



Hudson Valley Cannabis Industry Association And The New York City Cannabis Industry Association Social And Economic Equity Committee

Social Equity Pillars For New York's New Cannabis Regulations

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Introduction

For years cannabis advocates in New York fought, putting their lives and families on the line to right the wrongs of prohibition and end the War on Drugs. After seven years of an active legislative battle, in March 2021 legislation passed to allow for and regulate adult-use consumption. The Marihuana Regulation & Taxation Act (“MRTA”), which was sponsored by Assembly Majority Leader Crystal Peoples-Stokes and Senator Liz Krueger, is rich with language that explicitly acknowledges harm caused by the disparate enforcement of associated policies and attempts to put pieces in place to support the repair of damage. In spite of their good intentions, we know the devil is in the details and those details are created through the rules and regulatory process. We have seen things go horribly wrong in many states at that stage causing additional devastation to be experienced.

Fortunately, New York has an opportunity to learn from the trials of others. Considering the importance of New York based on scale and influence, those with decision making power must do all that can be done to create a fair and inclusive industry. According to the legislation, a Cannabis Control Board (“Board”) and its Chief Equity Officer (“CEO”) are required to devise a “social and economic equity plan” to fulfill the law’s intents and requirements related to social equity participants. The Board and CEO are encouraged to form advisory groups and committees that can incorporate insight and perspective from informed members of the community into the roll-out of the social and economic equity plan. The NYCCIA and HVCIA Social and Economic Equity Committee, in collaboration with other Association members, offer the following five pillars for consideration, as well as our support. We’d be honored to have selected members of the Association participate in an advisory capacity to address all aspects of the regulatory process with equality and inclusion as a central thread.



Pillar 1: Reflective Regulatory Bodies

The MRTA calls for the creation of a structure that in totality has an ethical obligation and sworn responsibility to create, implement and monitor New York's legal cannabis industry. The Office of Cannabis Management, The Cannabis Control Board and the Community Advisory Committee are made up of appointments and staff selections put in place by the Governor, who holds a supermajority of placements, and members of the Senate and Assembly.

We believe that the equity of the market depends heavily on the diversity and inclusion of these bodies. The structure must be reflective of the make-up of the state, from the First Nations to culturally diverse boroughs, towns, and municipalities with consideration given to communities that have been disparately impacted and continue to be harmed by the hyper enforcement of War on Drugs policies.

Pillar 2: Amnesty/Safe Harbor

The legacy market is worth three times as much as the legal market and inclusive of a loyal customer base, who like the prices they are paying and the quality they are receiving. To use prohibition-era tactics such as force and threats of continued criminalization to squash the legacy market has not and will not work. If we are truly in a phase of harm acknowledgment and repair then what is appropriate is a welcoming in. To put it plainly, the growth and sustainability of the legal market is dependent upon the successful and immediate transition of legacy operators. This is not just imperative for New York. Federal legalization affects how states will handle this issue and it is in our country's best interest for inconsistencies between federal and state positions on decriminalization and legalization to be rectified.

Amnesty, in this instance, would free a person or group of people from prosecution and any and all legal remembrance of all non-violent activities and acquired assets associated with cannabis. This would be done as a way



to acknowledge harm, to bring about change in public opinion and to address the need for reconciliation between systems of government and disproportionately affected groups of society.

The following are necessary for this process:

- A clear path into the legal market with a streamlined process to minimize unnecessary hardships
- Prohibitive barriers such as licensing fees to be removed and/or heavily discounted
- Clearance to use assets, finances and plant products in current possession, with proper testing
- Access to legal industry expertise to support and assist with the nuances of transitioning

Pillar 3: No NYCHA/ HUD Exclusion, Eviction, Denial of Federal Money

Despite the fact that more and more states are legalizing recreational and medicinal use of cannabis, residents living in federal public housing projects or using federal housing vouchers face punishments and possible evictions for exercising their right to legally use cannabis. Aside from use restrictions, typically, public housing rules and regulations also prohibit any sort of home cultivation of cannabis. This needs to change and to change quickly. This unfairly punishes some of the most vulnerable citizens in our society, fails to alleviate the continuous harm and over policing of persons and communities that have been disproportionately affected by the War on Drugs and prevents public housing residents from participating in a legal marketplace which goes against Social Equity and Inclusion.

This is true all across the country and even here in New York. The New York City Housing Authority (“NYCHA”) and city-located federal housing officials



have yet to act on proposals to reduce penalties and mandate the use of enforcement discretion to allow consumption, possession and cultivation by NYCHA residents. In this respect, Chicago is doing a better job than New York City. Illinois recently rectified its persecution of cannabis use by legalizing reasonable recreational use and allowing home cultivation. But there was a misstep on the path to social equity when, in November 2020, the Chicago Housing Authority sent out a notice to residents stating that cannabis use would still be prohibited and might still result in eviction, exclusion and or loss of federal subsidies.

However, Mayor Lori Lightfoot intervened and now the Chicago Housing Authority (CHA) has issued a new policy that will -- through thoughtful use of enforcement discretion -- allow public housing residents to participate in home cultivation and in the cannabis marketplace. Now the CHA will take the following factors into account when reviewing cannabis-related issues as possible lease violations:

- Disability status
- Time, nature and extent of the cannabis-related conduct
- Other conduct within context
- How lease termination will affect an entire family
- Overall impact of cannabis-related activity
- And more

These are the kinds of changes that must begin immediately here in New York City. It is disturbing that NYCHA officials seem unaware and unconcerned about these legal, social and equity issues. Legalization of cannabis use was – and is – crucially important for communities that have been disproportionately stigmatized and victimized by the War on Drugs. But



the home is where the heart is, as the saying goes. If home cultivation and participation in the cannabis marketplace is allowed for those living in private homes and apartments, then the same should be true for those living in federally funded homes and apartments. Everyone should have the equal protection of the laws, especially those that are living in public housing and Section 8 housing. If New York allows cannabis use and home cultivation, why are NYCHA residents treated like second-class citizens? Residents of public housing deserve respect and deserve clarity. It would be contrary to the legislative intent of social equity to potentially exclude one million New Yorkers living in NYCHA and HUD Housing. This is Equity and Inclusion:

- Full access to the plant ... home grow, consumption, possession, without the loss of federal benefits inclusive of New York State retaining its \$2 billion annual HUD funding.
- Embracing the legislative intent of the bill which is harm repair and inclusivity. To exclude one million plus New Yorkers who live in NYCHA and HUD housing from participating in this industry is in direct contradiction.
- No sharing of the Medical Cannabis Patient Database with the ATF especially for those Medical Cannabis Patients who are New York State registered gun owners at the risk of those gun owners losing their gun licenses.

Pillar 4: Banking Access and Funding Opportunities

The once illegal status of cannabis in the State of New York and the nation had a disproportionately negative impact on the African American and Latin X communities. Chapter 7-A of the recently enacted New York State Cannabis Law (“cannabis law”) confirms that criminalizing cannabis was ineffective at reducing cannabis use. Instead, it resulted in devastating consequences, including mass incarceration and a series of cascading complex generational traumas that contributed to the unprecedented wealth



and income gap between whites and people of color in the United States. According to a recently published Federal Reserve Board survey, the median white household has a net worth of \$171,000, ten times the net worth of the median black household, \$17,100. The ACLU looked at arrest rates from all 50 states and the District of Columbia between the years of 2001 and 2018 and found that, on average, a black person was 3.64 times more likely to be arrested for cannabis possession than a white person, even though black and white people use cannabis at similar rates. The intent of this cannabis law is, in part, to address the collateral damage that illegal cannabis has on people of color by making substantial investments in their communities and accelerating their ability to seize the opportunity to provide generational wealth creation by legalizing cannabis.

The following insight and recommendations are about the need for and the means to gain access to banking and financial services, as well as stimulating economic equality and inclusion for social equity cannabis participants.

Put social equity applicants first in line - The first step to fulfilling the legislation's commitment to communities that were disproportionately impacted by illegal cannabis is to make sure that social equity applicants are the first ones to receive licenses in every category, and that that at least 50% of licenses in every category are set aside for social equity applicants. Similar promises have been made but not honored in other states, but New York has an opportunity to ensure this happens by instituting an advance application period, EZ application forms or free application assistance for social equity applicants.

Make upfront capital and wraparound business services available - Starting a business, including one involving adult use cannabis, requires significant upfront capital. It can be extremely expensive to fund tangible items like construction, inventory and equipment, as well as professional services from lawyers to assist with everything from applying for a business license to completing an application for an adult use license, or a qualified accountant to help navigate tax rules and regulations. The licensing fees



should be reduced, low and or waived and not overly burdensome, such that they do not become a barrier to entry. Since the term “low” is relative, multiple financing options should be available for new social equity applicants that demonstrate need. These should include zero-interest loans, grants and loan forgiveness for failed businesses, an application fee discount schedule from 50% to zero, and a waiver of the first license renewal fee. The Board can support social equity participants by providing low-cost financing and professional services to establish and maintain their startup businesses. The capitalization of the license to profitability thus sustainability is necessary.

Provide information and education - The CEO can support social equity participants by providing information, education services and facilitating access to traditional, alternative, public and private forms of capital and financial services to start a cannabis business.

- Business acumen and education gained formally or through experience can be the difference between the success and failure of a good idea. The CEO should leverage the SBA and other public agencies and resources to make available and deliver business financial education specifically for the cannabis industry. Delivery of cannabis business education can be offered both in person and virtually and administered through specially created programs or in partnership with institutions that already offer a cannabis curriculum. Financing for education should be need-based and provided free of charge for those who qualify.
- Education and information about the ecosystem of traditional and alternative investments that look for opportunities to fund social equity cannabis participants needs to be provided. There should be a web-based clearing house for equity capital, debt and liquidity information, including the availability of urban development funds, community reinvestment grants, private equity, family office, hedge funds, angel investors and real estate funds for social equity participants.

Competitive Advantage – Adult-use cannabis is an opportunity to not only level the playing field but also to give a leg up for impacted communities that were economically and financially stunted by the criminalization of cannabis and the War on Drugs. Registered organizations and legal medical cannabis businesses already have an industry head start, and have built formidable brands that will be stiff competition.

- Some of the criteria for license approval under the new cannabis law may be costly and challenging to fulfil, and result in being an unintended barrier to entry for social equity applicants. The Board and CEO should assess the individual criteria for application approval and determine which components would be, at least initially, overly burdensome for some social equity applicants. Cutting the red tape by providing relief from certain application criteria, based on economic capability, is in line with the cannabis law’s intent to provide additional support to participants who have incomes lower than the residential county median.
- The authorization of the “Micro Business” license is characterized as “limited’ in the cannabis law. Other clauses talk about the imposition of price controls, quotas and caps. There are provisions that limit the canopy, plant count, square footage, and the amount of cannabis allowed to be grown, processed, distributed or sold. The Board should allow the market forces of supply and demand to determine the size of the adult-use cannabis businesses. Such artificial limitations run contrary to the concepts of capitalism, and could hamper the growth and wealth creation potential of social equity participants.
- The ownership and management of the existing registered organizations in New York State lacks diversity and social equity representation. Registered organizations have an advantage in that they leverage economies of scale by having a fully integrated business, having three adult-use retail establishments, and benefiting from relationships with research labs. Concerted efforts are underway to include cannabis recommendations and prescription into mainstream health facilities, which increases the potential for health insurance coverage of cannabis usage for medical purposes. One



of the exciting elements stemming from legalizing cannabis is the wide array of possible applications of CBD and the resulting streams of revenue. Without a medical cannabis license or something equivalent thereto, social equity participants will be shut out of this important and lucrative sector of the market. The Board should make additional medical cannabis categories and licenses available to allow social equity participants an opportunity to compete on a level playing field.

Get the corporate community involved - New York State should establish public-private partnerships (PPPs) specifically for social equity cannabis participants. PPPs have demonstrated a positive impact on the cannabis industry in other regions like Canada. For example, in 2017, a small Ontario town entered into a partnership with a cannabis company that resulted in the creation of new full time jobs providing \$3 million in annual revenue that supported more than 60 families, and generated \$12.5 million in economic benefit to the local businesses. By developing cannabis PPPs, the state can incentivize corporations via tax rebates, grants, loans, and other financial schemes to create jobs, provide job training, and contract with social equity businesses and service providers.

Pillar 5: Support

Data shows that access to licenses is just half of the battle. As new BIPOC entrepreneurs enter into the industry and efforts for legacy operators to transition into the legal industry ensue, assistance will be key for short and long term goal accomplishment. Incubator programs to help educate and support applicants with the overall process, sub-steps and regulatory, as well as timing to submit a thorough and ultimately, winning application. Focus should be on assuring that SE applicants/small business are not disadvantaged by the process itself when compared to large, corporately funded applicants.

- Create vibrant communication channels to keep applicants updated on status and other issues affecting their licensing (one of the authors saw a webinar where an operator in Michigan was praising their oversight board



for their proactive and positive communications that made doing business there easier/better than other places - something to that effect in New York State would be great).

- Provide guidance with compliance issues (ranging from adhering to the regulations to COVID-19 issues, such as mandatory vaccines and/or testing for employees), including providing user-friendly guides for navigating regulatory compliance and allowing for staff to be available to answer questions and provide assistance
- Provide resources to navigate the application process, inclusive of associated costs, from professional fees to brick & mortar services
- Securing a notice of intent for a physical location as a part of the application process should suffice as opposed to the financial burden of entering into a leasing agreement without surety of license.

Additional support needs associated with physical locations include but are not limited to:

- Construction
- Architects
- Lawyer(s)
- Electricians
- Plumbing
- Grow Room Set-Up
- Licensing and Application Fees
- Real-Estate Broker
- Taxes + Fees from the State + County
- COVID and ADA Compliance.
- Security Plan both Internal and Environmental; 24 hour Armed Security due to lack of banking.
- Metric and Inventory Tracking
- Cybersecurity and Data Privacy Plan which is required in New York State.



- Labor Peace Agreement
- ADA Compliance

These five pillars are major pieces that are necessary for the realization of repairing the harm caused by the War on Drugs and the creation of an equitable and inclusive legal cannabis market. They must be a part of local and federal conversations in order to uphold the Social and Economic Equity intent of the MRTA and for the growth and sustainability of the legal industry. The NYCCIA and HVCIA welcome the opportunity to work with appropriate bodies and all stakeholders to help make the New York market equitable and sustainable.