

Proposition 64 Implementation: Ten Recommendations for Prioritizing Social Justice & Equity in the California Marijuana Industry



The harms caused by past marijuana policies under prohibition require that new marijuana policies and legal regulations include opportunities to address and repair past harms and inequities.

In 1996, California voters passed Proposition 215, the Compassionate Use Act, making it the first state in the union to legalize marijuana for medical use. Over the next 19 years, a medical marijuana market emerged that was largely unregulated, although some local jurisdictions chose to permit and regulate certain commercial marijuana activity on their own.

In 2015, after almost two decades without regulation at the state level, California lawmakers enacted Assembly Bills 243 and 266 and Senate Bill 643, collectively known as the Medical Marijuana Regulation and Safety Act (MCRSA). These bills established a state-level licensing and regulatory framework for medical marijuana. Building on this framework, in 2016 voters approved Proposition 64, the Adult Use of Marijuana Act, legalizing personal use of nonmedical marijuana for adults 21 years of age and older.

Recent shifts in public policy and public opinion regarding marijuana are part of a broader trend, with polls finding the vast majority of Americans believe the “war on drugs” has failed. The vastly unequal enforcement of prohibition against low-income, Black and Latinx communities (despite use rates being similar across racial and ethnic lines) has been one of the driving forces behind marijuana law reform.

As California’s new marijuana policies are implemented across the state and within local jurisdictions, we have a unique opportunity to acknowledge and address the unequal harms of prohibition on low-income, Black and Latinx communities. A primary strategy for repairing these inequities is to create opportunities for low-income, black, and Latinx people to obtain an equitable stake in the legal marijuana market.

The following policy recommendations are designed to best promote equitable ownership and employment opportunities in the marijuana industry.¹

1. Equity as Public Policy

The first step toward ameliorating past harms is intentionally acknowledging them. It is imperative that state and local governments acknowledge how the war on drugs, and prohibition specifically, disproportionately harmed certain communities. Once these harms are acknowledged, state and local governments must do the hard work of repairing these past inequities. They must commit to addressing these disparities through intentional public policies addressing equity.

Example: In Oakland, California, city staff, at the direction of City Council, performed a race and equity analysis of medical marijuana regulations aimed at promoting equitable ownership and employment opportunities in the marijuana industry to decrease disparities in life outcomes for marginalized communities of color and to address the disproportionate impacts of the war on drugs in those communities.

2. Community Outreach

¹ Further strategies will need to be developed and implemented in order to ensure that tax revenue generated from the sale of commercial marijuana is reinvested in communities most harmed by marijuana prohibition.

Develop a multicultural community outreach strategy, targeting low-income communities and communities of color, to ensure they are intentionally engaged in the process of marijuana policy development and implementation.

Example: San Francisco, Oakland, and other cities have created formal marijuana commissions or advisory committees, comprised of a set of stakeholders diverse in their gender, race, ethnicity, geography, and expertise.

3. Social Equity Programs

Create a program intended to specifically and intentionally serve those individuals and communities that were disproportionately harmed by prohibition. This should include prioritizing formerly incarcerated individuals convicted of marijuana-related offenses, as well as their family members and people who live or have lived in communities that were subject to high arrest rates.

Example: Oakland, California defines an equity applicant as an owner who:

1. Is an Oakland resident;
2. Has an annual income at or less than 80% of Oakland Average Median Income adjusted for household size; and
3. Either:
 - a. Has lived in certain high arrest police beats for at least 10 of the last 20 years or
 - b. Was arrested after November 5, 1996 and convicted of a marijuana law violation committed in Oakland.

4. Inclusive Licensing

Background checks for license suitability should not exclude applicants based on prior drug arrests or convictions.

Example: Generally, Proposition 64 prohibits denial of a state marijuana license based solely on a prior drug conviction.

5. Priority Licensing

Due to the limited quantity of available licenses, equity applicants should receive some level of priority in the licensing and renewal process to ensure that these ownership opportunities aren't monopolized by well-resourced marijuana operators who are better-positioned than those in low-income communities and communities of color.

Example: Oakland will issue permit applications in two phases: (1) a restricted initial phase in which the number of permits issued to general applicants may not exceed the number of permits issued to equity applicants; (2) an unrestricted second phase that commences after their Equity Assistance Program has been funded and implemented.

6. Affordable Licensing & Compliance

Licensing and other regulatory fees should be made affordable to ensure low-income communities and communities of color are not priced out of participation.

Example: In Oakland, application and permit fees, as well as fees associated with fire and building inspections, will be waived for equity applicants.

Example: Under Proposition 64, compliance fees cannot be higher than three times the original licensing fee, and fines must be reasonable.

7. Resource & Financial Assistance

Funded programs should be developed and implemented to ensure that low-income communities and communities of color have access to land and capital, both of which can be a tremendous barrier to marijuana industry participation.

Example: In Oakland, equity applicants will have access to a \$3 million revolving loan program that will provide no-interest business startup loans to equity applicants. Oakland will also provide loan application preparation assistance.

8. Technical Assistance

Equity applicants should have access to resources that assist them in the process of navigating regulation, licensure and compliance.

Example: In Oakland, equity applicants will have access to technical assistance resources, such as licensing navigation, legal and business accounting, as well as business plan preparation. These resources are to be provided by a third party consultant funded by the city of Oakland.

9. Marijuana-Industry Corporate Social Responsibility

Marijuana operators should independently incorporate and prioritize equity. Some businesses may choose to develop equity initiatives within corporate social responsibility programs, community benefit agreements or through other private means.

Example: In Oakland, well-resourced general applicants who partner with less-resourced equity applicants are considered “equity incubators.” Equity incubators who provide qualifying capital or real estate to equity applicants will receive priority in the processing of applicant licensing.

10. Equitable Employment Opportunities

Marijuana operators should provide equitable employment opportunities to those communities worst harmed by prohibition. These opportunities should include hiring formally incarcerated individuals, hiring locally, and providing living wages for individuals employed by licensed marijuana businesses.