

Oregon Cannabis S.E.E.D. Program

(Social Equity and Economic Development)



Introduction

As more states legalize cannabis, there has been increased attention on social equity as a tool to remedy the disproportionate impact the war on drugs has had on individuals from minority communities and low-income areas. While many states have been proactive in establishing equity initiatives, Oregon has yet to establish a statewide program. By examining social equity plans in other states and municipalities, Oregon can establish a program to benefit the people most affected by the prohibition of cannabis by eliminating or reducing the barriers that have kept them out of the legal cannabis market.

The Need for Social Equity

Persons convicted of a cannabis offense, as well as their families, suffer the long-term consequences of prohibition.¹ These individuals have a more difficult time entering the newly created adult-use cannabis industry partially due to a lack of access to capital, business space, technical support, and regulatory compliance assistance.² Coupled with generational poverty and a lack of access to resources, it makes it extraordinarily difficult for persons with convictions to enter the newly regulated industry.

In response to this issue; California, Colorado, Illinois, Massachusetts, and Michigan have established social equity programs to help and encourage African American and Latino American populations to enter the legal cannabis market.

A report from the Ohio State University Moritz College of Law Drug Enforcement and Policy center has established 10 factors critical to a social equity program. Half of the factors are “accessibility” components, which encompasses components that affect the ease with which applicants can learn about and access a given program; and half are “environmental” components, which encompasses factors that form a support structure for social equity applicants and their communities.³

Accessibility	Environmental
Eligibility	Educational Services
Application Process	Incubator Program
Expungements	Zoning Regulations and License Caps
Preferential Licenses	Government Responsiveness
Shareholder/Ownership Requirements	Community Reinvestment

¹ "SB 1294 - California Legislative Information - State of California."

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1294.

² *Id.*

³ Nani, Christopher, Social Equity Assessment Tool for the Cannabis Industry (June 10, 2019). Ohio State Journal of Criminal Law, Forthcoming; Ohio State Public Law Working Paper No. 471. Available at SSRN: <https://ssrn.com/abstract=3312114> or <http://dx.doi.org/10.2139/ssrn.3312114>

Accessibility Factors

Eligibility

In order to maximize equity, the program should be eligible to “equity applicants” or “equity enterprises” who can meet one of the 4 following conditions:

- 1) Be an enterprise that would qualify as a Minority Business Enterprise (MBE), Emerging Small Business (ESB), or Disadvantaged Business Enterprise (DBE and ACDBE).⁴
- 2) Be a resident of an area that has experienced a “Disproportionate Impact” from cannabis-related arrests.
 - An area of “Disproportionate Impact” is defined as a geographical area that, due to statute, policy, or other law, have been adversely affected more than others within the same municipality or state.⁵
- 3) Be a “Member of an Impacted Family”, which means an individual who, had a parent, legal guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to cannabis legalization, was arrested for, convicted of, or adjudged to be a ward of the juvenile court for any non-violent crime under the laws of Oregon or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of cannabis.⁶
- 4) Have a “Prior Controlled Substance Record”, which 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 Oregon or any other jurisdiction relating to the sale, possession, use, cultivation, manufacture, or transport of cannabis prior to cannabis legalisation in Oregon.⁷

⁴ "Get Certified - Business Oregon."

<https://www.oregon4biz.com/How-We-Can-Help/COBID/Get-Certified/>.

⁵ "2019 -- h 5795 state of rhode island - Rhode Island General Assembly." 1 Mar. 2019,

<http://webserver.rilin.state.ri.us/BillText19/HouseText19/H5795.pdf>.

⁶ "MCBA's Ten Model Municipal Social Equity Ordinances - California" 1 Jul. 2019,

<https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/07/MCBAs-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>.

⁷ *Id.*

To ensure that people most affected by cannabis prohibition are given the greatest preference in fee deferrals and application fast tracking, municipalities like Los Angeles have established what is known as a “tiered” system.⁸ A tiered system is one where equity applicants are given different benefits based on how many qualifying factors they fall into.

Oregon could establish a similar tier program to seek out applicants most impacted by prohibition. Applicants who meet at least 3 of the 4 criteria could be given “tier 1” status, meaning full license cost deferral and top priority in license renewal. Applicants who meet 2 of the 4 criteria could qualify as “tier 2”, and applicants who meet 1 of the criteria could qualify as “tier 3”, with benefits such as 60% reduction⁹ in application and licensing cost.

Application Process

The Oregon Liquor Control Commission has the power to establish merit-based criteria for licensure or renewal of licensure.¹⁰ The OLCC should establish a “Social Equity Commission” (hereafter, The Commission) to administer the equity program. The Commission should be composed of experts in the fields of economic development, health and human services, and social justice.¹¹ The Commission should be given the following tasks to assist equity applicants:

- **Fast Pass:** The commission should be tasked with designating equity applicants who should have their applications fast tracked. Doing so will lower start up costs for equity applicants, and allow for those applicants to enter the market place sooner.
- **Technical Assistance:** Includes assistance with management and employee training, business plan creation and operational development, assistance in raising capital, accounting and sales forecasting, and tax and legal compliance.¹²

⁸ "Social Equity Program - Department of Cannabis Regulation - City of"

<https://cannabis.lacity.org/licensing/social-equity-program-2>.

⁹ "Michigan Unveils Social Equity Plan for Recreational ... - JD Supra." 22 Jul. 2019, <https://www.jdsupra.com/legalnews/michigan-unveils-social-equity-plan-for-65617/>. Accessed 24 Jul. 2019.

¹⁰ Act of June 30, 2015, ch. 614, § 20c

¹¹ "LO2 Work Product Final Draft - Northeastern University." 15 Dec. 2016, <https://www.northeastern.edu/law/pdfs/experience/lssc/lo2-report-2016.pdf>.

¹² "MA launching social equity program for cannabis industry workers." 28 Jun. 2018, <https://mjbizdaily.com/ma-launching-social-equity-program-for-workers-in-cannabis-industry/>.

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- **Fee and Licensing Cost Deferral:** Currently application fees in Oregon are due upon acceptance of the application.¹³ Deferring the fee until the business is in operation, or reducing the fee, would assist equity applicants in having more financial flexibility when opening their business. Lowering or eliminating licensing costs will allow equity applicants, who traditionally struggle with having access to capital, to more easily be certified and enter the legal market.
 - **Tax Breaks:** State sales taxes for marijuana retailers is 17 percent, and under certain circumstances, cities and counties may add up to an additional 3 percent tax.¹⁴ The retailer can also retain 2 percent of the tax to cover their expenses.¹⁵ Allowing equity applicants to pay less retail taxes, exempting them from the 3 percent increase in certain areas, and/or allowing them to retain a higher percent of the costs incurred to cover their expenses will make equity enterprises more competitive.

Expungements

Oregon Senate Bill 420, signed into law in 2019, establishes procedures for persons with qualifying marijuana convictions to file a motion requesting a court to enter an order setting aside the conviction.¹⁶ To further facilitate expungement, social equity applicants should automatically be considered for expungement of prior cannabis arrests. While Oregon does not ban individuals with past cannabis conviction from working in the legal cannabis market, expungement will further social justice and assist with access to capital.

Preferential Licenses

Oregon differs from other states who have established social equity programs as Oregon already has an established cannabis business. This does limit the ability for Oregon to give preferential licenses to equity applicants.

¹³ "Recreational Marijuana FAQs: Licensing Fees - Oregon.gov."

<https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Licensing-Fees.aspx>. Accessed 6 Jul. 2019.

¹⁴ Act of July 20, 2015, ch. 699, § 2(1), 2015 Or. Laws

¹⁵ Act of July 20, 2015, ch. 699, § 13, 2015 Or. Laws

¹⁶ "SB 420 - Oregon Legislative Information System - Oregon State"

<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB420>.

One way that Oregon could give preferential licensing to equity applicants in the future is through social consumption. Social consumption was brought to the 2019 legislature, but failed to pass and is currently illegal due to Oregon's Indoor Clean Air Act.¹⁷ If social consumption becomes a reality in Oregon, equity applicants should be given preferential licensing to facilitate more minority and women representation in the cannabis industry.

Additionally, a social equity program could be established with the idea of interstate commerce as a possible emerging cannabis market. Interstate commerce will grow the Oregon cannabis market significantly. A social equity bill therefore should be written with language giving social equity businesses preference for transportation and export licenses.

Shareholder/Ownership Requirements

The Minority Cannabis Business Alliance model ordinance requires licensees 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 that they have used good-faith efforts to achieve that 25% threshold.¹⁸

However, due to Oregon's lack of a diverse population, it may be difficult of social equity companies to reach these goals. Therefore, establishing a 25% criterion may be difficult. One way to increase diversity in the cannabis workplace would be through creation of a job board for individuals who qualify as equity applicants could increase access to cannabis job opportunities and help equity enterprises hire employees from areas of low income and disproportionate impact.¹⁹ A job board could also include "ancillary"²⁰ volunteers who can offer skills and knowledge that are directly transferable to working with or supporting cannabis businesses. Cannabis business investors and non-profits, after vetting and acceptance by the social equity commission, could also be given access to the job board as a way to reach out to equity businesses.

¹⁷ http://www.oregonlive.com/marijuana/index.ssf/2015/12/oregon_clean_air_rules_may_spe.html

¹⁸ "MCBA's Ten Model Municipal Social Equity Ordinances - California" 1 Jul. 2019, <https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/07/MCBAs-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>. Accessed 13 Jul. 2019.

¹⁹ "CANNABIS EQUITY EMPLOYMENT." <http://www.lbcannabisjobs.com/>. Accessed 6 Jul. 2019.

²⁰ "Equity Programs - Cannabis Control Commission." <https://mass-cannabis-control.com/equityprograms-2/>.

Environmental Factors

Educational Services and Outreach

Education and outreach are essential, as some equity programs have had difficulty in getting enough social equity applicants to apply for licenses.²¹ Most applicants who will apply to the equity program come from disadvantaged communities where business education is lacking and capital is not traditionally available. Allocating funds to market the programs availability would be very helpful to the programs success, because if no one in low-income and disproportionate impact areas knows about the program, they won't apply.

Education is also key for an equity applicant as it ensures they are knowledgeable about the cannabis business and better know how to manage the financial and commercial obligations required when operating a business. Application workshops could be established to help equity applicants prepare and submit a complete cannabis business license application, and learn strategies on how to increase opportunities for approval at each stage of the application process.²²

Partnering with established cannabis businesses and attorneys in educational training and outreach would be essential in expanding educational opportunities beyond the boundaries of governmental institutes limited by a finite amount of financial resources.²³ Cannabis business professionals and attorneys could help equity applicants by giving them the educational tools necessary to succeed, and in exchange, those established businesses and attorneys will begin to establish a relationship with newly emerging equity enterprises, which will help diversify the growing legal cannabis market.

²¹ "Five applicants for 123 social equity cannabis permits in Massachusetts." 20 Jun. 2019, <https://mjbizdaily.com/only-five-applicants-for-123-social-equity-cannabis-permits-massachusetts/>.

²² "Open an Equity Business - City of Long Beach." <http://www.longbeach.gov/citymanager/cannabis-information/cannabis-social-equity-program/open-an-equity-business/>.

²³ "Social Equity Assessment Tool for the Cannabis Industry by ... - SSRN." 14 Jun. 2019, <https://www.ssrn.com/abstract=3312114>.

Incubator Program

Tax and other economic incentives should be available to individuals and entities who offer rent-free space for cannabis dispensaries, processors, or growers. In addition to real estate, the incubator model could be expanded to existing grow operations who rent part of their grow space free to equity qualifying growers.

Of all the equity programs currently in place, the San Francisco program seems to have the most developed incubator program.²⁴ Incubators in San Francisco are required to establish an "Equity incubator Plan". The plan establishes which parties are in the partnership, what technical and financial support the incubator will supply to the qualifying equity applicant, and conditions for dissolution of the partnership.

One major problem that has arisen with incubators are instances where the incubator investor divests the social equity applicant of their share in the business.²⁵ To stop this, the OLCC and social equity commission should adopt policies that establish good faith negotiation standards and requirements that the venture remain in majority ownership of the equity qualifier, as well as place restrictions on lending practices that may be predatory. Additionally, a social equity bill should place requirements that the social equity business retain at least 51% of "control" in the business venture.

Zoning Regulations and Licensing Caps

Licensing caps to cannabis production and other business aspects should be written in a way to help equity applicants. Oregon Senate Bill 218 gave the OLCC the power to limit production licenses, based on the supply and demand of marijuana.²⁶ Tasking the OLCC with setting aside a percentage of new licenses to equity applicants will help diversify the production market.

²⁴ "1604(c) Equity Incubator | Office of Cannabis." 19 Jul. 2018, <https://officeofcannabis.sfgov.org/node/2697>.

²⁵ "Challenges - and controversy - swirl around marijuana social equity" 29 Nov. 2018, <https://mjbizdaily.com/controversy-marijuana-social-equity-programs-california/>.

²⁶ "Senate Bill 218." <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB218/Enrolled>. Accessed 19 Aug. 2019.

In addition to incorporating licensing caps with social equity policy, zoning regulations should also be written with social equity in mind. One instance where zoning may have this impact in the future is in regards to social consumption lounges. Any ordinance or rule in regards to cannabis social consumption that establishes hours of operation or creates a distance restriction from other types of facilities or uses should be no more restrictive than the most restrictive hours of operation or distance restrictions in Oregon law placed upon new applicants for a license permitting the sale of alcoholic beverages for on-site consumption.²⁷

Government Responsiveness

In order to ensure that the legislation adapts as necessary, the Social Equity Commission should establish an advisory committee that works to measure the programs success recommend changes as necessary. The Commission should be tasked with working on data driven studies to establish areas that qualify as low income, to establish areas of disproportionate impact, and to track the amount of equity applicants and enterprises entering the market.²⁸ Other responsibilities could include establishing good faith standards, community reinvestment requirements, and rules for incubator ownership requirements.

Community Reinvestment

To further facilitate community investment and equity, Oregon equity applicants and incubators should be required to create a “Community Invest Plan” and a “Diversity Plan.” Not only will this help disproportionately impacted areas economically, but also provide social benefits in creating community engagement between business and local citizens in areas that have struggled with poverty and disproportionate rates of arrest.

Many equity programs have stressed the importance of equity enterprises reinvesting in disenfranchised communities through working with nonprofits and performing community

²⁷ "MCBA's Ten Model Municipal Social Equity Ordinances - California" 1 Jul. 2019, <https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/07/MCBAs-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>.

²⁸ *Id.*

activities.²⁹ San Francisco has established requirements that Equity Incubators establish a “Community Investment Plan” demonstrating engagement with businesses and residents located within 500 feet of a proposed cannabis business site.³⁰ Community investment funds plans could include programs that provide for reentry services, job training, and criminal record-change assistance to residents of “Disproportionately Impacted Areas”.³¹ Existing cannabis businesses could be encouraged to invest in community funds and provide incubator services by offering a “social justice seal” on packing of businesses who voluntarily donate to the fund.³² Community reinvestment plans can be strengthened by disbursing block grants, funded by license fees from non-equity companies, to nonprofits working in low income and disproportionately impacted areas.

Diversity plans should be created to ensure that equity enterprises and incubators continue outreach to people from disadvantaged populations. This could include advertising employment opportunities tailored to individuals from low income and disproportionately impacted areas, creating a promotion process that employs equity principles for current employees, and providing recruitment meetings or participating in job fairs with a focus on attracting individuals who qualify for the equity program.³³ Requiring all new cannabis businesses, and not just equity enterprises, to create diversity plans could further facilitate market participation by individuals from disenfranchised areas.

²⁹ "guidance on required positive impact plans and diversity plans." 25 Feb. 2019, <https://mass-cannabis-control.com/wp-content/uploads/2019/01/Revised-Guidance-on-Disproportionate-Impact-and-Diversity-Plans.pdf>.

³⁰ "Ordinance 302-18 (Amendments to Article 16 on ... - Office of Cannabis." 3 Dec. 2018, <https://officeofcannabis.sfgov.org/sites/default/files/regulations/2019-01/Ordinance%20302-18%20%28Amendments%20to%20Article%2016%20on%2012.03.18%29.pdf>.

³¹ "MCBA's Ten Model Municipal Social Equity Ordinances - California" 1 Jul. 2019, <https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/07/MCBAs-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>.

³² "Opportunity for All: How Massachusetts Is Creating Social Equity in" 23 Jul. 2018, <https://merryjane.com/culture/opportunity-for-all-how-massachusetts-is-creating-social-equity-in-leg-al-cannabis>.

³³ "guidance on required positive impact plans and diversity plans." 25 Feb. 2019, <https://mass-cannabis-control.com/wp-content/uploads/2019/01/Revised-Guidance-on-Disproportionate-Impact-and-Diversity-Plans.pdf>.

S.E.E.D Grant Program

To facilitate economic equity, it is crucial that a low-interest loan or grant program be established to help defray the start-up costs associated with entering the licensed cannabis industry, as a lack of access to capital has hampered the success of social equity programs in other states. For instance, in Massachusetts, 46.7% of individuals who applied for the equity program but did not apply for licensing stated that difficulty raising funds or capital was the main reason they did not apply for a license.³⁴

The initial capital needed to start a cannabis business is substantial, and the already crowded cannabis market in Oregon makes the situation even more difficult. Providing grants can create a self-sustaining line of credit, as back payments on the low-interest loans can be put back into grants for new cannabis businesses.

Funds gained through interest on the loan payments could also be used to strengthen community reinvestment programs. Illinois has established the Restore, Reinvest, and Renew (R3) program, to address the impact of economic disinvestment, violence, and the historical overuse of the criminal justice system.³⁵ Oregon could establish a similar program, where taxes and interest payments by grant program enterprises go into a fund that provides grants to areas that have been most affected by the war on drugs.

One way to accomplish this could be through the creation of state sponsored tax-exempt bond program.³⁶ Tax exempt bonds are purchased by investors (e.g. banks, private lending institutions, or individuals) who then use the purchase price to finance the loans offered.³⁷ The investor is paid the amount of the bond, plus interest, upon the completion of the loan, and they may be exempt from federal and state income taxes on the interest amount.

In 2019, the Oregon legislature introduced HB3169, which would allow for the creation of banking institutions and credit unions that would have the ability to loan money to

³⁴ "A Baseline Review and Assessment of Cannabis Use and Public Safety." 20 Apr. 2019, <https://mass-cannabis-control.com/wp-content/uploads/2019/04/1.-RR2-94C-Violations-FINAL.pdf>.

³⁵ "Summary of HB 1438 The Cannabis Regulation and Tax Act - Illinois.gov." https://www2.illinois.gov/HISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf.

³⁶ "LO2 Work Product Final Draft - Northeastern University." 15 Dec. 2016, <https://www.northeastern.edu/law/pdfs/experience/lssc/lo2-report-2016.pdf>. Accessed 8 Jul. 2019.

³⁷ "Tax Exempt Borrowing Basics – A Quick Reference Guide to Tax" 28 Jan. 2013, <https://www.hinckleyallen.com/publications/tax-exempt-borrowing-basics-a-quick-reference-guide-to-tax-exempt-bonds/>.

cannabis businesses. Cannabis businesses would be able to use these funds for the purposes of paying fees or taxes to a public body; to pay rent on property that is leased by, or on behalf of, a cannabis business; to pay a vendor that is physically located in Oregon for goods or services associated with a cannabis business; and to purchase bonds issued by a public body.³⁸ While HB3169 failed to pass, creation of such a program is crucial, as federal criminalization makes it difficult to get credit in the private sector, and makes it impossible for cannabis businesses to take advantage of programs such as Opportunity Zone funds.³⁹

Funding Sources for State Grant Program

(1) Cannabis Tax Revenue

- Revenue from the Oregon cannabis tax, which topped \$102 million in the 2019 fiscal year, could be used to fund the program.
- Establishment of a “social equity” tax could also raise money for the grant program. The city of Portland has established such a tax locally, which raised \$4.6 million in 2019.⁴⁰

(2) Oregon Lottery Tax Funds

- 25.5% of Oregon lottery tax revenues goes to economic development projects.⁴¹ The Oregon Lottery tax between 2015-2017 provided over \$1.8 million in economic development grants and over \$2 million in loans for Marion County.⁴²

(3) Voluntary “Social Justice Equity” tax

- Massachusetts cannabis companies that donate one percent of their revenue toward a technical assistance fund to support the equity program can display a state-approved “social justice seal” on their packaging, which could serve as a powerful signal to consumers who want to support and share those values.

³⁸ "House Bill 3169."

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3169/Introduced>.

³⁹ "Opportunity Zones - Business Oregon." <http://www.oregon4biz.com/Opportunity-Zones/>.

⁴⁰ "Recreational Cannabis Tax - The City of Portland, Oregon." 30 Apr. 2019, <https://www.portlandoregon.gov/auditservices/article/730292>. Accessed 15 Dec. 2019.

⁴¹ "How Funds are Allocated - Oregon Lottery." <https://www.oregonlottery.org/about/oregon-lottery-information/how-lottery-funds-are-allocated>. Accessed 16 Dec. 2019.

⁴² "Untitled - Oregon Lottery." <https://www.oregonlottery.org/docs/default-source/good-things-by-county/2015-2017/marion>. Accessed 16 Dec. 2019.