



Smart Practices for Equity in Municipal Cannabis Regulation Case Studies for Program Design



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Disclaimer

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Cannabis regulation is still changing rapidly, and aspects of the programs described here are still under development. The contents of this document are believed to be accurate as of May 1, 2018. Their accuracy thereafter may change as local and state policy changes. This analysis does not constitute legal advice or business advice and the author, Mills College, and the Hood Incubator do not take any responsibility for actions based on these claims. We recommend that parties verify all information presented here against the newest available data and legal codes.

Executive Summary

Barriers to entry are a market failure and an indication that a policy intervention is needed. Historically, barriers to entry, such as red-lining policies that prohibited black and Asian families from moving their residences or businesses into San Leandro and parts of East Oakland, were deliberately codified to impede the access of people of color to white communities, institutions, and resources (Self, 2003, p. 105). Such discrimination is no longer legal, but entrepreneurs of color continue to face significant barriers to entry in most markets, including the new legal and regulated cannabis market, where in 2018, “More often barriers to entry are unintended consequences of well-meaning regulatory efforts” (CGA, 11).

Now that cannabis is legal in California, too few black and brown people who would like to operate cannabis businesses have local permits and state licenses, and too few businesses that have received licenses have commenced operations. According to the Marijuana Business Daily Women and Minorities in Cannabis Report, rates of “minority” ownership of cannabis businesses are too low, at a combined 20%, as compared to those of white ownership at just over 80%. (McVey, Women and Minorities in the Marijuana Industry Report, 2017). Afropunk reports that these rates are even lower for dispensaries, “Of the 3,200 to 3,600 marijuana dispensaries in the U.S, fewer than three dozen are black-owned. That’s about one percent” (Mitchel, 2017). This is an economic equity issue and a restorative justice issue because data demonstrates that black communities were the most heavily policed under the prior regulatory scenario, prohibition (Coyné & Hall, 2017).

Mitigating Risks with a Harm Reduction Approach

People of color seeking to enter cannabis markets face unique risks and vulnerability within the political climate of the United States in 2018. Although cities and states across the country are legalizing cannabis and developing regulatory programs, the plant remains on the Controlled Substances List and it continues to be illegal according

to the federal government (Drug Enforcement Administration, 2018). Under a federal regime that has expressed its hostility towards cannabis and towards undocumented immigrants, minority and immigrant communities may be targeted through cannabis enforcement, just as they have been since the early days of cannabis policy. (City and County of San Francisco, 2017).

Cannabis companies face many hurdles when interacting with federal systems, such as restrictions on banking, on business expense deductions, and on obtaining credit, mortgages, loans, and insurance. Cannabis businesses also continue to face the threat of federal enforcement through raids and asset seizure. For producers, retailers, and consumers alike, cannabis activity may be considered evidence of criminality in immigration decisions. These are especially significant hurdles for entrepreneurs hoping to enter the cannabis sphere who face oppression, in addition to the stigma associated with cannabis, along one or more intersecting areas of their identity (race, ethnicity, religion, class, gender, age, sexual orientation, ability etc.) (Savali, 2018).

Cities and counties wishing to promote equitable cannabis entrepreneurship must consider the circumstances created by these federal policies and the specific risks that they pose. Jurisdictions interested in equity and in harm reduction can design programs that ameliorate some of this risk, and that protect cannabis business owners when appropriate and possible. The Transform Drug Policy Foundation points out that, “Legally regulated and controlled drug markets will offer a far greater level of protection to vulnerable groups than the chaotic, unregulated, and often violent illegal markets we have today... A criminal record (even for a minor drug offense) can have a devastating effect on already vulnerable individuals, fostering social exclusion. A criminal record puts significant restrictions on employment, travel, personal finance, and housing. For many young people, it is a greater threat to their health and well-being than occasionally drug use, particularly if it involves the trauma of imprisonment” (Transform Drug Policy Foundation, 2007, p. 50).

Local Governments Can Intervene to Produce Better Outcomes.

As of April 2018, four California jurisdictions (Oakland, San Francisco, Sacramento, and Los Angeles) have developed “equity” permitting programs to address and reduce barriers to entry into the newly-legal and regulated California cannabis markets while reducing the harm associated with the criminalization of these markets and while providing restorative justice within communities. A state cannabis equity bill has also been proposed in the state Senate and is making its way through Senate committees.

From Equality, to Equity, to Liberation

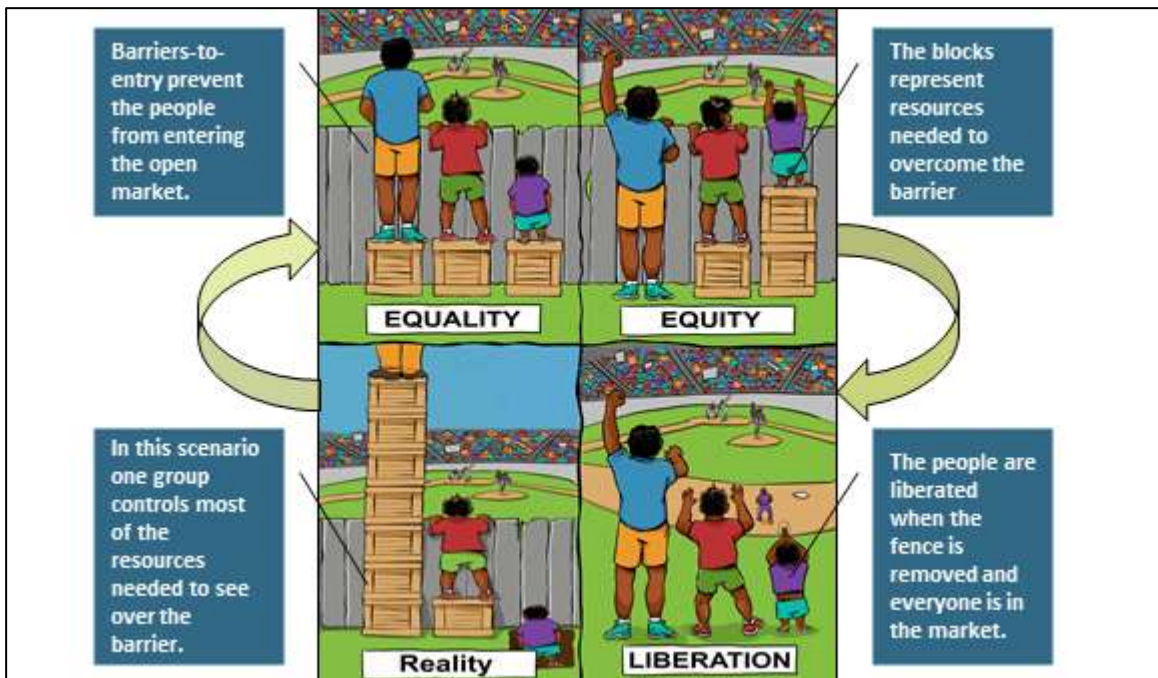


Figure 1: Address the causes of inequity by removing systematic barriers

Figure One, above, demonstrates the difference between reality, equality, equity and liberation. In the reality scenario, one group controls all the resources necessary to see over the fence, much the less enter the stadium (the market). This is the cannabis industry today. As the graphic demonstrates, equality is not enough because the barriers to entry are still so great that some of the people who want to enter the market cannot. Equity (the equity permit programs) lifts the shorter players up to the same

height, but it still isn't enough. In the final scenario, equity is built into the core of a cannabis regulatory program, not tacked on as an afterthought. Liberation is achieved when the barriers to entry are removed and everyone is in the market.

SMART Practices for Regulatory Program Design

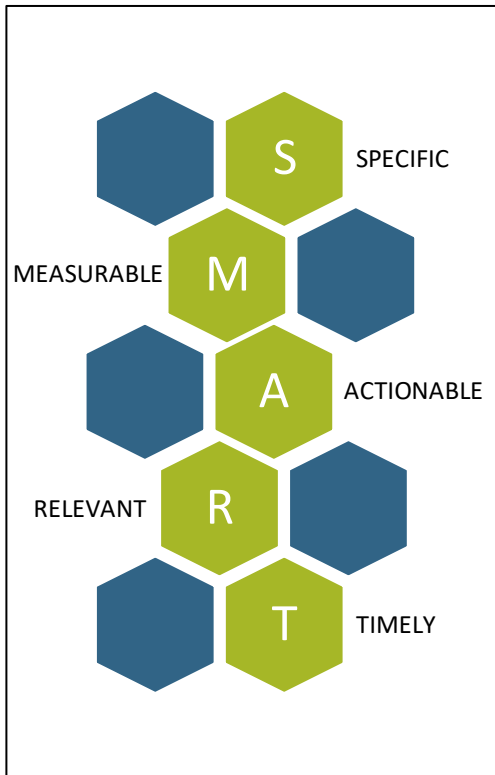


Figure 2: SMART practices are steps to reach desired outcomes

Equity programs can boost positive outcomes for target populations, but are unlikely to succeed unless equity, as a core value, is built into every aspect of a jurisdiction's regulatory program. This report presents several frameworks for thinking about equitable program design, compares equity program case studies, and considers impacts of state and local tax rates. It concludes with recommendations for SMART practices for design and implementation of restorative justice cannabis regulatory programs, built from the grassroots up to reduce barriers to entry and to promote black and brown ownership and success within regulated cannabis economies.

The SMART practices presented here work within an existing framework of regulation crafted by the California State Legislature and by the voters of the State of California. This analysis presumes cannabis legalization and regulation as unavoidable factors built into the problem context and will not look at alternative systems such as criminalization, decriminalization, and federal rescheduling. It focuses on local and state cannabis policy in California and does not examine risk posed by the federal government. Instead, it presumes that individuals should be informed and then decide for themselves what

levels of risk they are willing and able to assume. It also posits that individuals who wish to assume the risks associated with operating a legal cannabis business deserve to have the opportunity to do so within an equitable marketplace with few barriers to entry that can be attributed to systematic or institutional structures.

Key Findings

Figure Three, on the following page, presents a Theory of Change model for cannabis equity programs in California. The long-term success of the existing equity programs cannot yet be evaluated because there is not yet sufficient data on program outcomes, but early data in Oakland indicate that jurisdictions can increase outputs of equity-qualified applicants by reducing barriers to entry in all aspects of their program design. Equitable cannabis regulatory programs should be informed by and shaped around local data, local communities, and local voices under the leadership of those most impacted.

This report highlights three barriers to entry and possible sites for intervention that jurisdictions can use to, local tax rates, local land use policy, and license type and size, but these are just a start. Each program component should be evaluated according to its ability to produce equitable outcomes and to avoid externalities such as nuisance conditions and negative impacts on the environment.

Local leaders can help regulators to assess the needs of the community and the program structures that will be appropriate to address them. Jurisdictions wishing to implement equity programs as a restorative justice practice should start with a community listening session where the members of a community can come together to tell stories about the harm that was experienced and the impact that it had on their lives. Following that, equity programs should be data-driven, should reserve some permits for equity applicants, should be funded, and should include support even after a business has received a local permit.

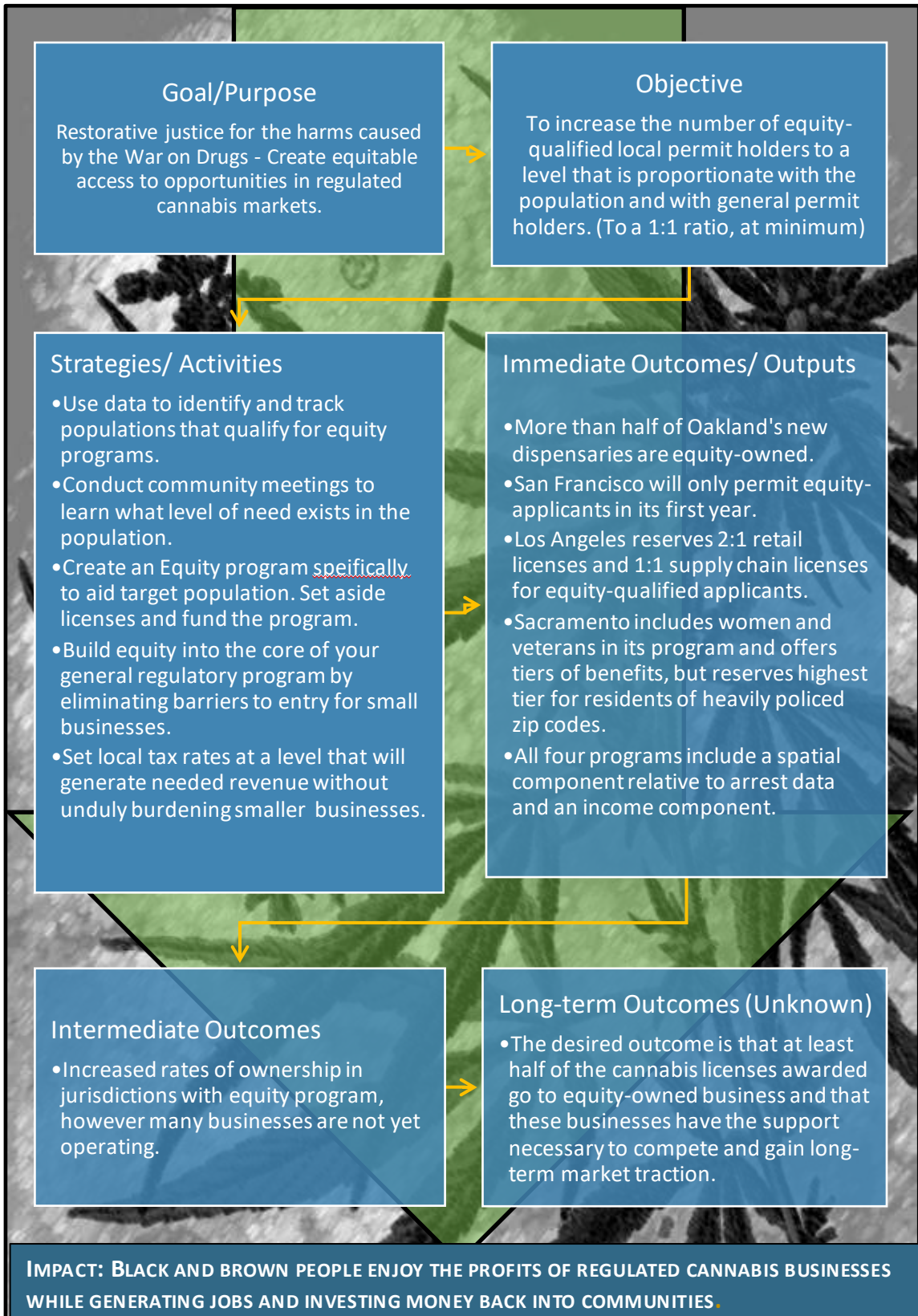


Figure 3: Examine your goals to determine your strategy