not feel limited to, the following factors: “operations ready” status, demonstrated financial need, or other factors deemed relevant by an established local sub-unit with community-level decision-making authority and an in-depth understanding of the community’s needs (e.g., Neighborhood Council, Economic Development Council).

<sup>18</sup> In this case, the Department’s designee may be another local government body that is better suited to perform this role or a third-party contractor with the necessary skills and expertise to provide excellent service to Social Equity Program participants.

<sup>19</sup> The reference to “neighborhood” could be revised to refer to a city ward, supervisorial district or other political subset of the adopting jurisdiction.

<sup>20</sup> Alternatively, a locality may consider fee deferral until a Social Equity Program licensee is profitable and can afford assessed fees.

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3. Third priority: Tier 3 Program applicants that will provide Incubation Space to Tier 1 Program applicants.
  4. Fourth priority: Tier 3 Program applicants that will provide Incubation Space to Tier 2 Incubatees.
  5. Fifth priority: Tier 3 Program applicants that will provide a Department-approved fee in lieu of Incubation Space.
  6. Sixth priority: General applicants who enter an agreement with the City to contribute funds to Social Equity Commission initiatives including, without limitation, community reinvestment and the Social Equity Program. Prioritization within this category shall be based on annual contributions.
  7. Seventh priority: All other general applicants.
- H. The [CITY/COUNTY] shall verify the eligibility of all Tier 1 and Tier 2 applicants.
1. Applicants will be required to disclose all business formation documents for their businesses, as well as any resolutions or consents of the board of directors or managers, any shareholder or LLC member consents and agreements (including but not limited to voting agreements), and any material agreements (including, but not limited to, service, licensing and royalty agreements, and real estate leases and agreements) which distributes the business' revenues and/or profits to any other party.
  2. The disclosure requirement in subsection 1 above will be a continuing obligation for all Tier 1 and Tier 2 licensees, which shall make their corporate records open to inspection by the [CITY/COUNTY] upon reasonable notice.
  3. The ownership interests held by Qualifying Individuals in a Tier 1 or Tier 2 business may not be diluted through additional capital contributions into the business during the Qualifying Period.
  4. The ownership interests of Qualifying Individuals may not be transferred or sold during the Qualifying Period; provided, however, the Qualifying Individuals in a single business may transfer their ownership interests among each other at any time with prior written notice to the [CITY/COUNTY].
  5. Qualifying Individuals may only be divested of their ownership interest in a Tier 1 or Tier 2 business for acts or omissions which would otherwise result in the loss of a state or local cannabis business license if the Qualifying Individual is not divested.

**SECTION 3: GOOD-FAITH EFFORT FOR EQUITY IN EMPLOYMENT**

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- A. **[Each licensee, including Tier 1 and Tier 2 licensees][Each Tier 3 licensee]** shall undertake good-faith efforts to ensure that at least 25% of the Licensee's employees must be individuals who:
1. Has a Prior Controlled Substance Conviction;
  2. Is Low Income;
  3. Is a Member of an Impacted Family;
  4. Is a Resident of an Impoverished Area; or
  5. Is a former Resident of a Disproportionately Impacted Area.
- B. Annually, **[each licensee, including Tier 1 and Tier 2 licensees]/[each Tier 3 licensee]** shall send to [CITY/COUNTY] a certification, stating either:
1. that at least 25% of the Licensee's employees meet one of the five criteria above, or
  2. (a) that the Licensee has hired such employees to the extent feasible, and describing the Licensee's employment outreach and recruitment strategies, including providing employment opportunities to persons meet one of the five criteria above and (b) that the Licensee transmitted all job openings, to [CITY/COUNTY] agency responsible for workforce development, for public posting.

Some participants wanted to see Tier 3 businesses mandated to do business with their incubatees (such as a retail storefront incubator providing its delivery service incubatee the exclusive contract to deliver for the storefront for a period of years), or at least not to set-up a business that competes with the incubatee for a period of years.

#### **SECTION 4: COMMUNITY BENEFITS AGREEMENT**

- A. The [CITY/COUNTY] may, at its discretion, adopt an ordinance that requires applicants to enter into a community benefits agreement with the [CITY/COUNTY] as a condition of license issuance. The general scope of the community benefits agreement and the procedures for administration shall be established by ordinance.
- B. Except as otherwise specified, contributions made pursuant to a community benefits agreement may be monetary, non-monetary, or both.
- C. At least once annually, the [CITY/COUNTY] shall request that each disproportionately impacted area [INSERT EQUIVALENT OF COMMUNITY PLAN AREA/NEIGHBORHOOD COUNCIL] and residents adversely impacted by a prior arrest or other criminal justice system involvement prepare a list of community needs.



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- D. Non-monetary contributions shall be responsive to the needs of one or more disproportionately impacted areas.
- E. Monetary contributions shall support programs, initiatives, and organizations that address the needs of one or more disproportionately impacted areas.
- F. Procedures for collection and distribution of community benefits funds shall be established by ordinance.
- G. The [CITY/COUNTY] may exempt Social Equity Program participants from any mandate to enter a community benefits agreement with the [CITY/COUNTY] or any mandatory monetary contribution related to a community benefits agreement for up to three years.
- H. The [CITY/COUNTY] shall not enter a community benefits agreement that requires a General Applicant or General Licensee to contribute funds in excess of three percent (3%) of projected or actual annual net profits or the dollar equivalent thereof.
- I. The [CITY/COUNTY] shall not enter a community benefits agreement that requires a Social Equity Program participant to contribute funds in excess of one percent (1%) of projected or actual annual net profits or the dollar equivalent thereof.
  - a. As used in this section, “net profits” means (i) the total amount actually received or receivable from all sales, and the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise minus (ii) any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.<sup>21</sup>
- J. A Social Equity Program participant may submit a request to the [CITY/COUNTY] for reduction or deferral of contributions required by community benefits agreement on the basis of financial hardship.
- K. Within fourteen (14) calendar days of the date the request is received by the [CITY/COUNTY], the [CITY/COUNTY] shall approve or deny the request in writing.
- L. If the [CITY/COUNTY] fails to approve or deny the request within fourteen (14) days of receipt, the request is deemed approved.

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<sup>21</sup> This definition may be revised and tailored by the adopting jurisdiction to account for microbusinesses and other vertically-integrated businesses that have intra-company sales.

- M. The [CITY/COUNTY] shall not impose any requirements in a community benefits agreement or in relation to such agreement that would be unreasonable, impractical, or contrary to the public interest for the licensee to comply with.
- N. The [CITY/COUNTY] shall prepare an annual report on community benefits agreements for the Cannabis Social Equity Commission. The report shall include, without limitation, a description of the conditions that trigger a community benefits agreement, the total number of active community benefits agreements, the number of new community benefits agreements, the number of retired community benefits agreements, a list of participating licensees and compliance status, funds owed and collected, and a summary of non-monetary contributions.
- O. The [CITY/COUNTY] shall conduct a periodic review of community benefits agreements at least every 12 months, at which time the licensee subject to the agreement shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the [CITY/COUNTY] finds and determines, on the basis of substantial evidence, that the licensee has not complied in good faith with terms or conditions of the agreement, the [CITY/COUNTY] may terminate or modify the agreement. The [CITY/COUNTY] shall not terminate a community benefits agreement entered into by the [CITY/COUNTY] and a Social Equity Program participant unless such action is considered and approved in writing by the Cannabis Social Equity Commission.

## **SECTION 5: COMMUNITY REINVESTMENT FUND**

- A. The [CITY/COUNTY] shall establish a Community Reinvestment Fund for the purpose of revitalizing Disproportionately Impacted Areas and improving life outcomes for persons with a Prior Cannabis Record and residents of Disproportionately Impacted Areas.
  - 1. Disproportionately Impacted Areas will be identified in a manner determined by the Social Equity Study.<sup>22</sup>
  - 2. [CITY/COUNTY] shall consult with community members to determine where the funds should be allocated.

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<sup>22</sup> As previously stated, we strongly advocate for a data-driven approach to determining which communities have been disproportionately impacted and therefore should be targeted for community reinvestment initiatives and other benefits. However, we recognize that commissioning a Social Equity Study is expensive and may not be feasible for all localities. A less expensive alternative may be to conduct internal analysis of cannabis arrest data to determine a simple standard (e.g., 1.5+ standard deviations above the mean cannabis arrest rate for the City) for identifying “disproportionately impacted” communities. Localities may also consider adding eligibility criteria that are indirectly related to or are results of discriminatory cannabis enforcement on the basis of race and class in an effort to broaden the base of communities and persons that may benefit from the Community Reinvestment Fund.

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- B. On at least an annual basis, a percentage of tax and non-licensing fee revenue from licensed cannabis businesses shall be transferred to the Community Reinvestment Fund.<sup>23 24</sup>
- C. Community Reinvestment Fund monies shall be used for purposes including, at minimum:
1. Assisting individuals with Prior Criminal Records and residents of Disproportionately Impacted Areas to obtain copies of their criminal record histories;
  2. Record or sentence modification for persons with criminal convictions, including development and implementation of regular legal clinic models to access record change services through the public defender's office, legal aid organizations, or local law schools and/or automated solutions;<sup>25</sup>
  3. Reentry services (e.g., job placement voter registration, etc.), especially in Disproportionately Impacted Areas; and
  4. Job training for residents of Disproportionately Impacted Areas, including training in management and other areas reasonably expected to help trainees secure higher-level jobs.<sup>26</sup>

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<sup>23</sup> This text will need to be adjusted depending on how cannabis funds will be collected and allocated. We intentionally left little detail regarding appropriations so that the text may be easily adjusted. Localities may consider including details regarding the person or agency that grants fund transfers, where transfers will be made from, who has decision-making authority regarding fund appropriations, and minimum annual transfer thresholds.

Localities should also consider including a directive for an initial appropriation from the General Fund or another appropriate local fund unrelated to cannabis to prevent delays in program roll out. The initial amount borrows could then be reimbursed in full once a sufficient amount of cannabis tax and fee revenue has been collected.

<sup>24</sup> **NOTE FOR MCBA BOARD: Thoughts on voluntary contributions from non-social equity businesses (in return for some benefit) as an additional or alternative funding source?**

<sup>25</sup> Automated solutions are optimal because they positively impact the greatest number of individuals and demand no further investment of time or money by impacted individuals who have been burdened by the stigma of a criminal record for cannabis. However, we recognize that automated solutions may not be feasible -- politically or otherwise -- in some localities and encourage those localities to pursue expungement and resentencing in an achievable manner (i.e. through the public defender's office, local legal aid organizations, or area law schools with clean slate clinics). We support all expungement and resentencing efforts for prior cannabis offenders in states that have legalized and encourage localities to tailor their approaches as needed to make progress in this area.

<sup>26</sup> **NOTE FOR MCBA BOARD: Please consider whether to include any additional purposes for which the Fund monies should be used: community centers; youth programs; health education programs; to support organizations and initiatives that aim to address the impact of racially disproportionate arrests and incarceration, generational poverty, community degradation, housing insecurity, loss of educational and employment opportunities, disruption of family structures, and other burdens of the failed War on Drugs; public libraries; other purposes chosen by a committee of residents of disproportionately impacted areas. (Note that most of these additional items inspired by Barbara Lee's RESPECT Resolution and San Francisco's social equity program. The drafting team thought the three purposes included in the model ordinance**

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5. Community health and nutrition programs, including school based community gardens
6. Community driven asset mapping to determine future needs

**SECTION 6: RECORD CHANGE PROVISIONS<sup>27</sup>**

- A. For purposes of this Section 6, “Record Change Process” includes all processes related to the change of one’s criminal record to lessen or eliminate the legal consequences associated with a criminal conviction or arrest. This may include, but is not limited to, expungement, vacating, purging, sealing, dismissing, resentencing, reclassification, any combination of the aforementioned, etc. This process may be applicable to all conviction types and criminal justice interactions, including felonies, misdemeanors, infractions, citations, arrests, juvenile adjudications, etc.
- B. For purposes of this Section 6, “Automating” (re: Record Change Process) refers to a process wherein a person convicted and/or arrested for a crime is not required to initiate the record change process on their own. Instead, the city or county prosecutor’s office would assess all convictions in their jurisdiction to determine which are eligible to be changed.
- C. [CITY/COUNTY] shall make opportunities available to individuals with criminal convictions and arrests to have their criminal record history, or sentence if they are currently under carceral control,<sup>28</sup> modified in accordance with record change statutes in [State]. This shall apply to all conviction types and arrests for which a remedy exists for record modification. [CITY/COUNTY] will take **[one or a combination]** of the following approaches to achieve this goal:
  1. Automating the record change process for cannabis and non-cannabis convictions;

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language so far are most critical and that the remaining items could be discussed internally by MCBA Board.)

**If the Board is in favor of including other purposes for which the Fund monies may be used, please consider whether some fund uses should be weighted more than others in decisions regarding Fund allocation. For example, expungement, reentry services, and job training could be weighted more than other uses that less directly address the program’s intent in an effort to ensure more funds are directed towards high priority Fund uses.**

<sup>27</sup> Some states, like California, have passed legislation to automate the record change process for prior cannabis convictions. An adopting jurisdiction in such a state could omit this Section. See AB 1793, recently signed into CA law:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1793](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1793)

<sup>28</sup> Carceral control includes, but is not limited to, prison, jail, probation, parole, and post-release community supervision.

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2. Automating the record change process for cannabis and cannabis-related (i.e., paraphernalia) convictions only and providing information on how to access other record change services in [CITY/COUNTY];
  3. Allocating funds [made available through [CITY/COUNTY]'s general funds, an existing budget, or a local cannabis tax to [CITY/COUNTY]'s public defender's office, legal aid organizations, and/or local law schools that engage in record change work;
  4. Hosting legal fairs in partnership with the [CITY/COUNTY] public defender's office, legal aid organizations, [CITY/COUNTY] agency offices that engage in employment or housing issues, and/or local law schools that engage in record change work to offer post-conviction relief to persons with all conviction types in [CITY/COUNTY]; and/or
  5. Hosting legal fairs in partnership with the [CITY/COUNTY] public defender's office and/or local legal aid organizations to offer post-conviction relief to persons with at least one marijuana conviction [CITY/COUNTY].
- B. [CITY/COUNTY] shall create a directory of attorneys or offices (public defenders, legal aid organizations, etc.) that are willing to represent clients free of charge if their petition for record change is discretionary and they decide to attend a hearing, or if a hearing on their petition is required. [CITY/COUNTY] may consider making this available to persons falling below a designated income level.
- C. [CITY/COUNTY] shall make available through general funds, an existing budget, or a local cannabis tax free access to a convicted person's criminal record history, including, but not limited to, waiver of the following costs:
1. Live Scan or other fingerprinting or background-investigation services, if applicable;
  2. Printing and mailing of criminal records by [CITY/COUNTY] courts or [STATE] agency; and
  3. Administrative fees associated with obtaining a copy of one's record.

**SECTION 7: NO ADDITIONAL RESTRICTIONS ALLOWED ON ENTRY INTO CANNABIS INDUSTRY**

- A. [CITY/COUNTY] shall place no additional restrictions on who can obtain a license to operate or work in the cannabis industry than those already created by [CITATION TO STATE LICENSING STATUTE], including prior history of substance use disorder or treatment for a substance use disorder, etc.

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- B. Convictions for any crime not related to an applicant's candor or character shall not disqualify them from obtaining a license to operate or seek employment in the cannabis industry. Evidence of rehabilitation may be used in determining whether a person should be licensed to operate or be employed in the industry if their conviction directly relates to the operation of a business.
- C. Applicants who are denied licensure shall have an opportunity to appeal [CITY/COUNTY]'s decision, and shall be provided with an explanation of why their application was denied.
- D. Background checks shall only be used to determine whether an applicant was convicted of a crime that excludes them from state licensing.

**SECTION 8: DATA COLLECTION**

- A. The agency regulating the licensure of cannabis businesses in [CITY/COUNTY] shall collect demographic data on all applicants and for all application types in [CITY/COUNTY]. This shall include, but not be limited to, information on race, ethnicity, gender, income level, prior convictions, and veteran status. The data will be used to inform future efforts to create more equity in [CITY/COUNTY] cannabis industry.
- B. Cannabis businesses in [CITY/COUNTY] shall report to the extent allowed under state law the demographic information on their workforce, including information on race, ethnicity, gender, income level, prior convictions, and veteran status.
- C. [CITY/COUNTY] will collect data on law enforcement involvement related to cannabis law violations, including the violation type, race, ethnicity, and gender.
- D. This information will be consolidated and reported without individual identifying information, and posted to the agency's website annually.

**SECTION 9: LOWEST LAW ENFORCEMENT PRIORITY**

- A. [CITY/COUNTY] shall make investigation, citation, and arrest for cannabis law violations the lowest law enforcement priority. This does not apply to distribution to minors.
- B. The following shall not constitute reasonable articulable suspicion of a crime in the absence of other factors:
  - 1. The odor of burnt or unburnt marijuana;
  - 2. The possession of or suspicion of possession of cannabis that does not exceed the legal limit in [STATE];
  - 3. The possession of multiple containers of cannabis without evidence of excess of the legal limit in [STATE].

- C. [CITY/COUNTY] shall make all reasonable efforts to create spaces for on-site consumption as allowed under state law.

## **SECTION 10: PERMITTING SOCIAL CONSUMPTION LOUNGES**

- A. “Consumption Lounge” means a permitted premises where cannabis goods and products may be brought and/or purchased there for on-site consumption, and consumed by persons 21 years of age and over.
- B. Consumption Lounges may sell cannabis-infused food items and non-cannabis-infused food items, and allow consumption of food and drink.
- C. Consumption Lounges must notify patrons that entry by persons under age 21 is prohibited, including but not limited to posting a conspicuous sign at the entry that states: “Entry into this premises by persons under age 21 is prohibited.”
- D. Consumption Lounges must notify patrons that cannabis consumption can impair driving ability, including but not limited to providing information on local car services, public transportation, and ride-share programs.
- E. Consumption Lounges must train their personnel about the various products provided, including their potency, absorption time, and effects. In an effort to ensure responsible consumption, Consumption Lounge personnel must educate all customers about products’ potency, absorption time, and effects.
- F. Any ordinance or rule that establishes hours of operation or creates a distance restriction from other types of facilities or uses shall be no more restrictive than the most restrictive hours of operation or distance restriction in [STATE] law or any rule promulgated by the [AUTHORITY OF CITY/COUNTY] placed upon new applicants for a license permitting the sale of alcoholic beverages for on-site consumption.

## **SECTION 11: ELIMINATING SUSPICIONLESS DRUG TESTING**

- A. No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment without reasonable documented cause; provided, however, that an employer may request such testing upon reasonable notice, but only for employees who work in sensitive job functions where the physical safety of such employee or others at the licensee’s facility may be jeopardized by the employee’s consumption of cannabis or other controlled substances.
- B. Under no circumstances may employers request, require, or conduct random or company-wide blood, urine, or encephalographic testing.

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- C. In any action alleging that the employer violated this section, the employer shall have the burden of proof.