



New Jersey

P.O. Box 32159
Newark, NJ 07102

Tel: 973-642-2086
Fax: 973-642-6523

info@aclu-nj.org
www.aclu-nj.org

AMOL SINHA
Executive Director

MARC BEEBE
President

August 16, 2022

Cannabis Regulatory Commission
225 East State Street
Trenton, NJ, 08608

Dear Members of the Cannabis Regulatory Commission,

In February 2021, New Jersey became the 13th state to legalize cannabis for adult use. This shift in policy came after years of advocacy by community members and advocates who brought attention to the racially disparate enforcement of cannabis prohibition and the decades of harm caused to Black and brown communities in New Jersey. Community members, advocates, and an overwhelming majority of the public advocated to not only legalize cannabis, but to do so in a way that would begin to repair past harms and build an inclusive and equitable marketplace.

The Cannabis Regulatory Commission has made strides towards cannabis justice over the last eighteen months, using its power to develop, regulate, and conduct enforcement of the industry to take first steps towards creating a diverse and equitable industry that prioritizes the inclusion of those most harmed by decades of criminalization. We applaud these efforts – priority review of social equity, diversely owned, and impact zone businesses, public education efforts undertaken to make the licensure process more accessible, and the racial diversity of awardees for conditional licenses. Yet as we recognize these initiatives, we also understand the serious need for more robust resources for equity and inclusion.

Per the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L.2021, c.16), the CRC is charged with issuing permanent rules and regulations to govern the cannabis industry, and the proposed final regulations were made public in the New Jersey Register on August 1, launching a 60-day public comment period. This moment presents an opportunity for the CRC to build equity into every facet of the industry, and its Commissioners and staff must ensure that the promises of equity and inclusion come to fruition. New Jersey can be a national leader in creating an inclusive, equitable, and diverse industry, but doing so will require an intentional focus from the start and a long-term commitment to justice.

Data and reports from jurisdictions that have legalized cannabis before New Jersey illustrate the importance of prioritizing equity from the beginning of the regulatory process. In states that were among the earliest to legalize cannabis, the lack of intentionally built equity frameworks in the marketplace resulted in industries dominated by white business owners.¹ Regulators in those jurisdictions are now working to create initiatives aimed at strengthening fairness, but are doing so in already saturated markets, and face elevated start-up costs and limited real estate availability. New Jersey can build a more inclusive marketplace from the start, by creating a robust equity program that results in a cannabis industry reflective of the diversity of the Garden State.

¹ [Chart: Percentage of cannabis business owners and founders by race, MJBizDaily, Sept. 11, 2017.](#)

It is important to note that efforts to build equity into the industry from inception can only be successful when there is a comprehensive and well-resourced plan to do so. In recent years, other states that have recognized the need to prioritize equity, such as Illinois, have implemented their own measures aimed at creating an accessible and inclusive marketplace. Yet in most cases, their efforts have been patchwork in nature, often due to a lack of dedicated funding, political will, and the outsized role of large cannabis businesses in influencing laws and regulations. As a result, many jurisdictions have not meaningfully created equity despite early promise.

New Jersey is in danger of this, too. As a result of an exception built into the cannabis legalization law, large multi-state operators that previously held medical cannabis licenses are the only businesses currently approved to grow, manufacture, and sell adult-use cannabis, dominating the marketplace and collecting nearly \$80 million in sales in the first ten weeks alone. Though the recently announced awardees for conditional licenses are a more diverse group, these businesses are still in their early stages of development (many lacking municipal approval, site control, and start-up capital) and their applications for full licenses are still in flux. This will be the true test on our state's cannabis industry, and steps taken now will shape whether New Jersey's industry is able to set a national example for creating an inclusive industry.

ACLU-NJ offers the following recommendations to ensure that New Jersey builds equity into its cannabis market and meaningfully invests cannabis revenues in communities most harmed by the War on Drugs. We anticipate providing additional feedback upon the release of regulations pertaining to other facets of implementation, such as edibles and commercial kitchens, social consumption lounges, and additional outstanding regulations. While these recommendations are a meaningful start, achieving true equity within New Jersey's cannabis marketplace is an ongoing and iterative process that will require flexibility and innovation.

Expand Resources for Equity Applicant Designees

The CRC's temporary regulations, issued in August 2021, included the three categories for priority review within the licensing application process – social equity, diversely owned businesses, and impact zone businesses – allowing eligible applicants to have their applications reviewed and potentially granted earlier than other businesses. We were pleased to see this inclusion, which builds on a review process created in Massachusetts and centers the inclusion of individuals with prior cannabis-related records and people of color within the cannabis industry.

We recommend the CRC builds on this commitment by making robust resources – such as start-up capital and technical assistance – available for social equity, diversely owned, and impact zone applicants in order to support the launch and growth of these businesses.

Given that cannabis sales have already started and municipal availability for licenses is limited due to local ordinances, it is imperative that the CRC implements a strong equity program now in order to ensure that the process is inclusive.

Access to Start-up Capital

Access to start-up capital is vital to ensuring that applicants interested in entering the cannabis marketplace are able to successfully start a cannabis business.² Yet because the federal prohibition on cannabis makes bank loans even more difficult to access, the cannabis industry has favored people and corporations that are already wealthy or are able to access capital privately. Lack of access to capital is a significant barrier to entry into the industry, and studies show that communities of color and individuals

² [Irwin, Veronica, Cannabis Equity Applicants Still Face Barriers, SF Weekly, Sept. 14, 2020.](#)

who are impacted by the criminal legal system are routinely victims of discrimination when applying for loans and are more likely to have limited access to savings and other financial resources.³

We encourage the CRC to follow in the footsteps of New York and work with the Legislature to appropriate \$200 million for a social equity cannabis fund that can provide start-up capital to social equity and diversely owned applicants and/or conditional licensees. This start-up capital must be in the form of grants, no-interest loans, or low-interest loans.

The CRC has also noted publicly that a program is being developed in conjunction with the New Jersey Economic Development Authority (NJEDA). This has the potential to help new entrepreneurs in the cannabis space, and pending legislation would allow cannabis businesses to qualify for state and local economic incentives that are administered by the NJEDA and other entities. This is a much-needed step towards making resources available, but a dedicated equity fund remains necessary.

In the interim, the CRC should dedicate all revenue collected through fees – application fees, licensing fees, and fees associated with the certification process that allowed for medical cannabis Alternative Treatment Centers (ATCs) to begin selling cannabis for adult use – as a stopgap measure to provide start-up resources to equity applicants.

Fee Waivers Reductions and In-Kind Supports for Equity Applicant Cannabis Businesses

Because access to capital is such a significant barrier for communities of color and criminal legal system impacted community members, application fees, licensing fees, and other fees imposed by the CRC should be waived for businesses with social equity and/or diversely owned status.

In addition to in-kind financial supports, the CRC must create a robust technical assistance program to provide training for applicants interested in starting cannabis businesses. If the license application process requires an individual to demonstrate their experience/expertise in certain areas (such as quality assurance, packaging and labeling, and other areas detailed in P.L.2021, c.16), technical assistance should include programming on those topics to ensure that individuals who are new to the cannabis industry have the opportunity to gain the knowledge necessary to garner points during the application review process. Without such programming, large operators, many of whom currently run cannabis businesses in other states, will have an advantage in the application review process, leaving others behind.

Hiring Requirements

In addition to supporting the ownership of cannabis businesses by social equity applicants and minorities, disabled veterans, and women, the CRC should take steps to ensure that employment in the industry is accessible for individuals most harmed by marijuana prohibition. All cannabis businesses with more than 10 employees should hire at least 33 percent of employees who live in impact zone municipalities or economically disadvantaged areas or who have been impacted by marijuana criminalization. To that end, the CRC should require that cannabis businesses meet this criterion. While the 33 percent requirement may take time to achieve for cannabis businesses, the CRC should create a process through which businesses can show that a good faith effort was made to recruit employees and an accountability mechanism to ensure such an effort.

Guidance for Local Municipalities

Though P.L.2021, c.16 created an artificial restriction on the market by capping Class 1 Cultivator licenses at 37 licenses, we are pleased that the CRC has not placed arbitrarily low limits on the number of

³ [Masunaga, Samantha and Avery, Taylor, Black-owned businesses face a system set up against them. COVID-19 makes it worse, Los Angeles Times, Jun. 20, 2020.](#) See also [Glantz, Aaron and Martinez, Emmanuel, For people of color, banks are shutting the door to homeownership, Reveal, Feb. 15 2018.](#)

licenses available in other classes at the state level. However, these efforts are stymied by municipal ordinances that limit the number of businesses that are able to operate within a jurisdiction. This is particularly true in municipalities that quietly approved prospective applicants without providing real notice to the public about the process and timeline for municipal approval.

A number of New Jersey municipalities have also introduced ordinances that would require applicants to pay significant non-refundable fees as part of a local endorsement process.⁴ Local ordinances that impose high costs on applicants undermine efforts to create equity in the industry, and essentially serve to ensure that only those with the most access to capital are able to compete.⁵ The CRC should issue guidance on setting reasonable local fees, and the importance of building equitable and inclusive opportunities for access when designing a local endorsement process as implementation continues to roll out. The CRC should also urge state lawmakers to pass legislation to limit high municipal fees.

Municipalities can also set up local equity programs to provide additional supports to local entrepreneurs. To incentivize municipalities to set up these programs, we recommend that the CRC offer grants or matching funds to municipalities that create local equity programs. These programs should include the supports recommended at the state level, such as financial, technical, and legal assistance, as well as supports to aid in property procurement, such as creating shared-use facilities and subsidizing property purchasing or renting from the municipality. Such equity programs should prioritize long-time residents of the municipality and those most impacted by the criminalization of marijuana.

Other states have utilized similar ideas to incentivize local equity programming. For example, California has a Cannabis Equity Grants Program for Local Jurisdictions, which allows municipalities to apply for funding to support local equity applicants and equity licensees.⁶ New Jersey should create a similar system to further build equity into the industry.

Navigating the Municipal Process

One hurdle faced by potential applicants is locating the relevant ordinances and application processes for municipalities where they may be interested in starting a cannabis business. The CRC can alleviate this challenge by compiling ordinances and application materials from all the municipalities that allow for cannabis businesses to operate locally into a central, searchable database. To ensure the database does not contain outdated information, we also recommend that the CRC request that municipalities provide any updated ordinances and application materials to the CRC within five business days.

Data Privacy Protections

As marijuana remains illicit at the federal level, noncitizens can experience adverse consequences within the federal immigration system for cannabis sale or use. As such, it is essential that any systems used to track the transfer or sale of cannabis products or employment within the cannabis industry remain inaccessible to federal immigration authorities. We encourage the CRC to build in stringent privacy standards to ensure that this data remains protected.

Public Education and Outreach

The emerging cannabis industry has the potential to provide new opportunities to people across New Jersey seeking to start a business in their community. However, as noted throughout this memo, creating an inclusive and diverse industry requires intentionality and a commitment to providing funding, technical assistance, and other resources. As a supplement to the other recommendations included in this memo, we

⁴ [O-21-13, Ordinance of the City of Bayonne regarding cannabis licensing, 3/17/21.](#)

⁵ [Bedford, Toni and Beland, Amanda, Mass. Cities And Towns Demand Large Payouts From Marijuana Companies, WGBH, Feb. 27, 2020.](#)

⁶ [Cannabis Equity Grants Program for Local Jurisdictions](#)

encourage the CRC to provide public education and conduct outreach to state and local organizations, such as community groups and employment hubs, about opportunities for state revenue investment in local communities and opportunities within the cannabis industry. There must be a particular focus on outreach to organizations led by or working with individuals who have been most harmed by cannabis prohibition, and we urge the CRC to translate public education and application materials and provide interpretation for public events in the top ten languages most commonly spoken in New Jersey other than English.

Dedicated Funding and Support for the Office of Minority, Disabled Veterans, and Women Cannabis Business Development

P.L.2021, c.16 and the “Jake Honig Compassionate Use Medical Cannabis Act” signed into law in 2019, call for the creation of an Office of Minority, Disabled Veterans, and Women Cannabis Business Development within the CRC. This office is charged with increasing business ownership by groups that are typically underrepresented within the business industry. Specifically, the Office is meant to achieve fifteen percent ownership by minority business owners and fifteen percent ownership by disabled veterans and women. We urge the CRC to consider this percentage a floor – rather than a ceiling – for inclusivity within the industry. In order to ensure that the Office is able to meet and surpass its goal, we recommend that the CRC ensures that the Office has an adequate budget and staff to support extensive programming and supports it with necessary staff.

Setting the Social Equity Excise Fee

We were pleased to see that the social equity excise fee was set to the maximum possible amount for “useable” cannabis within the proposed final regulations, but urge the CRC to increase the amount assessed on “unusable” cannabis to at least half of the fee assessed on “usable” cannabis. This would allow the CRC to collect additional revenue for programming to support municipalities and individuals most harmed by marijuana criminalization.

Allocation of Revenue from the Social Equity Excise Fee

P.L.2021, c.16 created a social equity excise fee to be assessed on cannabis cultivators and charged the CRC with making recommendations to the New Jersey Legislature about how the money should be allocated for community reinvestment and creating equity within the industry. While the CRC conducted three public hearings to inform their recommendations to the Legislature, the recommendations were not approved and shared with the Legislature until after the FY2023 budget was already signed into law by the Governor. Going forward, we urge the CRC to conduct hearings earlier and to share recommendations with the Legislature no later than the Governor’s proposed budget is released each year.

We also encourage the CRC to commit to a more robust and participatory process, including convening at least three hearings in each region of the state and partnering with community organizations in impact zone municipalities to solicit community input on the development of these recommendations.

As part of this process, the CRC will also determine where revenue raised through the social equity excise fee should *not* be allocated. It is our position that revenue should not be allocated to support already robust budgets for policing, drug recognition experts (DREs), or other drug enforcement. Cannabis prohibition, and the drug war broadly, has resulted in decades of increases in funding for police and other criminal legal system actors, at the expense and disadvantage of communities across the state. In making recommendations to the Legislature, we urge the CRC to prioritize funding for services and programs that help communities thrive rather than perpetuating the injustices of our current system.

Create a Social Equity Excise Fee Advisory Board

In addition to the participatory public input process detailed in the previous section, we urge the CRC to create a Social Equity Excise Fee Advisory Board to inform the CRC’s recommendations to the

Legislature regarding the allocation of the social equity excise fee revenue. We recommend that this advisory board include nine individuals from across the state who have directly experienced the harms of criminalization, either through the criminal legal system or through one of the many systems that are impacted by criminalization, including but not limited to child welfare, housing, immigration, education, and employment. It may also include advocacy organizations and experts in criminal legal system reform, tax and economic policy, and drug policy. Should the CRC decide to convene such an advisory board, the ACLU-NJ can provide recommendations on board structure, roles, and processes to ensure it is a just and effective one.

Data Collection and Reporting

Per P.L.2021, c.16, the CRC is required to share data on marijuana-related arrests, the diversity of the cannabis industry, and other related data with the Governor and Legislature on an annual basis. However, while the law does not explicitly call on the CRC to share the annual report with the public, we urge the CRC to make it available to members of the public on the CRC website at no cost.

We also urge the CRC to share data on marijuana-related policing on a quarterly basis, following the schedule for reporting laid out for the NJ State Police in P.L.2021, c.19, the state's marijuana decriminalization bill. Moreover, we encourage the CRC to supplement its data collection and reporting on the composition of the cannabis industry with data on the participation of those with equity designations and data on employee demographics within the industry.

We recognize that some of the recommendations contained within this comment will require action by the Legislature. We request that you uplift these ideas to the Legislature and Governor's Office using your platform as the State's authority on the cannabis industry. As we have seen in other states, including Massachusetts, a cannabis regulatory body can play a key role in educating lawmakers and shaping legislation aimed at creating equity.

Thank you for your consideration of these recommendations and your partnership in building an inclusive and equitable cannabis marketplace in New Jersey and participatory processes for determining community reinvestment.