City & County of San Francisco

Cannabis Equity Report

Office of Cannabis, Human Rights Commission & Controller's Office

November 1, 2017

To the Mayor and Board of Supervisors:

On behalf of the Office of Cannabis, the Human Rights Commission, and the Controller's Office we proudly present the enclosed "Cannabis Equity Report" the Mayor and Board of Supervisors.

Our legislative mandate: produce a report analyzing available data related to disparities in the cannabis industry, and providing recommendations regarding policy options that could (A) foster equitable access to participation in the industry, including promotion of ownership and stable employment opportunities in the industry, (B) invest City tax revenues in economic infrastructure for communities that have historically been disenfranchised, (C) mitigate the adverse effects of drug enforcement policies that have disproportionately impacted those communities, and (D) prioritize individuals who have been previously arrested or convicted for marijuana-related offense.

We find that the War on Drugs had disastrous impacts on San Francisco. But with this sad history come opportunities to do something important and positive. As the City considers our regulatory structure for this emerging industry, we can do so thoughtfully and intentionally, by enacting policies that undo the racist practices of our past. This report includes a number of findings and recommendations to that end.

A successful program will ensure a more inclusive and diverse industry through ownership and workforce, an expansion of educational opportunities, an end to policies that burden communities that have been disproportionately impacted by the War on Drugs, and investment in communities that are disenfranchised because of the consequences of past drug policies.

This report is submitted with gratitude to the many contributors, including Office of the Controller, the Human Rights Commission Director and staff, Dr. William Armaline, Director of the Human Rights Program and an Associate Professor in the Department of Sociology and Interdisciplinary Social Sciences [SISS] at San José State University, Dr. Mike Males, Senior Research Fellow at the Center on Juvenile and Criminal Justice. The report was further advised by the work of the San Francisco Cannabis State Legalization Taskforce, Human Rights Commission staff convening of stakeholders, the feedback of experts and the community during the October 21, 2017 District 10 Cannabis Forum, the San Francisco Chapter of the California Growers Association, and numerous City departments.

We are grateful for your partnerships and look forward to working with you, San Francisco's policymakers, the community, and other impacted stakeholders as the City moves forward with development a thoughtful and impactful Cannabis Equity Program.

Table of Contents

List of Figures

List of Appendices

Appendix Letter	Appendix Name
A	Center on Juvenile and Criminal Justice Drug Arrests Report (2017)
B	Full List of Cannabis-Specific Statutes Reviewed
C	Equity Program Components and Targeted Barriers to Entry
D	Existing Resources
E	Taxation: State Structure & review of Other Jurisdictions' Tax Structures

I. Executive Summary

The case for equity is clear. For decades, the War on Drugs has had consequential impacts on communities of color in San Francisco. The impacts of this disproportionality are acutely felt today: poverty, education gaps, and criminal records are the vestiges of explicitly and implicitly racist drug enforcement policies.

The City's challenge today is also our opportunity. As we move towards embracing a new industry, we must take the opportunity to harness its potential to begin to restore historic inequities. Some cities have already created industry-specific equity programs, but San Francisco should develop and implement a program that makes sense for the residents of our City, balancing our priorities and reflecting our values.

This report was drafted by the staff of the Office of Cannabis, Human Rights Commission, and Controller's Office, with assistance from numerous City and community partners. It examines the local, state and national history of cannabis regulation, the War on Drugs, and its impact on our communities. It reviews known characteristics of the City's existing cannabis industry and discusses barriers to entry into the industry. This report also looks at other jurisdictions' equity programs for lessons learned. Finally, the report makes recommendations meant to inform the creation of San Francisco's Cannabis Equity Program. Outlined below are key findings and highlights across the various sections within the report, and a summary of the final recommendations.

Equity Analysis

- San Francisco has always been on the forefront of cannabis legalization.
- African Americans in San Francisco have endured disproportionately higher felony drug arrests and crackdowns.
- More recent decriminalization efforts helped to narrow those gaps, but people of color still interact with the justice system at a rate far higher than white San Franciscans.
- Significant social hurdles result from disproportionate arrest and incarceration rates.
- Although local data is incomplete at best and misleading at worst, it reveals a strong correlation between poverty and cannabis arrests.
- Taken together, this paints a troubling picture of the War on Drugs' impact on communities of color, even in a progressive city like San Francisco.
- Data suggests that San Francisco's cannabis industry (and the national industry) skews disproportionately white and male.

Barriers to Entry

- Financial and real estate barriers present major equity hurdles to individuals seeking to enter the regulated cannabis industry.
- Other barriers include the soft skills of entrepreneurship, compliance, and legal complexity.
- While Prop. 64 clears the way for people convicted of cannabis crimes to enter the industry, a past criminal history can still present significant challenges, like accessing financing or signing a lease.
- Where the City allows cannabis businesses to operate will have important impacts on whether we can grow the industry equitably.

Cannabis Equity Programs Analysis

- Oakland and Los Angeles both have real or proposed equity programs that may serve as a good model for San Francisco.
- Both cities aim to help people either arrested for cannabis or residents of high-enforcement neighborhoods, and offer a suite of fee waivers, technical assistance, and subsidized loans to equity applicants.
- Other cities and states also put in place policies to try to correct for historical imbalances.
- San Francisco should select the policy components that make the most sense for our city.

Findings & Recommendations

The Office of Cannabis and supporting agencies chose to present a series of findings and recommendations to guide the Mayor and Board of Supervisors as they legislate an equity program. The following policy areas of focus represent this report's core recommendations:

1. **Eligibility:** inform eligibility criteria with data, set tiered eligibility criteria to allow most affected groups to receive higher-value benefits, while extending some benefits to a wider range of applicants impacted by the War on Drugs.
2. **Permitting:** prioritize and assist Equity Applicants during the permitting process, and establish an incubator program to incentivize partnerships between Equity Applicants and other cannabis operators.
3. **Community Reinvestment:** direct new potential funding from local cannabis taxes or the state toward programming for communities impacted by the War on Drugs. Businesses should also be required to describe how their business will provide community benefits.
4. **Workforce Development:** promote equitable employment opportunities at all cannabis businesses, especially for formerly-incarcerated individuals and those living in neighborhoods impacted by the War on Drugs. Expand First Source and Local Hire to cover the cannabis industry.
5. **Financial & Capital Access:** take an active advocacy role to open up banking services, particularly through state and local credit unions, for the cannabis industry.
6. **Technical Assistance:** direct Equity Operators to existing technical assistance resources in the City, and create new technical resources within the Office of Cannabis. Facilitate partnerships with other existing Operators and non-profits to help overcome technical barriers.
7. **Criminal History:** hold streamlined expungement events for citizens convicted of eligible cannabis offenses.
8. **Stakeholder Engagement:** create culturally sensitive and district-specific outreach, and extend Task Force membership to include representatives from communities with high concentrations of individuals eligible for Equity status.
9. **Public Awareness & Education:** deploy an outreach campaign for the Equity Program.
10. **Data Collection & Accountability:** gather data on General and Equity Applicants on a regular basis to analyze the outcomes of the Equity Program, and use this data to refine the program. Enforce compliance of commitments made by applicants.
11. **Modification & Course Correction:** permitting in phases and communicating with stakeholder groups will allow for steady improvement of the regulatory structure.
12. **Land Use & Zoning:** create land use controls that mitigate overconcentration in disenfranchised neighborhoods.

II. Introduction

Mayor Lee has designated San Francisco's vision to be a safe, vibrant city of shared prosperity. Guided by the Human Rights Commission, the City incorporates strategies and programs that address the challenges resulting from prejudice, intolerance, bigotry, and discrimination. The City undertakes these challenges with the knowledge that the cumulative impact of systemic discrimination has depressed prosperity for us collectively.

In 1964, the stroke of a pen ended legal discrimination in the United States. However, as our country and our city has learned, the deletion of explicitly racist words, amendments to explicitly racist laws, and the terming out of explicitly racist policymakers were insufficient to address centuries of racialized outcomes. In the United States and in San Francisco, the legacy of those discriminatory laws remains: communities of color are still disproportionately incarcerated, unemployed, and impoverished.

The San Francisco Human Rights Commission has developed an equity framework, known as Engineering for Equity, for all City and County of San Francisco departments, including the Office of Cannabis, to provide the tools and strategies essential to making our government services more equitable for all. The equity framework helps city departments create and uphold transformational systems and approach actual and/or perceived limitations with innovation. It reflects the belief that city government can support resilient people and, in partnership with communities, can help develop foundations that uplift all.

This framework builds on shared definitions, developed in the interest of creating alignment across City departments working to ensure that all people are seen and heard fairly. Accordingly, this report adopts the Human Rights Commission's definitions for equity and community:

- **Equity:** Full and equal access to opportunities, power and resources, whereby all people may thrive and prosper regardless of demographics.
- **Community:** Stakeholders across San Francisco's diverse neighborhoods who are either benefited or burdened by public policies.

The legalization of adult-use cannabis presents an urgent opportunity to learn from the past and create accountable mechanisms to achieve shared prosperity. In anticipation of this, on September 5, 2017, the Board of Supervisors unanimously passed Ordinance No. 170859, creating the Office of Cannabis and requesting that the Office of Cannabis, the Human Rights Commission, and the Controller's Office deliver to them and the Mayor no later than November 1, 2017, a report analyzing available data related to disparities in the cannabis industry, and providing recommendations regarding policy options that could (A) foster equitable access to participation in the industry, including promotion of ownership and stable employment opportunities in the industry, (B) invest City tax revenues in economic infrastructure for communities that have historically been disenfranchised, (C) mitigate the adverse effects of drug enforcement policies that have disproportionately impacted those communities, and (D) prioritize individuals who have been previously arrested or convicted for marijuana-related offense.

As detailed in this report, the War on Drugs, has had disastrous impacts in San Francisco. In this city and in cities across the nation, these effects, including the creation of generational poverty, loss of property, community degradation, and loss of educational and employment opportunities, have been disproportionately shouldered by the poor and people of color, specifically African American and Latinx populations.

If the City is serious about improving the quality of life in San Francisco and helping those who have been disproportionately burdened by public policies like the War on Drugs, it must address systemic

barriers and understand the role that policies, practices, and procedures play in creating the current health, safety, economic mobility and community environment circumstances. We must remember the part these factors play in developing an equitable, inclusive and diverse city.

San Francisco is currently considering a proposed regulatory structure for local commercial cannabis activity beginning in 2018. The Commercial Cannabis Regulations Ordinance contemplates the creation of an Equity Program and makes clear that applications for adult-use commercial cannabis activity will not be made available until the City establishes a program designed to foster equitable access to participation in the cannabis industry, including access to workforce and ownership opportunities.

It is our hope that this report and its recommendations help inform the development of a robust equity program that ensures a cohesive, results-oriented strategy. A successful program will strengthen equitable access to the cannabis industry workforce, encourage entrepreneurship, and expand educational opportunities. It will help eliminate discriminatory institutional and structural policies and practices and strive to curtail the stigma against activities now legal under Proposition 64. This will require relevant departments to consider the impact of their services and develop transformational approaches that cut across multiple institutions, to disrupt institutional culture, and shift values and political will to create equity.

III. Equity Analysis

Methodology

This Equity Analysis section first examines the history of drug enforcement policies in the United States and in California, which informs this overall equity analysis. This section also examines arrest rates in San Francisco, starting with a broad view of all drug arrests and narrowing to cannabis arrests. It uses census data and arrests data to highlight which populations in San Francisco have experienced disproportionate levels of cannabis arrests. From there, it defines the size and scope of low-income communities in San Francisco, and geospatially cross-references cannabis arrests with low-income census tracts. The overlap provides some insight into the correlation between cannabis law enforcement and income status, highlighting which local communities have likely been economically disadvantaged by cannabis law enforcement. Finally, this analysis looks into the demographics of the existing legal cannabis industry, from a national perspective and a local one, exhibiting which populations have begun to economically benefit from gradual cannabis decriminalization.

Historical & Legislative Context of Cannabis Policies

United States Drug and Cannabis Policy

Food and drug regulation began in the United States with the Federal Food and Drug Act of 1906. The law permitted the U.S. Department of Agriculture's Bureau of Chemistry to test, regulate, and standardize commercial substances.[1] Between 1906 and 1942, the federal government primarily regulated narcotics through taxation, with the exception of opium and cocaine. The Opium Exclusion Act of 1909 limited opium imports, partially over legitimate concerns regarding the drug's level of addiction and health effects. However, its passage was contemporaneously supported by xenophobic fears of East Asian immigrants, foreshadowing the federal government's racialization of drug policy throughout much of the 20th century.[2] The Harrison Act of 1914 created a prescription registry and imposed a special tax on narcotics imports.

In 1927, Congress reorganized the drug regulatory structure by establishing the Food, Drug, and Insecticide Administration, which was shortened to the Food and Drug Administration in 1930. 1930 brought further administrative and bureaucratic changes, including the transfer of powers from existing agencies to the newly created Bureau of Narcotics.[3] The Bureau of Narcotics was given broad jurisdiction over controlling narcotics, and its first commissioner, Harry J. Anslinger, pushed cannabis regulations further towards criminalization and as an outlet for discrimination and marginalization.[4]

Throughout his tenure as Narcotics Commissioner, Anslinger gave speeches across the United States, portraying cannabis as, "a scourge on society, ruining the moral fabric of America...".[5] Anslinger often implicated Mexicans, Mexican-Americans, and African Americans as drug users, even stating explicitly that Mexico was responsible for introducing cannabis to the United States.[6] In *Marijuana: A Short History*, John Hudak connects the racialization of cannabis policy to wider geopolitical events at the time. After the

---

[1] Hudak, John. *Marijuana: A Short History*. Washington, D.C.: Brookings Institution Press, 2016, 32.
[2] Ibid., 34.
[3] Ibid., 35.
[4] Ibid., 35-36.
[5] Ibid., 36.
[6] Anslinger, Harry. *Marijuana, Assassin of Youth*. The American Magazine, 124, no. 1 (1937).

Mexican-American War (1846-1848) and continuing into the early 20th century, America received an influx of Mexican immigrants, which further exacerbated existing racial tensions. Hudak writes, "As Americans sought a pretext to vilify this new immigrant community, they found an ideal culprit in marijuana...fear and anti-immigrant sentiment prompted state-level bans on cannabis...".[7]

Anslinger conducted public opinion campaigns to support the criminalization of cannabis at the state and federal levels. By the time Congress passed the Uniform State Narcotic Act in 1932, urging states to unify narcotics laws and implement criminal punishments, 29 states had already criminalized the use of cannabis.[8] The Marihuana Tax Act of 1937 levied a tax on every group involved with producing, distributing, selling and purchasing cannabis, including importers, growers, sellers, prescribers, physicians, veterinarians, patients, and other consumers. Failing to pay any of these taxes resulted in heavy fines and jail time.[9]

Despite facing some objections against implementing harsh punishments for cannabis offenses, Anslinger and Congress continued to criminalize cannabis in stricter terms.[10] The Boggs Act of 1951 created mandatory minimum sentences for those convicted of drug-related offenses. These sentences were soon increased with the Narcotics Control Act of 1956.[11]

The counterculture movements of the 1960s pushed back against social norms and government actions and policies that were perceived as unjust.[12] Cannabis took on a visible role within some of these countercultures, as well as within the music industry and media. Cannabis use increased among American youth, and the United States government, perceiving itself as under siege, responded again with increased criminalization.[13]

Presidential administrations from the 1950s onward frequently pushed the criminalization of cannabis alongside urgent social narratives. President Eisenhower's Interdepartmental Committee on Narcotics published a report in 1956 that detailed the harms of cannabis on youth and communities, without scientifically evaluating the impacts of cannabis usage.[14] One exception was President Kennedy's Advisory Committee on Narcotic and Drug Abuse, established with Executive Order 11076 in 1963, which found that drugs were not grouped together legally based on the risk of addiction or level of health effects, and even stated that mandatory minimums should be reconsidered.[15] However, Kennedy was assassinated shortly thereafter, and his successor, President Johnson, did not take action on many of the Committee's findings. .

Despite this, Lyndon B. Johnson had a relatively nuanced stance on drug usage, distinguishing between dealers and users and recognizing the public health and safety need for treatment. However, Richard Nixon's election in 1968 redirected the government's focus back to criminalization and punishment.[16] After Congress passed the Controlled Substances Act in 1970, President Nixon formally declared a "War

---

[7] Hudak, John. *Marijuana: A Short History*, 38.
[8] Ibid., 37.
[9] Ibid.
[10] Ibid., 38-39.
11 Ibid., 39.
12 Ibid., 41-42.
13 Ibid., 42.
14 Ibid., 43-44.
15 Ibid., 46.
[16] Ibid., 48.

on Drugs".[17] Nixon, however, had been focused on this war for years, as a part of his "Southern Strategy," which sought to marginalize vulnerable populations, especially minorities.[18] In fact, Nixon's adviser, John Ehrlichman, was recorded in a 1981 interview with Lee Atwater, saying:

We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.[19]

The events and actions that led to Nixon's formal War on Drugs proclamation include a 1969 speech to Congress, in which Nixon declared cannabis a national threat; the Supreme Court case *Leary v. United States*; Operation Intercept, a military operation that seized contraband at the U.S.-Mexico border; and the 1969 Bipartisanship Leadership Meeting on Narcotics and Dangerous Drugs. [20]

The 1970 Controlled Substances Act is crucial because it formalized drug schedules, which categorized drugs into legal groups for sentencing and other purposes.[21] However, Congress, not the scientific or medical community, sorted drugs into schedules, placing cannabis in Schedule I alongside drugs with much higher levels of addiction and health effects.[22] The law expanded the government's powers for regulating drugs and gave Nixon the foundation for his upcoming War on Drugs.[23] Nixon's final substantial action in the War on Drugs was his proposal to Congress to reorganize the government agencies that regulate drugs and narcotics, the "Reorganization Plan 2 of 1973".[24] Congress approved and the Drug Enforcement Administration (DEA) was created within the Department of Justice. The DEA consolidated functions and jurisdictions and has consistently received significant increases in funding and employees since its creation.[25]

President Ford continued Nixon's tough rhetoric, expanding the United States' involvement in drug operations internationally. At the same time, Ford supported treatment and prevention, later revealing that drug addiction was a personal issue to his family. Like President Ford before him, Carter worked to stem international drug trafficking while attempting to reform aspects of drug policy at home. In his 1977 "Drug Abuse Message to the Congress," Carter laid out his vision to increase funding for research, create

---

17 Nixon, Richard. "Special Message to the Congress on Drug Abuse Prevention and Control, June 17, 1971." The American Presidency Project. Accessed October 30, 2017. http://www.presidency.ucsb.edu/ws/?pid=3048.
18 Hudak, John. Marijuana: A Short History, 50.
19 13th. Directed by A. DuVernay. Produced by H. Barish and S. Averick. United States: Netflix, 2016.
20 Hudak, John. Marijuana: A Short History, 51-52; Nixon, Richard. "Special Message to the Congress on the Control of Narcotics and Dangerous Drugs, July 14, 1969." The American Presidency Project. Accessed October 30, 2017. http://www.presidency.ucsb.edu/ws/?pid=2126.
21 The Diversion Control Division. "Title 21 United States Code (USC) Controlled Substances Act." U.S. Department of Justice. Accessed October 30, 2017. https://www.deadiversion.usdoj.gov/21cfr/21usc/811.htm.
22 Hudak, John. Marijuana: A Short History, 54.
23 Ibid., 55.
24 Nixon, Richard. "Message to the Congress Transmitting Reorganization Plan 2 of 1973: Establishing the Drug Enforcement Administration, March 28, 1973." The American Presidency Project. Accessed October 30, 2017. http://www.presidency.ucsb.edu/ws/index.php?pid=4159.
25 The Drug Enforcement Agency. "DEA Staffing & Budget." DEA.gov. Accessed October 30, 2017. https://www.dea.gov/pr/staffing.shtml.

federal prevention and treatment programs, and shift the government's regulatory focus to drugs with more severe health consequences. Carter's proposals were never realized.[26]

Like Nixon, Reagan incorporated drug policy into his broader political strategy. He continued to expand the United States' drug involvement efforts internationally while enhancing penalties and reducing defenses for the accused domestically.[27] Finally, Reagan expanded education and treatment programs, enlisting the help of First Lady Nancy Reagan. With Executive Order No. 12368, Reagan created the Drug Abuse Policy Office.[28] The Office quickly won a series of legislative successes, including the Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988.[29] All of these laws enhanced criminal punishments for drug-related offenses. The 1986 law expanded the crimes to which mandatory minimums applied, and the 1988 law enhanced these minimums.[30] In 1989, President H.W. Bush created the Office of National Drug Control Policy, replacing Reagan's Drug Abuse Policy Office. The director of this office is referred to as the "Drug Czar", whose influence in U.S. drug policy continues to this day.[31]

The 1988 law also increased funding for education programs, and redirected funds in other programs towards drug-related programs. Researchers have evaluated the effectiveness of drug education programs, and found limited, if any, effects on curbing drug use among American youth.[32]

President Bill Clinton incorporated kinder rhetoric when speaking about drug use, although his policies continued to intensify criminal punishments for cannabis.[33] For instance, the Violent Crime Control and Law Enforcement Act of 1994 intensified criminalization, introducing the "three strikes" provision for traffickers, and increased funding for prisons and local law enforcement.[34] After the 1994 law, arrests for cannabis users increased significantly. In 1991, there were around 327,000 arrests for cannabis-related offenses. By 2000, there were over 700,000.[35] Meanwhile, states began legalizing medical cannabis; some states authorized medical cannabis on the day Clinton was reelected to office.[36]

Public opinion about cannabis reversed became increasingly positive in the 1990s and 2000s,[37] a trend that has continued to the present. In 2000, 31% of Americans supported the legalization of cannabis. By

---

26 John Hudak. Marijuana: A Short History, 67-70; Carter, Jimmy. "Drug Abuse Message to the Congress, August 2, 1977." The American Presidency Project. Accessed October 30, 2017. http://www.presidency.ucsb.edu/ws/?pid=7908.

27 Hudak, John. Marijuana: A Short History, 73.

28 Reagan, Ronald. "Executive Order 12368: Drug Abuse Policy Functions, June 24, 1982." The American Presidency Project. Accessed October 30, 2017. http://www.presidency.ucsb.edu/ws/index.php?pid=42672.

29 Hudak, John. Marijuana: A Short History, 76.

30 Ibid.

31 Ibid.

32 Engs, Ruth C., and Fors, Stuart W. "Drug Abuse Hysteria: The Challenge of Keeping Perspective." Journal of School Health 58, no. 1 (1988): 26-28.

33 Hudak, John. Marijuana: A Short History, 81-82.

34 Ibid., 82-83.

35 King, R., and M. Mauer. "The War on Marijuana: The Transformation of the War on Drugs in the 1990's." The Harm Reduction Journal 3, no. 6 (2006).

36 Hudak, John. Marijuana: A Short History, 83.

37 Pew Research Center. "In Debate over Legalizing Marijuana, Disagreement over Drug's Dangers." Accessed October 29, 2017. http://www.people-press.org/2015/04/14/in-debate-over-legalizing-marijuana-disagreement-over-drugs-dangers/2/.

2013, nearly 58% of those polled supported legalization.[38] Much of this shift in public opinion is attributed to generational acceptance and an increase in the number of individuals who have tried or used cannabis.[39]

While campaigning for President, George W. Bush conveyed his support for allowing states to determine their own cannabis policies. During a campaign event in Seattle, Bush stated, "I believe each state can choose that decision as they so choose".[40] Despite this initial stance, President Bush's drug policies closely resembled those of his predecessors, focusing on international trafficking, law enforcement and treatment.[41] What's more, the Bush Administration frequently conducted raids on medical cannabis dispensaries, including dispensaries that functioned legally under state law.[42]

President Obama voiced support for the concept of medical cannabis, and promised a Justice Department Policy that would allow dispensaries to operate unimpeded. In a formal memo to United States Attorneys in 2009, Attorney General Holder wrote that the Obama Administration would end raids on cannabis distributors. It states that "...the prosecution of significant traffickers of illegal drugs, including marijuana...continues to be a core priority...pursuit of these priorities should not focus federal resources in your states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."[43] Holder did, however, oppose adult-use cannabis. His position became public in response to a 2010 California ballot initiative, which would have legalized adult-use cannabis in California, but failed to win a majority vote[44]

Then, in 2011, the Justice Department announced a crackdown on medical cannabis dispensaries across the United States. In a memo released on June 29, 2011, Deputy Attorney General James Cole communicated that the Justice Department would prosecute persons involved in producing, distributing, and selling cannabis, "regardless of state law".[45] Shortly afterwards, California's four U.S. Attorneys proceeded to announce criminal charges against cannabis dispensaries and threaten landlords with property seizure (See "California Cannabis Policy," below).

Like George W. Bush before him, Donald Trump vowed to leave medical cannabis policy to individual states while campaigning. As President, however, Trump nominated then-Senator Jeff Sessions for

---

38 Swift, Art. "For the First Time, Americans Favor Legalizing Marijuana." Gallup. Accessed October 30, 2017. http://news.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx.
39 Hudak, John. Marijuana: A Short History, 91-92.
40Hsu, Spencer. "Bush: Marijuana Laws Up to States; But GOP Candidate Says Congress Can Block D.C. Measure." The Washington Post, October 22, 1999. Accessed October 30, 2017. http://news.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx.
41 Marquis, Christopher. "Bush's $19 Billion Antidrug Plan Focuses on Law Enforcement and Treatment." The New York Times, February 13, 2002. Accessed October 30, 2017. http://www.nytimes.com/2002/02/13/us/bush-s-19-billion-antidrug-plan-focuses-on-law-enforcement-and-treatment.html?ref=topics.
42 Johnston, David and Lewis, Neil. "Obama Administration to Stop Raids on Medical Marijuana Dispenseries." The New York Times, March 18, 2009. Accessed October 30, 2017.
http://www.nytimes.com/2009/03/19/us/19holder.html; Taylor, Stuart. "Marijuana Policy and Presidential Leadership: How to Avoid a Federal-State Train Wreck." The Brookings Institution, April 11, 2013. Accessed October 30, 2017. https://www.brookings.edu/research/marijuana-policy-and-presidential-leadership-how-to-avoid-a-federal-state-train-wreck/.
43 Taylor, Stuart. "Marijuana Policy and Presidential Leadership: How to Avoid a Federal-State Train Wreck," 20.
44 Ibid., 21.
45 Ibid., 22.

Attorney General of the United States,[46] an opponent of medical cannabis and any effort to decriminalize cannabis or to reduce criminal punishments. At a Senate drug hearing in April 2016, Sessions stated:

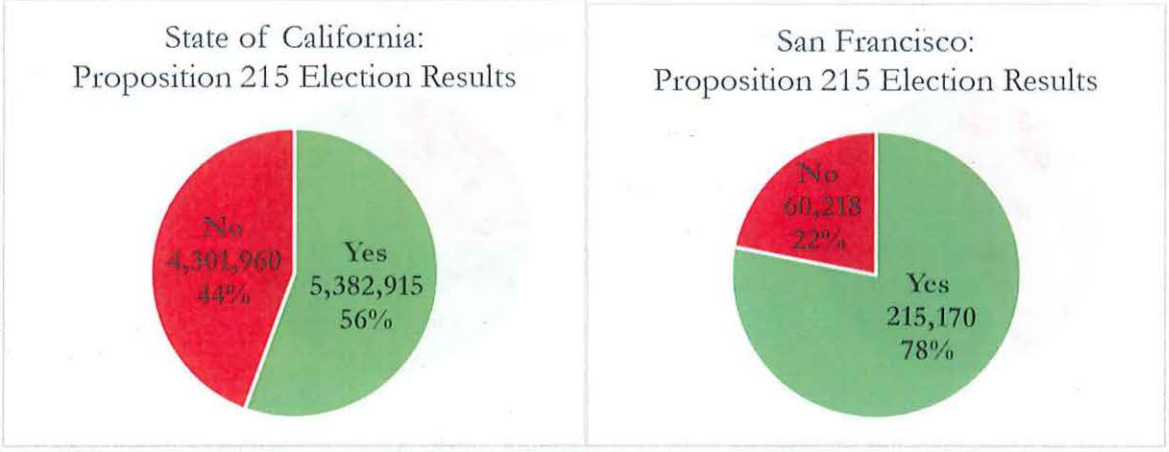
> ...we need grown-ups in charge in Washington to say marijuana is not the kind of thing that ought to be legalized, it ought not to be minimized, that it's in fact a very real danger...this drug is dangerous, you cannot play with it, it is not funny, it's not something to laugh about...and to send that message with clarity that good people don't smoke marijuana.[47]

Attorney General Sessions' stance on cannabis is reminiscent of Anslinger's statements, which rejected cannabis on moral grounds without acknowledging its similarities to legal substances such as tobacco and alcohol.

California Cannabis Policy

In 1996, California passed Proposition 215, the Compassionate Use Act, with 56% of the votes statewide, and 78% in San Francisco as illustrated in Figure 1 below.

Figure 1. Proposition 215: Comparison of California and San Francisco Election Results



In doing so, California became the first state in America to legalize cannabis for medical use. The Compassionate Care Act allowed patients and qualified caregivers to cultivate and possess cannabis for personal use, however it did not provide a regulatory structure.[48] IToclarify the Compassionate Use Act, the State Legislature passed Senate Bill 420 in 2003. This bill also provided for the creation of an identification program for qualified patients.[49]

In addition to legalizing medical cannabis, California voters propelled the state's drug policy away from criminalization and harsh punishments. In 2000, voters approved the Substance Abuse and Crime

---

46 Ingraham, Christopher. "Trumps Pick for Attorney General: 'Good People Don't Smoke Marijuana'" The Washington Post, November 18, 2016. Accessed October 30, 2017. https://www.washingtonpost.com/news/wonk/wp/2016/11/18/trumps-pick-for-attorney-general-good-people-dont-smoke-marijuana/?utm_term=.854263e133ee.

47Ibid.

48 "Uniform Controlled Substances Act." California Legislative Information. Accessed October 28, 2017. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC.

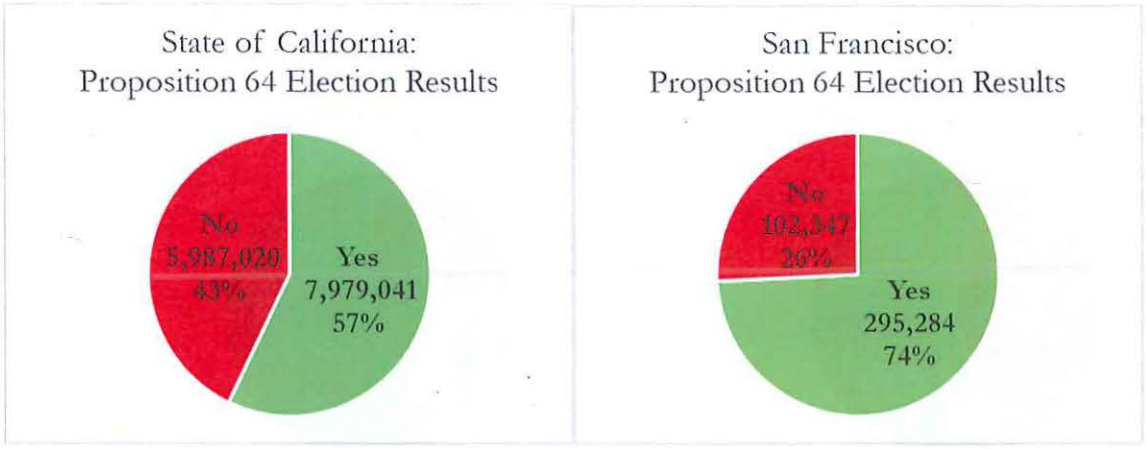
49 "Bill Number: SB 420, Bill Text." California Legislative Information. Accessed October 28, 2017. ftp://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0401-0450/sb_420_bill_20031012_chaptered.html.

Prevention Act, directing the state to offer eligible offenders treatment rather than jail-time for drug possession and drug use.[50]

Between 2003 and 2015, the commercial cannabis industry grew with few rules and regulations. It wasn't until 2015 and the passage of the Medical Marijuana Regulation and Safety Act that California established a legal framework to regulate and monitor cannabis dispensaries.[51] Originally set to take effect on January 1, 2016, the Medical Marijuana Regulation and Safety Act was amended via the Medical Cannabis Regulation and Safety Act in June 2016. This updated piece of legislation aimed to incorporate stronger environmental protection policies within a comprehensive licensing system.[52]

On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act, legalizing the distribution, sale, and possession of cannabis.[53] Proposition 64 passed with 57% of the vote statewide and 74% of the vote in San Francisco, as illustrated in Figure 2 below.

Figure 2. Proposition 64: Comparison of California and San Francisco Election Results



The Adult Use of Marijuana Act (AUMA) of 2016 was modeled on the Medical Marijuana Regulation and Safety Act (MMRSA) of 2015. In 2017 California sought to create one regulatory system for both medical and adult-use use. Therefore, this last June, Governor Jerry Brown signed the Medicinal and Adult Use Cannabis Regulation and Safety Act into law, reconciling the differences between AUMA and MMRSA, and taking a crucial step towards developing a regulatory framework to facilitate a legal, for-profit cannabis sector for both medicinal and adult-use.[54]

---

50 "The Substance Abuse & Crime Prevention Act of 2000." County of Santa Clara's Public Defender Office, March 13, 2013. Accessed October 28, 2017. https://www.sccgov.org/sites/pdo/Pages/SACPA.aspx.
51 "AB-243, Medical Marijuana." California Legislative Information. Accessed October 30, 2017. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB243.
52 "SB-643, Medical Marijuana." California Legislative Information. Accessed October 29, 2017. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB643.
53 "AB-64, Cannabis: Licensure and Regulation." California Legislative Information. Accessed October 29, 2017. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB64.
54 "SB-94 Cannabis: Medicinal and Adult Use." California Legislative Information. Accessed October 30, 2017. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB94; "State and Local Cannabis regulations under the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA)." The Sonoma County Bar Association. Accessed October 30, 2017. http://www.sonomacountybar.org/wp-content/uploads/2017/09/12-12-17-Cannabis-Regualation-Safety-Act.pdf.

San Francisco Cannabis Policy

Prior to the passage of the statewide Compassionate Use Act, San Francisco voters passed Proposition P, Hemp Medication, in 1991. The proposition asked whether San Francisco would recommend that the State of California and the California Medical Association restore "hemp medical preparations" to California's official list of medicines.[55] There were three paid arguments on the ballot in favor of Proposition P, which provided quotes from physicians and cited scientific institutions in arguing for cannabis' medical benefits.[56] Voters approved the proposition with nearly 80% of the vote.[57]

In 1999, San Francisco's Health Commission adopted Resolution No. 29-99, "Supporting the Development and Implementation of a Voluntary Medical Cannabis Identification Card Program."[58] This resolution supported the development of an identification card program for medical cannabis for individuals who qualified under the Compassionate Use Act as patients or primary caregivers. In 2000, the Board of Supervisors formally created San Francisco's current identification program for medical cannabis.[59]

In 2002, the Board of Supervisors placed Proposition S, titled "Medical Marijuana," on the ballot. The proposition was a declaration of policy, directing the Mayor, Board of Supervisors, District Attorney, City Attorney, and Department of Public Health to explore the possibility of creating a program to grow and distribute medical marijuana.[60] Proposition S passed with approximately 62% of the vote.[61]

In March 2005, the Board of Supervisors passed Ordinance No. 64-05, "Zoning – Interim Moratorium on Medical Cannabis Dispensaries".[62] The ordinance expressed concern over the significant increase in the number of individuals enrolled in the city's voluntary medical cannabis identification program, stating "In 2002, there were approximately 2,200 individuals registered...and there are now over 5,000 or 7,000 individuals enrolled".[63] The ordinance acknowledged that there were no mechanisms to regulate or monitor medical cannabis dispensaries and therefore imposed a moratorium on new medical clubs and dispensaries. On November 22, 2005, the Board of Supervisors unanimously passed Article 33 of the San

---

55 Office of the Registrar of Voters. San Francisco Voter Information Pamphlet and Sample Ballot. PDF. The San Francisco Public Library, 1991. Accessed October 29, 2017. https://sfpl.org/pdf/main/gic/elections/November5_1991short.pdf.

56 Ibid., 146.

57 "San Francisco Ballot Propositions Database." The San Francisco Public Library. Accessed October 29, 2017. https://sfpl.org/index.php?pg=2000027201&PropTitle=&Description=&PropLetter=p&Month=&Year=1991&submit=Search.

58 The San Francisco Health Commission. Minutes of the Health Commission Meeting. The San Francisco Department of Public Health, 2000. Accessed October 29, 2017. https://www.sfdph.org/dph/files/hc/HCMins/HCMin2000/HCMin07182000.htm.

59 Ibid.

60 The Department of Elections. Voter Guide: November 5, 2002. PDF. The City and County of San Francisco, 2002. https://sfpl.org/pdf/main/gic/elections/November5_2002.pdf.

61 "San Francisco Ballot Propositions Database." The San Francisco Public Library.

62 The San Francisco Board of Supervisors. Ordinance No. 64-05: Zoning - Interim Moratorium on Medical Cannabis Dispensaries. PDF. The City of San Francisco, 2005. Accessed October 30, 2017.

63 Ibid.

Francisco Health Code, which provided codes, rules, regulations, and operating procedures for medical cannabis dispensaries.[64]

Despite the city's 2005 moratorium on cannabis dispensaries, San Francisco and its Board of Supervisors continued to support cannabis for medicinal purposes as a whole. In 2007, the Board of Supervisors passed Resolution No. 307-07, "acknowledging [the] importance of safe and legal access to medical cannabis in San Francisco."[65] The resolution further urged the U.S. Attorney's Office in San Francisco to cease from investigating and prosecuting medical cannabis providers, caregivers and patients.

On October 7, 2011, California's four United States Attorneys announced law enforcement efforts against illegal operations within the for-profit cannabis industry.[66] Melinda Haag, the U.S. Attorney General for Northern California at the time, threatened landlords of cannabis dispensaries located near schools with property seizure.[67]

Anticipating the decriminalization of adult-use cannabis for adults, the San Francisco Board of Supervisors created the Cannabis State Legalization Task Force in 2015.[68] The task force is comprised of a range of stakeholders, from representatives of the Department of Public Health, to industry members, and community residents. The task force hosts public meetings to discuss issues related to the regulation of adult-use cannabis activity in an effort to advise the City's policymakers on the legalization of adult-use cannabis. To date, the task force has created over 200 recommendations for consideration.

San Francisco's "Budget and Appropriation Ordinance" for the Fiscal Year 2017-2018 established the Office of Cannabis to coordinate city departments and state agencies for the regulation of commercial cannabis activity in 2018.[69]

Arrest Rates in San Francisco

To better understand which individuals and communities have been disproportionately impacted by War on Drugs enforcement policies, this section takes available data sets and reviews arrests rates by race, ethnicity, and geographic location in the City and County of San Francisco. The arrest analysis relies on

---

64 The San Francisco Department of Public Health. Article 33: Medical Cannabis Act. PDF. The City and County of San Francisco. Accessed October 30, 2017. https://www.sfdph.org/dph/files/EHSdocs/MedCannabis/MCD-Article_33.pdf.

65 The San Francisco Board of Supervisors. Resolution No. 307-07: Condemning Prosecution of Medical Marijuana by the Federal Government. PDF. The City of San Francisco, 2007. Accessed October 30, 2017. http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions07/r0307-07.pdf.

66 "California's Top Federal Law Enforcement Officials Announce Enforcement Actions against State's Widespread and Illegal Marijuana Industry." The United States Attorney's Office, October 7, 2011. Accessed October 30, 2017. https://www.justice.gov/archive/usao/cac/Pressroom/2011/144a.html.

67 United States Attorney, Northern District of California. Re: Marijuana Dispensary at REDACTED City and County of San Francisco APN: REDACTED. PDF. KQED. Accessed October 30, 2017. http://ww2.kqed.org/news/wp-content/uploads/sites/10/2011/10/US-Attorney-marijuana-letter.pdf.

68 "Knowledge Sharing & Collaboration: Cannabis State Legislation Task Force." The San Francisco Department of Public Health, 2015. Accessed October 29, 2017. https://www.sfdph.org/dph/comupg/knowlcol/csl/default.asp.

69 Office of the Controller. Budget and Appropriation Ordinance 145-16. PDF. The City and County of San Francisco. Accessed October 29, 2017. http://sfcontroller.org/sites/default/files/Documents/Budget/FY17%20%26%20FY18%20AAO%20FINAL%20Budget%20with%20tails.pdf.

data provided by San Francisco Police (SFPD) and Sheriff's Department (SFSO), and features comparable statewide statistics, published by the California Criminal Justice Statistics Center and posted on the Attorney General's Open Justice site (DOJ, 2017).

A broader analysis of all drug arrests was conducted largely by the Center on Juvenile and Criminal Justice (CJCJ), which has issued a series of reports detailing a pattern of racially discriminatory arrest practices in San Francisco, particularly for drug offenses.[70] The analysis begins with CJCJ's review of all drug arrests in San Francisco from 1977 to 2016, with a strong focus on felony arrests, (which include manufacture, sale, and large-quantity drug possession). This report then analyzes San Francisco's cannabis arrests from 1990-2016. The cannabis arrests captured in the data set include felony charges and custodial misdemeanors and infractions.[71] Misdemeanors primarily involve low-quantity possession, though possession of less than an ounce was downgraded to an infraction in 2011.

SFPD and SFSO data have several deficiencies in how race and ethnicity are treated. Most crucially, Hispanic/Latino ethnicity is posited as a type of racial identity in the data, erasing the nuance of race/ethnicity within the Latino community. Hispanic coded arrests also only represented less than 1% of arrests from 1990-2016, a level that is highly inconsistent with available conviction data for that time period. In other words, it is likely Latino arrests are distributed amongst "White" and other racial categories, which may undermine the validity of arrest rates across racial categories.

In response to the lack of data on adult Hispanic/Latino cannabis arrests, CJCJ supplemented their analysis with statistics from the San Francisco Juvenile Probation Department (SFJPD) (2017) which more accurately reflect how drug arrests differ by race and ethnicity amongst juveniles. Furthermore, the analysis of cannabis arrests is confined to examining African American cannabis arrests percentages relative to their percentage of the population, rather than in comparison to the arrest rates of other racial groups. To compare drug arrests across populations, CJCJ calculated arrest rates by dividing totals by state Department of Finance populations for each age group, gender, and race.

Drug Arrests Analysis, 1977-2016

CJCJ's study of drug arrest data for felony charges found significant fluctuations in the City's drug law enforcement, primarily involving African American arrest rates. Their key findings included:

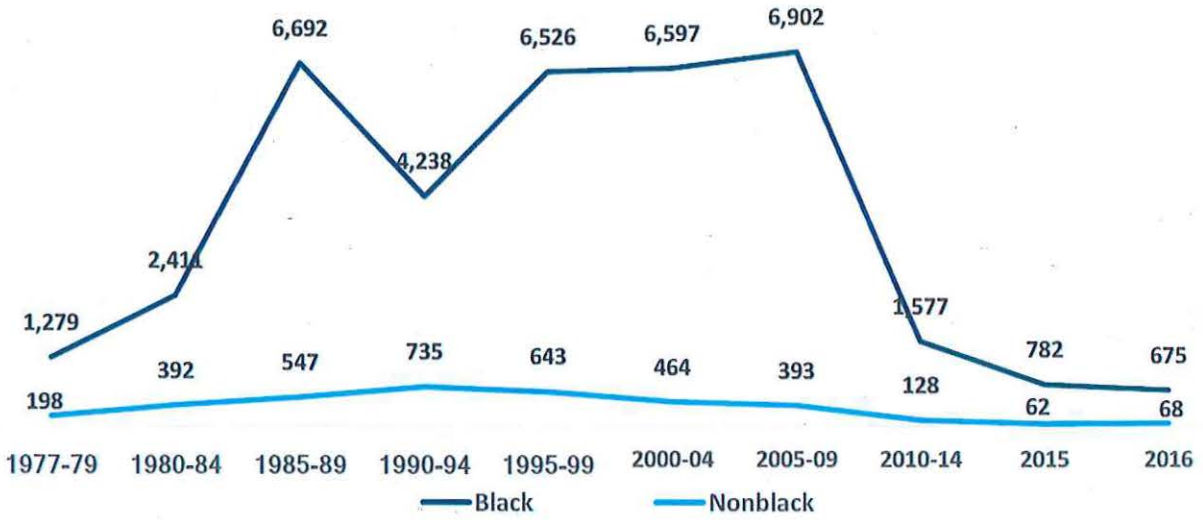
- From 1980 to the mid-1990s, San Francisco's racial patterns in enforcement of drug laws roughly resembled those statewide. Still, African Americans in San Francisco were 4 to 5 times more likely to be arrested for drug felonies prior to the mid-1990s than their proportion of the total population would predict.
- From 1995-2009, San Francisco experienced an explosion in drug felony arrests of African Americans that did not occur elsewhere in the state, nor for other racial categories in San Francisco.
- From 2008 - 2016, the City's decline in drug arrests for all races was larger than occurred statewide.
- From 2010 - 2016, drug arrests fell sharply for all races in San Francisco from 2010 through 2016. In 2008, a number equal to 8.7% of San Francisco's African American population was arrested for drug felonies. In 2016, the number had dropped to 0.7%.

---

70 See Appendix A. Center on Juvenile and Criminal Justice Drug Arrests Report, 2017.
71 See Appendix B. Full List of Cannabis Specific Statutes Reviewed.

- From their 2008 peak, drug felony rates fell 92% among African Americans and by 84% among non-black races in the City (DOJ, 2017). These declines were much larger than occurred elsewhere in California (79% for African Americans, 68% for other races).

Figure 3. San Francisco felony drug arrests by race, per 100,000 population, annual averages (1977-2016)



Source: CJCJ (2017)

- While some of the decline in felony arrests is due to recent state reforms to reclassify many felony drug offenses as misdemeanors, misdemeanor drug arrests also fell by 90% in San Francisco from 2008 to 2015, also a much larger decline than statewide.
- Racial disparities in 2016 have narrowed from the peak year, 2008, when African Americans in San Francisco were 19.2 times more likely than non-black San Franciscans, and 4.5 times more likely than African Americans elsewhere in California, to be arrested for a drug felony.
- Even at today's much lower levels, however, large racial disparities persist. In 2016, African Americans in San Francisco experienced felony drug arrest rates 10 times higher than San Franciscans of other races, and 2.4 times higher than African Americans elsewhere in California.
- Among youth (a very small sample), Latinos are now twice as likely as African Americans, five times more likely than whites, and nearly 10 times more likely than Asians to be arrested for a drug felony.

Figure 4. Juvenile felony drug arrests per 100,000 population age 10-17, San Francisco vs. rest of California, 2009 vs. 2016

		MALE				FEMALE			
	Felony Drug Arrest Rate	African American	White	Hispanic	Asian	African American	White	Hispanic	Asian
2009	San Francisco	2,531.6	237.9	915.1	92.7	2,419.4	69.3	20.8	38.4
	California (excluding SF)	486.6	200.6	211.0	120.8	48.1	61.9	29.9	19.4
	Ratio, SF drug felony rate vs. CA	5.2	1.2	4.3	0.8	50.3	1.1	0.7	2.0
2016	San Francisco	76.8	19.4	63.4	25.6	-	-	62.3	-
	California (excluding SF)	90.4	38.1	66.9	29.5	11.2	12.2	10.9	4.2
	Ratio, SF drug felony rate vs. CA	0.8	0.5	0.9	0.9	-	-	5.7	-

Source: CJCJ (2017)

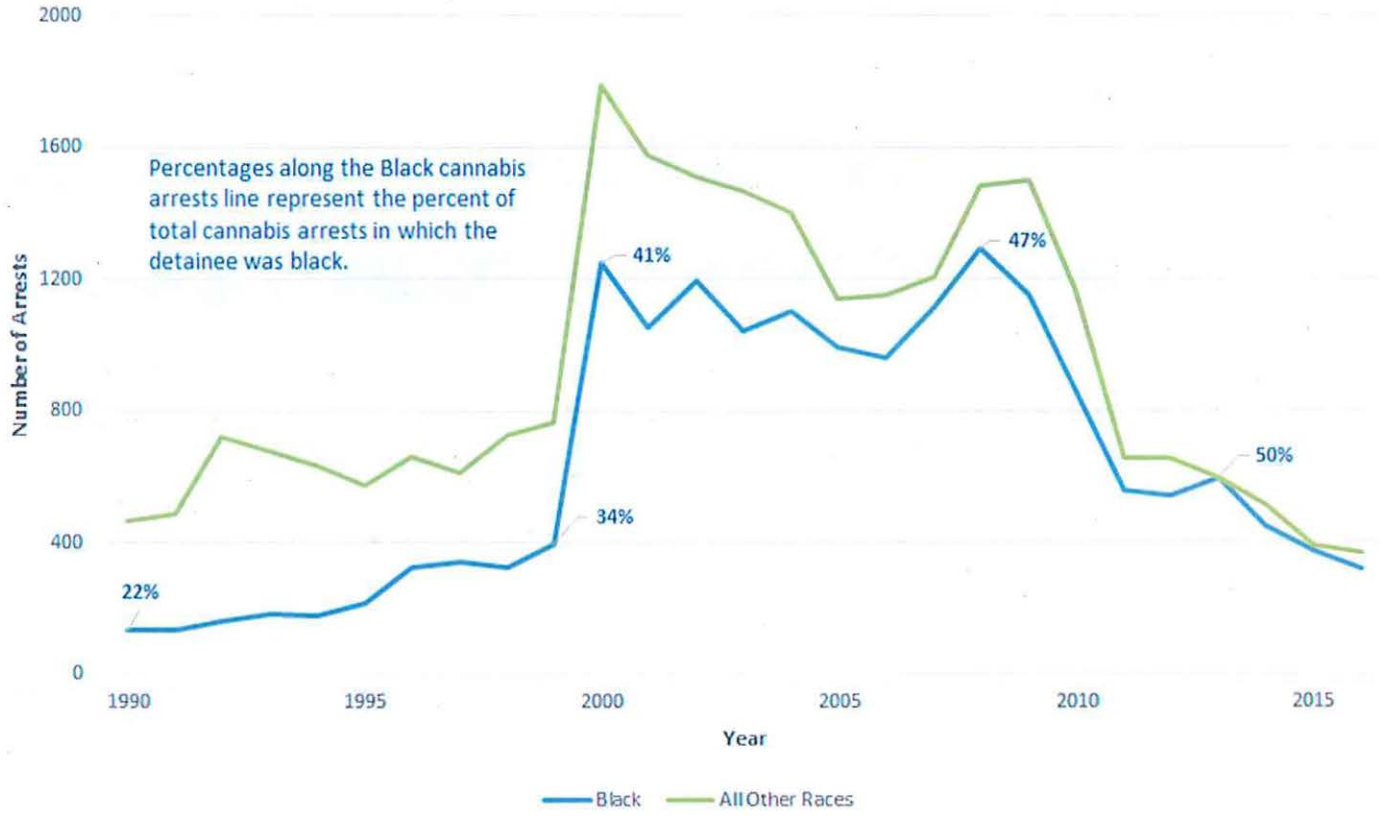
- African American girls and young women were until recently targeted for criminal law enforcement at much higher rates in San Francisco in comparison to all other demographic groups in the City. In 2007 (the peak year for youth drug arrests), San Francisco's African American female youth accounted for 40% of the felony drug arrests of African American female youths in California and had arrest rates 50 times higher than their counterparts in other counties. In 2014-2016, only one African American female youth was arrested in San Francisco for a drug felony.
- In 2007, 125 of the City's 265 youth drug felony arrestees were Latinos, 112 were African Americans, and 12 were Asians. In 2016, seven were Latinos, one was African American, two were Asians, and none were White.
- Racial patterns in drug arrests do not match racial patterns in drug abuse. Of the 816 people who died from abusing illicit drugs in San Francisco during the five-year, 2011-2015 period, 55% were non-Latino Whites, 22% were African Americans, 10% were Latinos, and 9% were Asians. In contrast, 43% of the city's 6,587 drug felony arrests during

Cannabis Arrests, 1990-2016

Patterns similar to those found in CJCJ's analysis are apparent when specifically examining cannabis-related felony and custodial misdemeanor arrests. As demonstrated in Figure 5 below, from 1990-2016, Black[72] individuals represent an increasingly larger percentage of total cannabis-related arrests in San Francisco. Though Latino arrests were not discernible from the data set, Asian cannabis arrests reflected only 1% of the total arrests from 1990 to 2016.

[72] Arrests are racially coded in the data as "B" for Black or African American in the SFSO cannabis arrests data set, meaning individuals from the African diaspora may also be reflected in the data. This section of the analysis addresses the Black population in San Francisco with an understanding that an overwhelming majority of Black arrests likely involve African Americans.

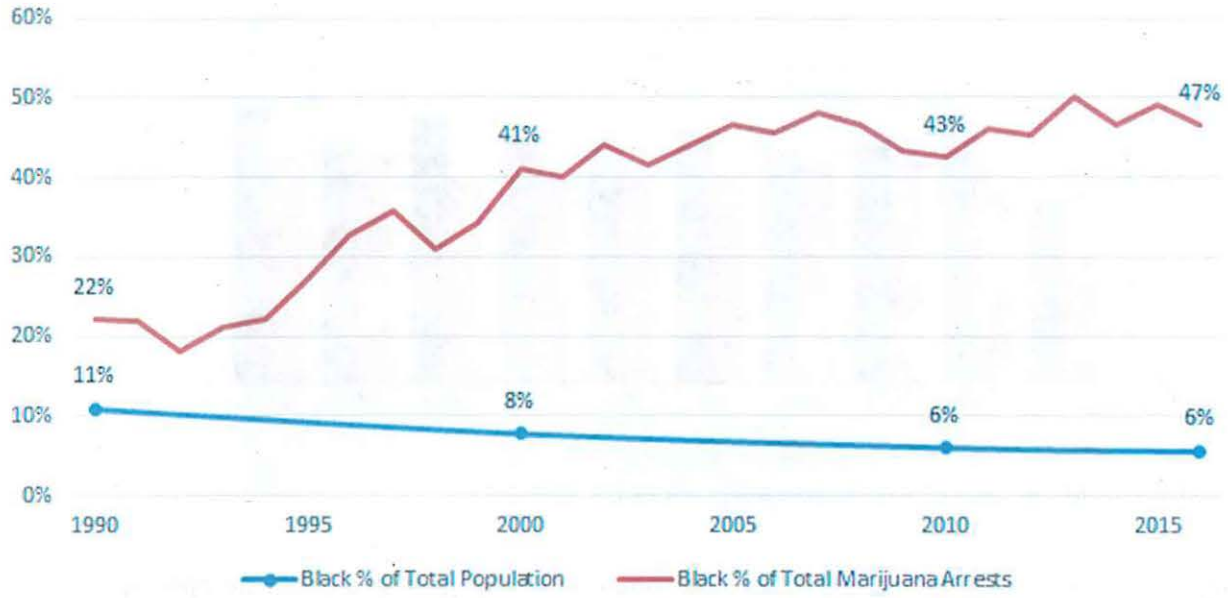
Figure 5. San Francisco Cannabis Arrests for Black Individuals vs. All Other Races (1990-2016)



Source: SFSO arrest data (1990-2016)

The jump in total arrests in 2000 was accompanied by a jump in the disproportionality of Black arrests. Arrests increased by 160% between 1999 and 2000, from 1164 to 3042. The percent of arrests featuring Black detainees went up from 34% to 41% of all arrests, a 20% increase. Despite the high percentage of Black cannabis arrests, Black San Franciscans comprised 7.8% of San Francisco's population in 2000. Even as the number of total arrests drastically falls around 2011, after the downgrading of misdemeanor cannabis possession to an infraction, Black cannabis arrests as a percentage of total arrests hovers around 50%. As Figure 6 shows, Black people only represented 6% of San Francisco's population in 2010.

Figure 6. Percent of Black Cannabis Arrests Compared to Black Population in San Francisco (1990-2016)

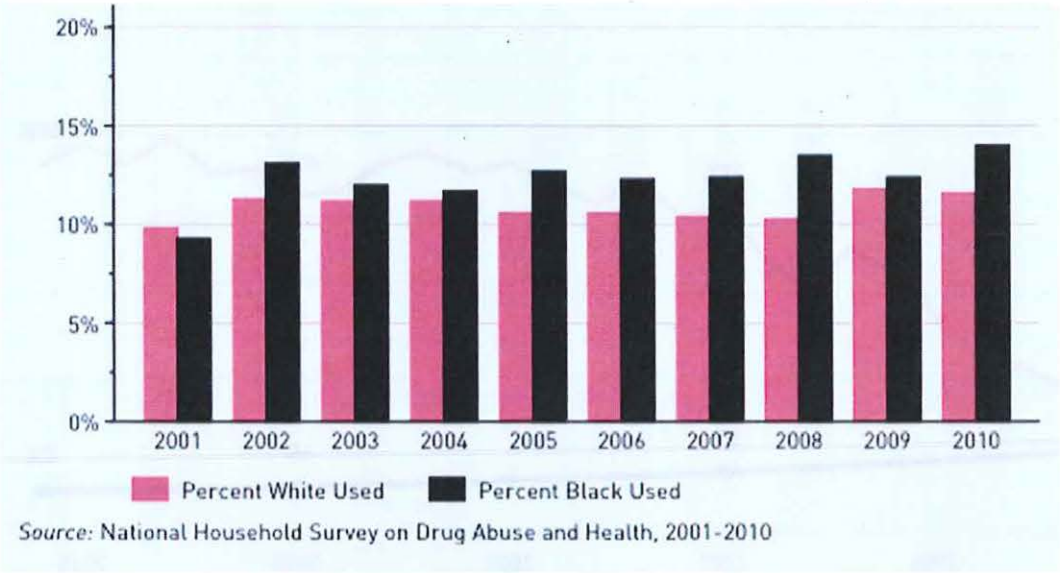


SOURCE: SFSO Arrests Data (1990-2016), U.S. Census (1990,2000,2010), American Community Survey (2016)

Identifying Disadvantaged Communities

As indicated by the racial disparities in San Francisco arrest and booking rates, the War on Drugs has produced disparate arrest rates across racial groups. And while rates of drug use and sale are commensurate across racial lines (see Figure 7), Black and Latino communities interact with the criminal justice system, including via arrests, bookings, and incarceration, at a rate far higher than their White counterparts.

Figure 7. Cannabis Use by Race (2001-2010)



Source: National Household Survey on Drug Abuse and Health, 2001-2010

There is a clear relationship between race, the criminal justice system, and economic opportunity, both in San Francisco and nationally. An Obama White House Report, *Economic Perspectives on Incarceration and the Criminal Justice System,*[73] uses economic analysis to understand the costs, benefits, and consequences of criminal justice policies. Notably, the report points out that having a criminal record in the U.S. makes it more difficult to find employment and those who have been incarcerated earn 10 to 40 percent less than similar workers without a history of incarceration.[74] The report also estimates that rates of parental incarceration are 2 to 7 times higher for Black and Hispanic children than White children, and parental incarceration is a strong risk factor for a number of adverse outcomes, including but not limited to mental health problems, school dropout, and unemployment. Finally, the report concludes that consequences of interactions with the criminal justice system can include not only negative impacts on employment, but also health, debt, transportation, housing, and food security, and on a national level,

[73]https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf

[74] Executive Summary, page 5: "Recent job application experiments find that applicants with criminal records were 50 percent less likely to receive an interview request or job offer, relative to identical applicants with no criminal record, and these disparities were larger for Black applicants."

these impacts are "disproportionately borne by Black and Hispanic men, poor individuals, and individuals with high rates of mental illness and substance abuse."[75]

Overall, the White House report makes clear that interactions with the criminal justice system, including through enforcement of cannabis-related activity, can have negative and consequential economic impacts on the arrestee and their immediate family.

Identifying San Francisco's Disadvantaged Community

San Francisco's data on arrest rates by location is inadequate for the purposes of mapping arrest rates by geographic locations over an extensive period of time, and therefore understanding long- term impacts of over- policing in certain communities (i.e. prior to 2010). However, this analysis utilizes available location data of cannabis arrest (occurring between January 2010 - October 2017), for the purposes of understanding where high arrest rates overlap with economically disadvantaged communities (see Figure 9 on the following page).

For 2017, California Department of Housing and Community Development defines San Francisco's extremely low-, very low- and low-income levels as a household annual income at or below 80% of the Area Median Income for a 4-person household, $115,300.[76] AMI may be broken down into more exact figures by household size (see Figure 8). However, this analysis considers a low-income household to be any household with a total income less than 80% of San Francisco's AMI, which is $92,240. Figure 8 below shows the current areas of the City with the highest percentage of low income populations.

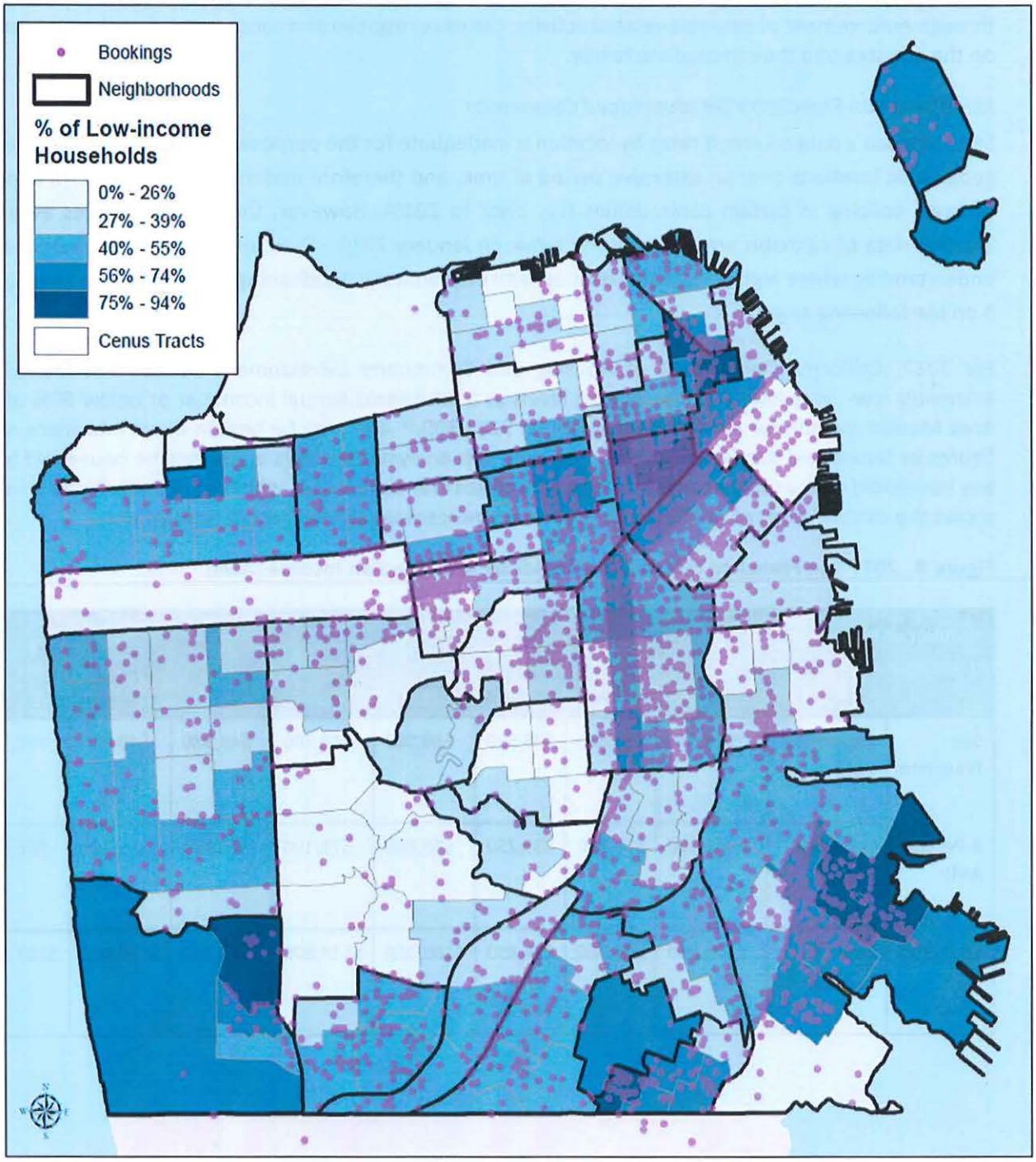
Figure 8. 2017 San Francisco Income Thresholds by Area Median Income (AMI)

Number of Persons in Household		1	2	3	4	5	6	7	8
San Francisco	Extremely Low	$27,650	$31,600	$35,550	$39,500	$42,700	$45,850	$49,000	$52,150
4-Person AMI:	Very Low Income	$46,100	$52,650	$59,250	$65,800	$71,100	$76,350	$81,600	$86,900
$115,300	Low Income	$73,750	$84,300	$94,850	$105,350	$113,800	$122,250	$130,650	$139,100

75 Conclusion, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf

76 CA HCD Income Limits for 2017, http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k17.pdf

Figure 9. Concentration of Low-Income Households at or Below 80% of Median Income by San Francisco Census Tract with Cannabis Bookings by Arrest Location (2010-2017)



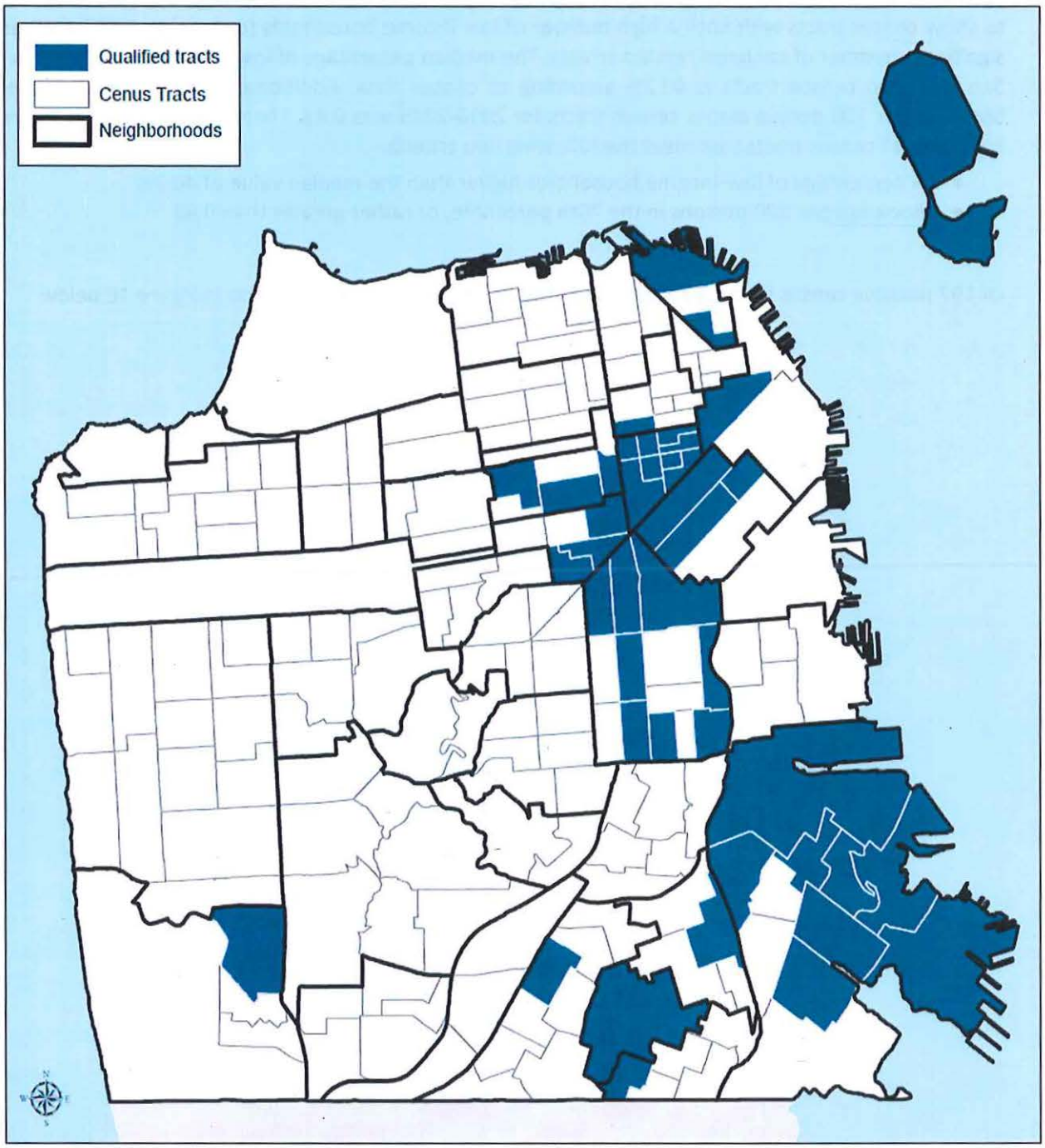
Source: Mayor's Office of Housing and Community Development (2017)

To further understand which communities within the City have experienced a disproportionately high number of arrests and potential economic disadvantage as a result, the map in Figure 10 is further refined to show census tracts with both a high number of low income households (defined as <80% AMI) and a significant number of cannabis related arrests. The median percentage of low-income households across San Francisco census tracts is 40.2% according to census data. Additionally, the median number of bookings per 100 people across census tracts for 2010-2016 was 0.43. Therefore, the map in Figure 10 highlights all census tracts that meet the following two criteria:

- A percentage of low-income households higher than the median value of 40.2%
- Bookings per 100 persons in the 70th percentile, or rather greater than 0.83

Of 197 possible census tracts, 43 met both criteria and are represented in blue in Figure 10 below.

Figure 10. Tracts with low income population (<80% AMI) above median percentage and bookings per 100 persons above 70th percentile



Source: Mayor's Office of Community Housing and Development (2017)

Figure 11. Qualified Tracts by Neighborhood, Unemployment Rate, Race Composition, and Cannabis Arrests

Neighborhood	Census Tract	Low-income Households (%)	Unemployment Rate (%)	Racial/ Ethnic Minority (%)	Cannabis Arrests per 100 Persons (2010-2017)
Bayview Hunters Point	9809	42.6%	15.8%	56.8%	39.11
	612	62.2%	15.3%	90.0%	7.29
	232	64.0%	14.8%	92.9%	4.75
	231.03	90.7%	17.7%	96.9%	3.35
	234	68.5%	14.9%	97.4%	2.18
	9806	58.3%	20.5%	88.9%	1.85
	231.02	76.0%	18.5%	94.7%	1.44
	230.01	53.6%	10.8%	93.1%	1.02
Excelsior	260.01	53.9%	7.2%	89.6%	1.01
South Beach	117	68.5%	9.9%	67.6%	5.87
Hayes Valley	162	47.7%	3.0%	38.2%	1.57
	168.02	42.8%	6.0%	43.3%	1.13
	168.01	40.6%	6.9%	38.6%	1.07
Lakeshore	332.01	75.5%	24.5%	56.8%	1.64
McLaren Park	9805.01	70.0%	23.6%	93.0%	1.14
Mission	177	41.1%	9.4%	58.8%	9.30
	201	66.2%	11.3%	71.6%	8.51
	209	59.6%	6.1%	64.1%	2.41
	228.02	54.7%	2.8%	66.0%	2.25
	208	48.5%	7.2%	67.5%	2.05
	229.03	41.3%	5.0%	67.2%	1.35

Neighborhood	Census Tract	Low-income Households (%)	Unemployment Rate (%)	Racial/ Ethnic Minority (%)	Cannabis Arrests per 100 Persons (2010-2017)
	229.01	47.5%	12.7%	74.2%	0.99
	202	49.2%	9.8%	46.6%	0.88
Nob Hill	120	70.4%	5.6%	56.9%	3.20
North Beach	106	64.3%	7.8%	66.3%	2.30
	101	51.1%	5.1%	52.9%	0.97
Portola	257.02	51.8%	5.8%	93.1%	0.94
	176.01	69.6%	4.6%	72.4%	19.41
South of Market	178.02	48.6%	7.3%	59.7%	2.71
	178.01	73.9%	6.7%	72.3%	1.67
	125.01	92.2%	7.1%	73.6%	29.18
	124.02	64.0%	5.3%	60.9%	10.97
	123.01	94.4%	5.0%	69.2%	7.41
	124.01	86.1%	9.1%	72.1%	7.21
Tenderloin	125.02	92.1%	14.1%	85.0%	6.17
	122.02	78.4%	11.8%	64.6%	3.10
	122.01	71.0%	6.5%	63.3%	2.35
	123.02	66.7%	7.2%	61.1%	2.31
Treasure Island	179.02	68.1%	13.3%	71.9%	1.16
Visitacion Valley	605.02	82.2%	22.2%	96.6%	2.31
	161	71.7%	10.1%	79.6%	1.71
Western Addition	158.01	46.6%	12.8%	65.0%	1.35
	160	54.5%	4.9%	51.8%	0.98

Source: American Community Survey (2016), SFSO Arrest Data (2010-2017), DataSF (2017)

As Figures 10 and 11 show, more than half of the qualified census tracts fall in Bayview Hunters Point, the Mission, and the Tenderloin combined. These neighborhoods also all feature census tracts with significant rates of unemployment and some of the highest rates of cannabis arrests. It should be noted that this analysis does not establish direct correlation between cannabis arrest and low-income households. For instance, the high number of students residing in Lakeshore may be a driving factor behind the lower income levels present in census tract 332.01, rather than the high cannabis arrest rates. However, given the existing literature on the relationship between economic opportunity and the War on Drugs, the tracts identified above are the places where that relationship is most likely to have had an adverse economic impact.

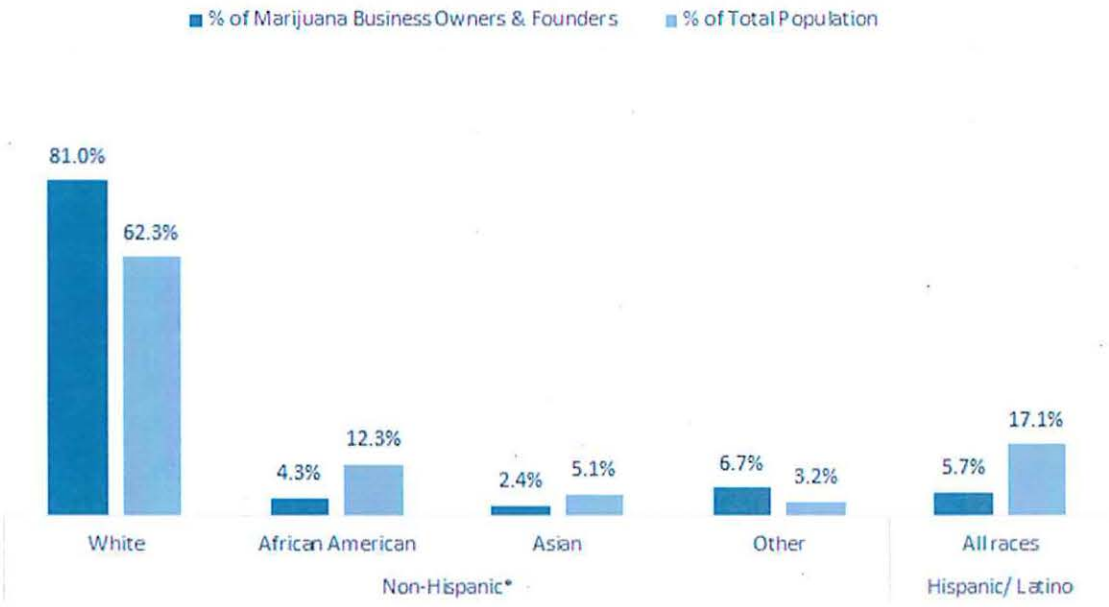
Existing Cannabis Industry Data

Given the infancy of the legal cannabis market and the continued illicit nature of the industry in a federal context, there is a dearth of quality demographic data on cannabis industry professionals. The existing industry, as discussed in this section, relies on small sample surveys, which limits confidence in how these numbers can be applied to larger populations. However, these surveys are our best look into this emerging industry.

National Industry

Marijuana Business Daily conducted an anonymous online poll of 567 self-identified cannabis industry business owners and executives, shedding some light on the composition of the national market.[77] Ethnicity was not treated distinct from race in the Marijuana Business Daily survey, instead requiring Latino respondents to choose between responding to the survey with their race or their ethnicity, not both. It should be noted that this has implications for the data's accuracy. Still, according to the survey, 19% of respondents were racial/ethnic minorities, though racial/ethnic minorities comprise 38.7% of the national population. Under representation affects non-Hispanic African Americans and Asians as well as Hispanic/Latino communities. Non-Hispanic African Americans and Latinos face the highest level of disproportionality, each owning only a third of the market that their share of the national population would imply.

Figure 12. Survey of Race & Ethnicity in the National Cannabis Industry



**Note: The chart above assumes all survey respondents that did not identify as Hispanic/ Latino are non-Hispanic, however this may not be the case given respondents were not given the option to identify both their race and ethnicity.*

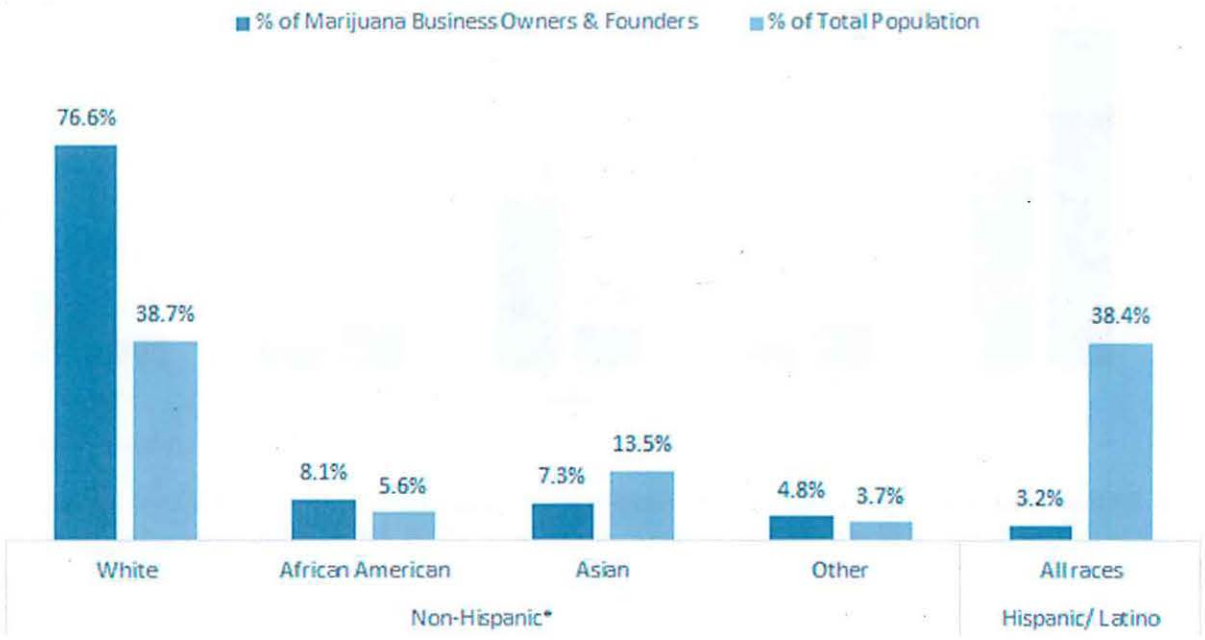
Source: Marijuana Business Daily (2017), American Community Survey (2016)

[77] Marijuana Business Daily (https://mjbizdaily.com/women-minorities-marijuana-industry/)

California Industry

Almost a third of respondents to the Marijuana Business Daily survey reported that their business headquarters were in California. This is reflective of California's share of the national market, in which California accounted for 27% of 2016 legal market sales.[78] The state also boasts the highest percentage of minority-owned cannabis businesses, according to the survey. Over 23% of California respondents were racial minorities. In comparison to the state's total population, which is 61% comprised of racial/ethnic minorities, there is still significant under representation in the industry.

Figure 13. Survey of Race & Ethnicity in the California Cannabis Industry



**Note: The chart above assumes all survey respondents that did not identify as Hispanic/ Latino are non-Hispanic, however this may not be the case given respondents were not given the option to identify both their race and ethnicity.*

Source: Marijuana Business Daily (2017), American Community Survey (2016)

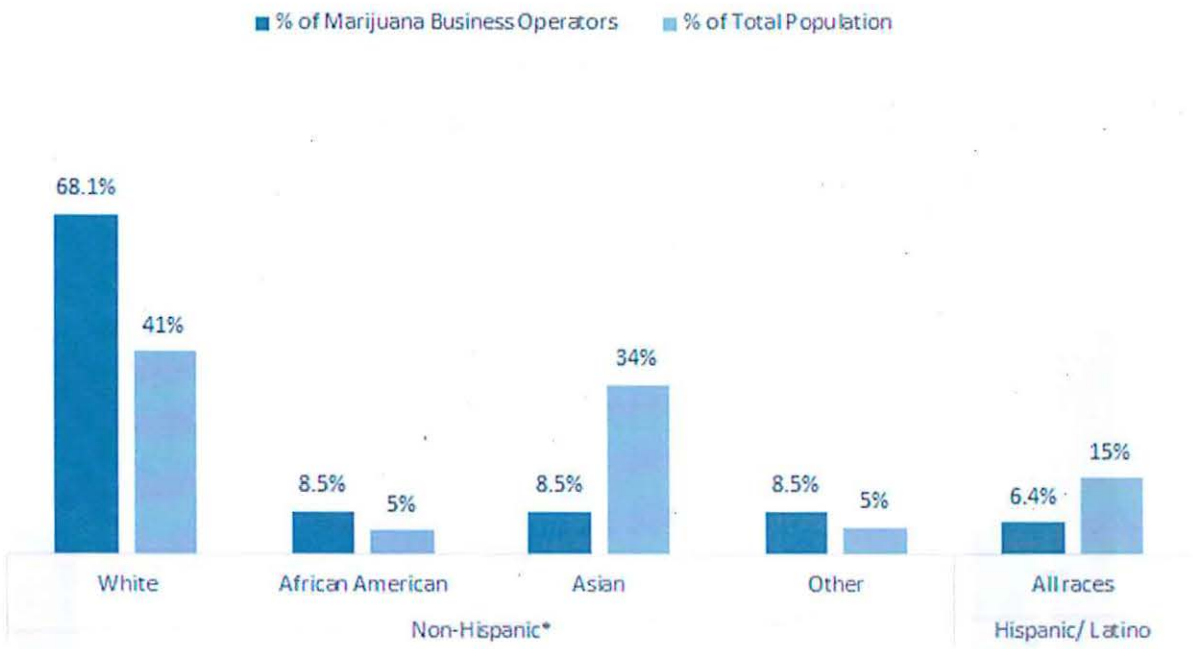
San Francisco Industry

A small 77-person survey conducted by the San Francisco chapter of the California Growers Association found more diversity in the cannabis industry on a local level than within the nation and the state. Respondents were able to self-identify their race/ethnicity in a free form field. Figure 14 shows that 66% of respondents currently operate a cannabis business in the City, and of them, 32% identified as a racial or ethnic minority. This is a higher percentage than the state's industry as reflected by the Marijuana Business Daily Survey, meaning the San Francisco market may be a heavy influence on the level of diversity in California's cannabis industry. Still, racial and ethnic minorities are 58% of San Francisco's total population (ACS 2016), 26 percentage points higher than the percentage of racial and ethnic minority business operators in the survey. The Asian community is especially underrepresented in the local market, representing 34% of the San Francisco population but only 8.5% of cannabis business

[78] SF Weekly -- http://www.sfweekly.com/news/california-leads-nation-in-legal-marijuana-sales/

operators. Additionally, 31% of marijuana business operators responding to the survey were female, a figure well below parity.

Figure 14. Survey of Race & Ethnicity in the San Francisco Cannabis Industry



**Note: The chart above assumes all survey respondents that did not identify as Hispanic/ Latino are non-Hispanic, however this may not be the case. Source: CA Growers Association - San Francisco Chapter (2017), American Community Survey (2016)*

IV. Barriers to Entry

Key Barriers to Entry into the Adult-Use Cannabis Market

This section provides an overview of factors or barriers that can make entry into the adult-use cannabis market difficult. The barriers to entry identified in Figure 15 are not an exhaustive list, but rather a list of key factors that may be particularly difficult to overcome for communities that have been disproportionately impacted by cannabis drug enforcement. Equity program components should be designed to mitigate these barriers.

Figure 15. Key Barriers to Entry

Category	Barrier
Financial	Access to Capital or Financing
	Access to Real Estate
	Licensing and Regulatory Fees
Technical	Business Ownership
	Legal and Regulatory
	Tax
	Awareness of Equity Programs
Criminal	Background Checks
Other	Geography
	Distrust in Government

Financial Barriers

All new businesses face financial requisites to enter a new market. Access to capital or business financing is necessary to purchase the equipment and labor to get any business up and running. For individuals disproportionately targeted for drug enforcement and consequently, disadvantaged socio-economically during the last decades of cannabis prohibition, these financial barriers can be particularly difficult to overcome.

Access to Capital or Financing

Even post-decriminalization of marijuana offenses in California, the Drug Policy Alliance and the ACLU found that the cost of marijuana-related infractions "can be a substantial burden for young and low-income people" and was "particularly acute for black people and young men and boys." The cumulative effect of economically-disadvantaged neighborhoods that have been disproportionately targeted with enforcement (often with punitive monetary fines) means that many individuals do not have the personal capital to invest in a new business.

Additionally, these individuals are less likely to be able to secure traditional business financing or even open traditional checking accounts associated with their business. As major banks are federally regulated and cannabis remains illegal at the federal level, most banks refuse to offer services to cannabis businesses. Without the initial capital to launch a business venture or to sustain operating costs until profits are realized, these individuals are rendered unable to enter the adult-use cannabis market.

Access to Real Estate

Closely related to financing, but of acute concern in San Francisco, is access to real estate. New businesses need a location from which to operate, and San Francisco has an extremely competitive real estate market with some of the highest rents and lowest vacancy rates for commercial and retail properties. Economically-disadvantaged individuals may find San Francisco real estate to be prohibitively expensive, and cannabis entrepreneurs may find banks unwilling to extend loans.

Licensing and Regulatory Fees

Cannabis businesses intending to operate in San Francisco will be required to obtain a license and pay any applicable fees to legally operate a business. In addition to fees for the license itself, these fees may include regulatory costs (e.g., building inspection, security requirements) as well as license renewal fees to continue operations. Costly licenses combined with complex regulatory requirements disproportionately disadvantage lower-income individuals.

Technical Barriers

Technical barriers to entry include aspects of business planning, ownership expertise, and operational practices that are typically knowledge-based barriers.

Business Ownership

Individuals starting a new business may lack the technical knowledge related to business plan creation, accounting, or sales forecasting that are beneficial to any new venture. While these business practices are not unique to cannabis, disadvantaged individuals will have a harder time paying for business classes, technical consultants, and/or contracting out specialized work.

Cannabis-based businesses face an additional technical knowledge gap of learning industry-specific best practices in an industry that has been historically secretive and underground, including cultivation techniques and manufacturing processes used in specialized products that are compliant with San Francisco regulations.

Legal and Regulatory

Compliance with the legal and regulatory requirements surrounding an adult-use cannabis business is an unpredictable barrier to entry given the current unestablished regulatory framework. Cannabis businesses will require a license to operate from both the State of California and the City and County of San Francisco. San Francisco's licensing process and conditions for operation are not yet established and could be relatively complex to navigate, especially for first-time entrepreneurs. These barriers are more difficult to navigate for lower-income individuals who may not be used to working in this environment and/or unable to afford specialized consulting or legal assistance.

Tax

Cannabis businesses will be subject to traditional state and local business taxes that often require some amount of expertise to ensure proper compliance. Further complicating matters is that cannabis businesses will be subject to a state and local tax system that has not yet been fully established. Without a clear picture of the tax regime, entrepreneurs are unable to estimate their tax burden even if they could accurately forecast all other costs. In this atmosphere, well-funded businesses that can build in a financial contingency for unforeseen tax liability will have an advantage over less economically-advantaged ventures.

Awareness of Equity Programs

If established, an equity program can help mitigate the other barriers to entry presented in this section. A program is only helpful, however, if cities and states conduct the necessary stakeholder outreach such that potentially eligible persons are aware of the program and its benefits as early as possible.

The equity component of licensing becomes particularly important when the total number of cannabis businesses are capped at a certain number, given that well-resourced operators will be able to move toward licensing faster. In a capped licensing framework, there is increased urgency to ensure that potentially-eligible applicants are educated on the equity program before applications are accepted, so that they are not crowded out of a finite number of licenses.

Criminal Barriers

California's Proposition 64 states that applicants cannot be denied a cannabis business license solely because of a prior drug conviction. It is important to recognize, however, that a state license is not the only barrier to entry that can be related to a drug conviction. A criminal record can limit an individual's ability to gain employment, apply for government assistance, or even obtain a loan. In the case of individuals convicted of a drug offense, these cumulative effects coupled with fines, court costs, incarceration, and other subsequent disadvantages can be insurmountable.

Background Checks

While Proposition 64 states that drug offenses will not bar an individual from licensure, other entities that an entrepreneur may encounter can still utilize background checks. For example, a bank can utilize a background check as part of evaluating a loan application. Proposition 64 does not require expungement of previous cannabis convictions from individual's criminal records, meaning that a criminal record can still pose a barrier to entry for many applicants.

Other Barriers

Geography

Geography can pose as a barrier to entry when allowable zones for cannabis businesses are too far from potential entrepreneurs. While San Francisco's recreational cannabis regulations are not yet established, many cities restrict where these businesses can exist through zoning. Geography will be an important consideration to balance in eventual regulation: on one hand, neighborhoods that have been disproportionately impacted by the War on Drugs should have access to the business opportunities provided by this new market; on the other, there are unknown and potentially negative impacts (such as health impacts) of these businesses on the surrounding neighborhood, and they should not be concentrated in areas already reeling from disproportionate drug enforcement.

Distrust in Government

An important barrier to entry to address is the perception of the current climate surrounding cannabis and legalization. While some individuals may feel encouraged that legalization of commercial and recreational marijuana may mitigate historically racist drug enforcement, others may wonder why a cannabis conviction will stay on an individual's criminal record or how the state will handle federal requests for information about cannabis business operators. The current ambiguity around what is legal at the local, state, and federal levels may create a barrier to entry among populations that do not trust the government to act in their best interest.

As discussed in the *Equity Analysis* section of this report, arrest and conviction of cannabis offenses have disproportionately affected communities of color, despite studies showing relatively similar rates of use of cannabis between racial groups. In this context, trust between these communities and the police or government has been low. These communities may be particularly wary of establishing a registered business in an industry in which they have been historically targeted for criminal enforcement.

V. Cannabis Equity Program Benchmarking

Overview of Peer Jurisdictions' Efforts in Equity in Adult-Use Cannabis Implementation

Since the legalization of medical and adult-use cannabis in several states across the country, many cities and states have recognized the inequities imposed by the War on Drugs and implemented programs to achieve equity goals and mitigate barriers to entry into this emerging market.

This section provides a broad overview of equity frameworks in other jurisdictions that are already experimenting with or implementing equity programming in adult-use cannabis. For a summary overview of equity program components and associated mitigated barriers to entry discussed in the previous section, see Appendix C.

To synthesize various possible equity programmatic elements as well as key considerations and lessons learned, the Controller's Officer researched local and state adult-use cannabis programs and conducted telephone interviews with the following peer jurisdictions:

- Oakland, CA
- Los Angeles, CA
- Denver, CO
- Massachusetts

California state law regarding cannabis delegates much autonomy to localities over licensure and regulation of cannabis operations. Oakland is the only city in the country to currently have an implemented cannabis equity program. Los Angeles presented a Cannabis Social Equity Analysis to its City Council in October 2017, detailing recommended criteria for equity programming. As the only California peers experimenting with equity frameworks, both are profiled in detail in the figures below.

Massachusetts is also considering equity concepts, but operates on a very different licensing system than California as the state retains more control over licensure and regulation. Denver does not have an established equity program, but has been licensing adult-use cannabis since 2014[79] and is an important comparison as it was the first major city to legalize adult-use of cannabis. Finally, a number of states have recently experimented with equity concepts for either medical or adult-use cannabis, which are also summarized at the end of this section.

[79] The Denver Collaborative Approach: Leading the way in municipal marijuana management (2017 Annual Report).

Oakland

The City of Oakland's Equity Assistance Program was established by city ordinance and is among the most well-developed programs focused on cannabis equity in the nation. Although it currently only applies to medical dispensary permits, Oakland intends to open the program to adult-use applicants as the state begins to issue adult-use permits in 2018. The program utilizes residency, geographical area, and income conditions to qualify for eligibility in the program as shown in Figure 16 below.

Figure 16. Eligibility Requirements for Oakland's Cannabis Equity Program

Must be:		
(1) an Oakland resident, **AND** (2) earn 80% or less of Oakland average median income (<$52,650), **AND**		
(a) have lived within 21 high-enforcement police beats for 10 of last 20 years.	**OR**	(b) have been arrested and convicted of a cannabis crime in Oakland after 1996.

Oakland's equity program intends to address financial barriers to entry through a no-interest loan program offered to qualified equity applicants. The funding for this loan program will be made up of local tax revenue from cannabis businesses, but loans will not begin to be distributed until the loan fund reaches a threshold amount of $3.4 million. Until that time, the permitting of cannabis businesses has been restricted such that permits must be issued to equity and general applicants at a 1:1 ratio – if one equity applicant is permitted, one general applicant can be permitted. After this initial phase, permits will be issued on a first-come, first-served basis, but equity applicants will be eligible for additional benefits (see Figure 17), including technical assistance and fee waivers.

Figure 17. Oakland Cannabis Equity Assistance Program Benefits

Benefit	Details
Incubator Program	During the initial (restricted) permitting phase, non-equity applicants can receive priority permit issuance for providing an equity applicant with real estate or free rent for three years.
Business Technical Assistance	Oakland has partnered with local consultants and nonprofits to provide both business technical assistance, such as business plan workshops.
Industry Technical Assistance	Oakland has also partnered with local organizations to provide cannabis-specific assistance, such as cultivator permit compliance classes.
Zero-Interest Loans	Equity applicants can receive zero-interest startup loans to cover the costs of establishing a cannabis business.
Fee Waivers	Equity applicants are not assessed a fee for Oakland City permitting.

Oakland has been accepting applications under this equity framework since the end of May 2017 (see Figure 18). It has been tracking data regarding general and equity applicants, and currently have 216 completed applications with a ratio of 106 general applicants to 110 equity applicants. In addition, 27 applicants applied as an incubator with 17 more expressing interest in becoming an incubator.[80]

Figure 18. Oakland Applicant Data (May 2017 – Sept 2017)

Applicant Category	Completed Applications
General Applications (non-equity)	106
Equity Applications (based on residency)	85
Equity Applications (based on conviction)	25
Total Complete Applications	**216**

As the only major city to have an implemented equity program, Oakland is instructive in what it implemented in its equity program and what it is seeing during the early stages of permitting. Figure 19 below is a summary of Oakland's key components of its equity programming and a brief discussion of key considerations and lessons learned. Green bullets represent potentially advantageous factors, while red bullets indicate potential challenges.

Figure 19. Oakland Equity Assistance Program Considerations

Equity Component	Key Considerations
Eligibility Criteria	• The program is targeted to high-cannabis-enforcement zones or cannabis convictions, which clearly defines the eligible population. • Only Oakland residents are eligible, which does not account for recent years of displacement of low-income individuals. • Convictions only include those within Oakland, which does not include Oakland residents convicted anywhere outside the city.
One-for-One Permitting Framework	• Ensures a mandatory level of participation by eligible applicants while other program components are established. • Guards against equity applicants being crowded out of limited number of permits by more well-resourced competitors. • Potential for artificial bottleneck if there are insufficient equity applicants (current data from Oakland does not show this to be the case). • Oakland caps dispensary permits at eight annually. This means that while half of new dispensaries will be from equity applicants, the discrete number of permits is low (four). • There is potential for market distortion given the cap on distribution points (dispensaries) with no cap on cultivation or manufacture facilities.
Incubator Program	• Allows general applicants to receive a benefit for providing benefits to equity applicants, which supports Oakland's equity goals at no cost to the city. • Only applies to real estate; other potential benefits, like money, technical assistance, or equipment are not included.

[80] Per interview with City of Oakland.

Figure 19. Oakland Equity Assistance Program Considerations	
Equity Component	**Key Considerations**
	• The program provides a benefit to well-resourced applicants who have the space and/or capital to provide benefits to equity applicants. Small- and medium-sized operators are relatively disadvantaged against larger competitors who can afford this benefit.
Business Technical Assistance	• Use of contracted organizations allows Oakland to minimize city staff while leveraging local industry expertise. • Contracting requires up-front funding before adult use tax revenue is collected.
Zero-Interest Loans	• Provides significant benefit to equity applicants who would otherwise be unable to afford – or even obtain – a private business loan. • The program is dependent upon tax revenue generated by permits to build up enough initial capital to begin issuing funds, but funding streams are potentially limited by the dispensary cap and the one-for-one permitting framework.

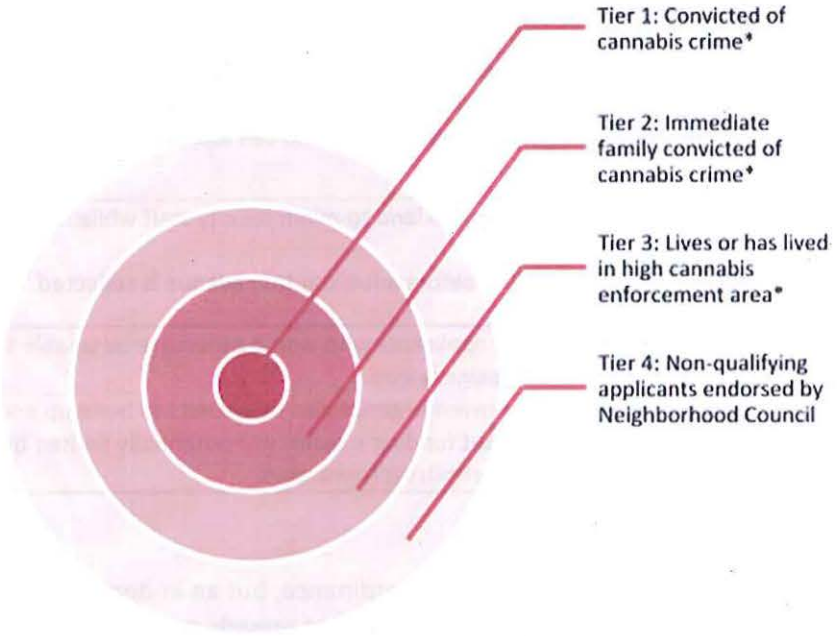
Los Angeles

Los Angeles' equity program has not yet been established in city ordinance, but an in-depth equity report was delivered to the City Council in October with recommendations that provide guidance on a potential program framework. The report provided options for both program eligibility and services that will be offered to qualifying applicants. While many options were presented, the city ordinance has not yet been passed, so it is currently unknown what exact components will be implemented. As commercial permit applications will be available starting in December 2017, Los Angeles anticipates that its equity program will be implemented as early as spring 2018.

Los Angeles has proposed having two windows for applicants. The first window will permit already-established medical cannabis dispensaries that have been compliant with city regulations. The second window will permit operations on a one-for-one basis: one permit for a general applicant for every permit for a qualified equity applicant (50% general and 50% equity permits). This one-for-one framework is recommended to continue for the life of the equity program, which is currently undetermined.

Los Angeles' Cannabis Social Equity Analysis also proposes a tiered framework (see Figure 20) of eligibility based on the direct and indirect impacts of cannabis law enforcement in an effort to make its equity program as inclusive as possible. Individuals who have been arrested for a cannabis crime (in California) are prioritized, followed by immediate family, then neighborhoods impacted by high enforcement levels, and finally neighborhood-endorsed applicants who are not otherwise qualified but provide a benefit (space, or assistance and capital) to a qualified applicant.

Figure 20. Los Angeles Equity Program Recommended Eligibility Tiers



**Must also qualify as low income*

Each tier of eligibility comes with a different suite of benefits or programming offered to the applicant as detailed in Figure 21 below. A Tier 1 applicant is offered access to all programming, including two benefits not offered to any other group: (i) a City-operated no-interest or low-interest loan program and (ii) an incubator/industry partnership program. Tiers 2 through 4 offer a proportionally reduced set of benefits.

Figure 21. Los Angeles Equity Program Recommended Benefits by Tier

		Recommended Benefits					
Tier	**Eligibility Criteria**	Priority Processing	Permitting Assistance	Business Training	Fee Waivers	Loan Program	Incubator/ Partnership Program
Tier 1	Low-income resident of LA with a prior cannabis conviction in CA.	✓	✓	✓	✓	✓	✓
Tier 2	Low-income resident of LA with immediate family member convicted of a cannabis-related crime in CA.	✓	✓	✓	✓		
Tier 3	Low-income resident of LA who lives or has lived in eligible districts.	✓	✓	✓	*		
Tier 4	Non-qualifying applicants who are endorsed by a Neighborhood Council.	✓	✓	✓			

**Eligible for fee deferral*

Figure 22 provides details regarding proposed benefits offered to equity applicants.

Figure 22. Los Angeles Recommended Cannabis Equity Program Benefits	
Benefit	**Details**
Waived Fees	Permitting and inspection fees for qualifying applicants are waived.
No- or Low-Interest Loans	City-managed loan fund offering no or low-interest loans to eligible applicants.
Incubator/Industry Partnership (Type 1)	General applicants can provide space or capital to eligible applicant to be eligible for a tax rebate and potential qualification as Tier 4 equity applicant. Equity permittees would also receive tax rebate.
Incubator/Industry Partnership (Type 2)	Landlords with currently unpermitted cannabis operations (which is punishable by punitive fines) can receive fine waivers if they provide space to equity applicants.
Technical Assistance	Assistance with navigation of City permitting requirements and compliance.
City Property	City-owned property not eligible for affordable housing may be made available for free or reduced rent to equity applicants.
Conditional Approval	Equity applicants may be eligible for conditional approval of a permit without securing real estate for their operation.

In addition to equity program components for which only eligible permittees qualify, the Los Angeles report also recommends several general conditions or programs, such as workforce commitments and diversity plans from new permittees, community reinvestment, education programs, and expungement events in highly-impacted communities, which are further detailed in Figure 23 below.

Figure 23. Los Angeles Recommended General Equity Components	
Benefit	**Details**
Streamlining	A streamlined permitting structure and a suite of development standards will reduce operational downtime spent in application review, which disproportionately impacts low-income applicants.
Phased Permitting	After already-existing medical businesses are permitted (grandfathered), equity and general applicants will be permitted on a 1-for-1 basis (50% permits to equity applicants).
Education & Outreach	Outreach and educational programs targeted to potential applicants to spread awareness of the equity program.
Community Reinvestment	Reinvestment fund and programming earmarked for communities disproportionately affected by cannabis enforcement.
Expungement	Expungement events held in disproportionately affected communities to help with criminal expungement.
Workforce	All businesses (not just equity) must commit to 50% eligible workforce (low-income or impacted) and submit a diversity plan.

While the Cannabis Social Equity Analysis made the above equity programming recommendations, there has been no establishment of this program in legislation yet. As such, which combination of components are included the final program remains to be seen, and there is no programmatic data currently available. Nonetheless, for the purpose of this report, Figure 24 includes a summary of these recommended equity programming components and a brief discussion of its key implementation considerations.

Figure 24. Los Angeles Equity Program Considerations

Equity Component	Key Consideration
Eligibility Tiers	• LA's eligibility framework provides a progressive level of benefits depending on an applicant's direct or indirect impacts from cannabis enforcement. • Conviction-based eligibility includes a conviction anywhere in California, in recognition that disproportionate arrests and convictions happen in many places throughout the state and should not be limited to Los Angeles. • As the program is not yet established, which benefits are approved in the final program are unknown. If certain program elements are not approved, it may arbitrarily impact what each eligibility tier qualifies for.
Community Reinvestment	• Recommendations include the use of adult use revenue for community reinvestment programs. These programs have the potential to improve opportunity in neighborhoods most disproportionately impacted by the War on Drugs.
Conditional Approval	• This allows applicants who have not yet secured real estate to avoid non-operational downtime while their permit application is under review. This offers flexibility to applicants who do not have the resources to carry the cost of commercial rents while they are not operating business.
Community Outreach & Education	• These programs can educate potentially eligible individuals about equity programming. These can be targeted to neighborhoods and communities that were highly impacted by the War on Drugs.
Expungement Events	• Criminal records expungement can be held in communities that were highly impacted by the War on Drugs. Expungement can mitigate other financial barriers such as denial of business loans based on conviction history.
Type-2 Incubators	• To incentivize unpermitted operators to enter the legal market, landlords can receive waivers from significant punitive fines for illegal operations on their property if they offer free space or rent to eligible equity applicants.
City Property	• It is recommended that LA consider city-owned property that is not eligible for affordable housing as potential space for eligible applicants to operate for free or reduced rent. • This may not be feasible in San Francisco, which faces a similar affordable real estate crunch in a much smaller geographical footprint than LA. There are also legal implications to this policy that must be considered.

Massachusetts

Massachusetts approved adult-use cannabis on the November 2016 ballot and has not yet finalized its state licensing framework; although it anticipates issuing licenses in the summer of 2018. In contrast to California, local jurisdictions in Massachusetts are limited to zoning control over cannabis businesses while the state retains control over almost all licensing conditions and regulations. The primary equity provisions are currently comprised of language that was inserted into state legislation, requiring that certain equity provisions be included in the eventual state regulation. These are summarized in Figure 25 below.

Figure 25. Required Equity Provisions in Massachusetts State Law

Provision	Details
Agency Representation and Legislative Mandates	• The Cannabis Control Commission must include a certain number of commissioners and advisory board members with backgrounds or experience in social justice and minority business ownership. • The Commission must adopt rules to promote participation in the cannabis industry by people from communities that have been disproportionately harmed by cannabis prohibition and enforcement. • A subcommittee of the Advisory Board will develop recommendations on women, minority, and veteran-owned businesses, and local agriculture and growing cooperatives.
Criminal Record	• People with past cannabis possession charges are eligible to have their records sealed and there will be an awareness campaign to inform the public. • Past cannabis offenses will not disqualify an individual from working or owning a cannabis business (except sale to a minor).
Priority Licensing	Priority licensing for applicants that promote economic empowerment in communities disproportionately impacted by cannabis arrest and incarceration.
Spending Priorities	Fees and revenue will go to a fund used for restorative justice, jail diversion, workforce development, industry technical assistance, and mentoring services.
Variable Co-op Fees	Cultivator license fees for cooperatives (co-ops) will be commensurate with cultivation size to ensure small farmers' access to licenses.
Data Collection and Study	• Data collection that tracks diversity in the industry is required. • The Cannabis Control Commission must report annually on data collected and research any evidence of discrimination or barriers to entry. • Additional licensing rules will be promulgated if evidence of discrimination or barriers to entry is found.

The Massachusetts Cannabis Control Commission is also doing statewide listening sessions with the public to solicit comments and concerns about the eventual regulatory framework. Equity-focused organizations and interested lawmakers have spoken at these sessions to encourage the Commission to implement equity programming and frameworks.

Denver

The first retail sales of adult-use cannabis in the United States began in Denver on January 1, 2014. Denver accounts for 40% of the state of Colorado's cannabis retailers and reached $288.3 million in sales in 2016.[81] Although Denver does not have an equity program that explicitly promotes equitable ownership and employment in the cannabis industry, it nevertheless can provide important insights as a city that is much farther ahead in the permitting framework than San Francisco.

Denver regulates the number of permits, manner (i.e., the sales conditions), zoning, and hours of adult-use cannabis. When adult-use cannabis became legal, Denver allowed all existing medical cannabis businesses to apply for a permit if they were permitted by July 2014. In 2016, Denver capped the number of adult use permits to existing and pending applications. As of January 1, 2017, the City of Denver has issued 429 adult-use permits and 684 medical permits across 484 unique locations.[82]

Denver requires that permit applicants submit a Community Engagement Plan, which details commitments from the business to provide a positive impact in the community. The engagement plan is not specific to equity, but could include an equity component if the business owner so chose. Plans often focus on charitable efforts like food drives, street clean up, or community gardens. The permitting authority in Denver has no enforcement authority to compel accountability to its community engagement plan.

As Denver is multiple years into permitting, they are experiencing secondary impacts of permitting that should be considered by other cities who are just beginning. Figure 26 below summarizes Denver's key lessons learned in permitting cannabis businesses for the past three years that should be considered in San Francisco's implementation of adult-use cannabis and its equity program.

Figure 26. Denver Adult-Use Permitting Lessons Learned

Type	Lesson Learned
Accountability	While Denver requires community engagement plans, it has no enforcement authority to hold permittees accountable to execute the plans.
Financial	It is important to understand how much revenue a city will expect to see and how it can be used, if restricted. Cities must plan for how funds can and cannot be used.
Data	Data collection should be built into the system from the beginning, baselines established early, and efforts should be made to collect data along the entire permitting process. Before and after data is critical to understand the economic impact of the cannabis industry.
Education and Awareness	The public should be educated about what is allowed and what is not in the cannabis industry. Youth and public education should be built into the program from the start and be robust.

[81] The Denver Collaborative Approach: Leading the way in municipal marijuana management (2017 Annual Report).

[82] Ibid.

	Cities should try to understand who is not participating in the legal market and make robust efforts to engage this community.
Social Use	Consumption in private and members-only lounges, which do not sell cannabis but allow its use, is an issue that surfaces with legal cannabis, and how a city wants to permit these establishments should be considered.

Other State Equity Programs

Other states that have licensed medical cannabis have considered or implemented provisions to promote equitable participation in the industry. These equity components are summarized in Figure 27 below.

Figure 27. Summary of Equity Components for Medical Cannabis in Other States

State	Equity Component
Florida	Once the state's medical cannabis patient registry reaches 250,000, three more cultivation licenses will be issued, one of which will be designated for the Florida Black Farmers and Agriculturists Association.
Maryland	Maryland initially issued 15 cultivation licenses but was sued when none were issued to minority-owned applicants. The State Assembly considered but did not act upon a bill that would have allowed seven additional cultivation licenses in the state, all designated for minority-owned companies.
Ohio	State law requires that 15% of licenses go to businesses owned by four identified minority groups.
Pennsylvania	Cultivation and dispensary applicants must submit diversity plans that include how they promote racial equity through ownership, employment, and contracting. The state must also help minority groups learn how to apply for licenses.
West Virginia	State law requires that regulators encourage minority-owned businesses to apply for growing licenses.

VI. Findings and Recommendations

The following section seeks to provide recommendations[83] regarding policy options that could (A) foster equitable access to participation in the industry, including promotion of ownership and stable employment opportunities in the industry (B) invest City tax revenues in economic infrastructure for communities that have historically been disenfranchised, (C) mitigate the adverse effects of drug enforcement policies that have disproportionately impacted those communities, and (D) prioritize individuals who have been previously arrested or convicted for marijuana-related offense. Specifically, this section provides key findings informed by this report's *Equity Analysis, Barriers to Entry*, and *Equity Program Benchmarking* sections. The recommendations incorporated are meant to inform policymakers as the City embarks on developing an Equity Program.

Green bullets represent potentially advantageous factors, red bullets indicate potential challenges, and black bullets represent neutral considerations.

ELIGIBLITY	**Finding 1: Eligibility factors should be focused on specific populations, namely, those that have been disproportionately impacted by cannabis prohibition during the War on Drugs, and criteria should be supported by data.**	
	Recommendation:	**Considerations:**
	The City's Equity Program should set specific criteria that define the population served. Criteria should be data driven to ensure the City meets its goal to prioritize individuals who have been previously arrested and convicted of cannabis-related offenses, or disproportionately impacted by the War on Drugs. Based on data analysis in this report, the City should consider including the following eligibility criteria: 1) Conviction history associated with cannabis related offense(s);[84] 2) Immediate family member with a conviction history associated with cannabis related offense(s);	• Limiting the eligible group allows an affected group to receive higher-value benefits. • Rationale for eligibility criteria must be clear and justifiable, preferably with data, to minimize confusion among groups not included. • Eligibility should, at a minimum, require a cannabis-related arrest and conviction, and should be consistent with the State's conviction history guidelines. • The City will have to decide on whether it should limit convictions to within the City, the Bay Area, the state of California, or anywhere in the United States.

[83] These recommendations should be subject to City Attorney review prior to implementation.

[84] The City should consider making the following serious criminal convictions not eligible: offenses that include violent felony conviction(s); serious felony conviction(s); felony conviction(s) with drug trafficking enhancements; felony conviction(s) for hiring; employing or using a minor to transport, carry, sell, give away, prepare for sale, or peddle any controlled substance to a minor; or sell, offer to sell, furnish, offer to furnish, administer, or give away a controlled substance to a minor.

	3) Low Income Status;[85] 4) Residency Requirement; 5) Ownership Requirements; and if appropriate 6) Geographic Location[86]	
	Recommendation: *Eligibility Tiers* The City should create a tiered structure to provide proportional benefits necessary for each tier's success.	**Considerations:** • Tiered eligibility can offer progressively more valuable services to the most-impacted (directly and indirectly) individuals and mitigate bottlenecks in one-to-one licensing frameworks. • Ensures that applicants with a cannabis conviction history directly benefit from the program. • Ensures limited resources can be targeted most effectively. • Conviction-based eligibility could include convictions within the state, recognizing the impacts of convictions on an individual, regardless of location of arrest/conviction. • More complex eligibility criteria require increased program administration resources.
	Recommendation: *Ownership* The City should consider requiring ownership structures of equity applicant operators to reflect a certain percentage. This structure should set a baseline that ensures applicants realize benefits from ownership, including decision making power, but be flexible enough to allow for a variety of ownership structures.	**Considerations:** • Requiring a percentage of ownership and/or control ensures equity operators are realizing the financial benefits of their operations. • Los Angeles suggested 51%+, however, requiring 51%+ ownership may have an unintended impact of lessening outside investor interest and, therefore, may prove to be a capital barrier for equity applicants.

[85] Low income is defined as at or below 80% San Francisco's area median income as defined by California Department of Housing and Community Development.

[86] The disadvantaged populations identified in the *III. Equity Analysis* section of this report may serve as an appropriate metric for identifying workforce populations, however, if there is an interest in determining which communities have been disproportionately impacted by the War on Drugs over a sustained period of time, we would recommend further analysis.

	Recommendation: *Residency* The City should consider creating a residency requirement to ensure that current and former San Francisco residents who have experienced over policing and have difficulty accessing living wage jobs are the first to benefit from this program.	**Considerations:** • Because of the size of San Francisco's market, and in the interest of ensuring a tempered rollout of new activity, prioritizing residency will allow current and former residents to benefit first from this opportunity. • Los Angeles requires residency for no less than 5 accumulative years, with no less than 70% meeting this requirements, and Oakland requires residency for no less than 10 years.
PERMITTING	**Finding 2: Adult-use cannabis permitting should ensure that equity applicants have sufficient opportunity to take advantage of the program and are not crowded out by more well-resourced applicants. It should incentivize ongoing support for Equity applicants, if necessary.**	
	Recommendation: *Prioritization* The City should consider a prioritized permit process to assist Equity Applicants.	**Considerations:** • A faster approval process ensures applicants are not crowded out by more well-resourced applicants. • Permitting conditions could prevent well-resourced competitors from crowding out potential equity applicants. • Prioritization approaches need to be considered in the context of overall tiering and phasing strategies to ensure desired outcomes for equity applicants.
	Recommendation: *Phasing* The City should consider permitting phases that layer frameworks in succession. The City should complete an analysis on each phase and this analysis should advise policy adjustments to the Equity Program framework, permitting process, and geographic distribution for the next phase.	**Considerations**: • As currently proposed, in 2018, only 1) Equity Applicants, 2) existing operators, and 3) operators who were operating in compliance with the Compassionate Use Act but were forced to cease activities due to federal enforcement, are eligible to apply for permits. • Existing medical businesses should be permitted in initial permitting phase(s) to ensure continued access to medicinal cannabis for patients. • An overly complex program could delay permit issuance. • In a one-for-one model, there is potential for a bottleneck in licensing if insufficient

		numbers of equity-eligible individuals apply.
	Recommendation: *Ratios* The City should, at a minimum, mandate a requisite number/percentage of equity applicants to new applicants during permitting phases.	**Considerations:** • As currently proposed, new general applicants are not eligible for permits in 2018, with the exception of businesses that were previously shut down through federal enforcement. As such, only Equity Applicants will be eligible for new permits in year one. • Both Oakland and Los Angeles have implemented or proposed a one-for-one licensing framework during the initial permitting phase that ensures 50% equity applicant participation to every new business.
	Recommendation: *Provisional Approval* For Equity Applicants, the City should allow for provisional approval of a permit prior to the applicant securing real estate for their operation.	**Considerations:** • Provisional approval of a permittee could help the applicant overcome potential financial barriers to entry by providing investors with more certainty to back that applicant and incentivize investors to provide adequate capital for a physical location.
	Recommendation: *CB3P for Retail Applicants* The City should consider extending the Community Business Priority Processing Program to Equity Applicants, specifically retail applicants, to allow for a fast tracked and streamlined Conditional Use review process.	**Considerations:** • The CB3P program would provide applicants with time savings and more clear timelines.
	Recommendation: *Amnesty Program* The City should consider developing pathways, such as an amnesty program, to encourage existing nonconforming businesses - many of which are small operators who may qualify as Equity Applicants - to transition to the legal market in 2018.	**Considerations:** • Ensuring continued operation could mean the operator faces fewer barriers to enter the regulated market.

Finding 3: Incubator programs are designed to incentivize partnerships between entrepreneurs or established cannabis operators and equity applicants, helping to achieve equity goals at no cost to the City.	
Recommendation: *Incubator Programs* The City should considering including a flexible incubator program that allows Equity Applicants to partners with operators who wish to further the City's equity goals. Such partnerships could include combinations of workforce, financial, capital, real estate, and technical assistance provided by non-equity applicants.	**Considerations**: • Incubator options that allow employers and cannabis operators flexibility to determine appropriate program offering(s) can incentivize private sector investment in equity goals.(e.g., real estate and/or mentoring; landlords allowing cannabis businesses on their property) • Accountability measures must be taken to ensure parties conform to agreements and equity outcomes are achieved. • Equity incubators incentivize knowledge and resource sharing with Equity Applicants at no cost to the City. • Oakland has faced criticism that requiring existing businesses to form incubators runs the risk of "hollowing out the middle," where the market shifts toward one that consists only of large, well-funded businesses and equity businesses, a model that could ultimately crowd out equity businesses.
Recommendation: *Incubator Program Priority Processing* The City should consider extending priority processing to Incubator Program applicants.	**Considerations:** • Priority processing will allow the City and the incubated operator to realize the equity benefits faster. • Non-equity existing operators that serve as "incubators" could be eligible to receive priority permit review and issuance. • Prioritization approaches need to be considered in the context of overall tiering and phasing strategies to ensure desired outcomes for equity applicants.
Recommendation: *Success Metrics* Metrics should be incorporated into the Equity Program to ensure that operators are	**Considerations:** • Operators could use Equity Applicants to enter the market in 2018, and provide them with no meaningful benefits.

	helping move Equity incubator operators towards success.	
COMMUNITY REINVESTMENT	**Finding 4: Adult-use cannabis revenues can be dedicated to community reinvestment programming that can help to addresses inequities in cannabis enforcement and lasting impacts to communities of the War on Drugs.**	
	Recommendation: *Creation of a Community Reinvestment Fund* The City should consider creating a Community Reinvestment Fund to allocate cannabis tax revenue and focusing investments on those communities disproportionately affected by cannabis enforcement. Programming may include restorative justice, jail diversion, and improving the health and wellbeing of communities that have been affected by the War on Drugs.	**Considerations**: • Community reinvestment offers neighborhood-wide and neighbor-directed benefits to those who were most disproportionately impacted by cannabis enforcement but are not participating directly in the cannabis economy. • A cannabis tax has not yet been approved by San Francisco voters, and there is little information available on revenues and spending priorities. • Cannabis tax revenues may be an inconsistent source of revenue until the market stabilizes, which could take a few years.
	Recommendation: *Anti-Stigma Campaign* The City should consider committing a portion of funding to build on the Department of Health's awareness campaign to further acknowledge the impact of the War on Drugs and the stigma that remains in certain communities.	**Considerations:** • Reducing stigma could help operators better access capital, real estate, and technical assistance. • Community awareness through this campaign can help calm fears that have been developed over decades of misinformation and scare tactics used during the War on Drugs. • In developing a more regular lexicon to use for the regulated activity, City should avoid Drug War language including "crackdown," and "Black market."
	Recommendation: *Funding for Community Reinvestment* The Office of Cannabis should continue to coordinate with City partners, including the Office of Economic and Workforce Development and the Mayor's Office, to continue advocacy for funding through the Governor's Office of Business and Economic	**Considerations** • State funding can enhance and supplement the City's ability to meet local equity goals.

	Development community reinvestment grants program.	
	Recommendation: *Equity Plan* The City should consider requiring applicants to submit, as part of their Community Benefit Agreement, an Equity Plan that describes how the applicant's business supports the Equity goals of the City.	**Considerations:** • This encourages business to think about Equity in the context of it being a community benefit in their surrounding neighborhood, and allows them to consider equity more broadly in the context of their business model.
	Recommendation: *Streamline Expungement Opportunities* Community reinvestment programming should include streamlined expungement events held in neighborhoods that have been disproportionately-impacted by the War on Drugs.	**Considerations** • Bringing events to communities enhances overall outreach for the equity program and reduces barriers to navigating the expungement process. • Such events should be done in coordination with the Public Defender's Office, the Courts, and other relevant partners, and they should provide clients with an expedient expungement process.
WORKFORCE DEVELOPMENT	**Finding 5: All cannabis operators should promote equitable employment opportunities for those communities harmed by the War on Drugs. These opportunities should include hiring formerly-incarcerated individuals, hiring in targeted neighborhoods, and paying living wages.**	
	Recommendations: *Leverage Existing Programs* The City should leverage eligible[87] existing workforce programs to provide pathways to employment in the legal cannabis industry for individuals engaged in street-level drug commerce.	**Considerations:** • Length of program would need to be balanced, making sure participants are job ready while meeting their need to enter the workforce quickly. • Accelerated training programs, similar to the models that allow for flexible approaches to certification should be leveraged to expedite and prioritize employment opportunities for persons who meet the equity permit criteria. • Cannabis industry workforce program could be modeled after existing OEWD Reentry Services Program. • Leveraging existing programs offers people opportunities to build skills for other industries as well.

[87] The City should recognize that there are some community based organizations that rely on federal funding and may therefore be unable to provide services due to threat of federal enforcement.

Recommendations: *Expand Workforce Curriculum* The City should consider expanding curriculum to support new workforce and/or entrepreneurship services for street level cannabis participants across industries.	**Considerations:** • The City's approach to curriculum development through GoSolarSF could be used as a model. • This would require engagement and training of new CBOs, in basic workforce knowledge. • There may be limited potential for program growth due to considerations and restrictions around co-mingling cannabis workforce funding with other sources. • This approach would also take time and creating new programming can be costly. • There is a potential lack of data related to industry workforce projections, making it difficult to scope program size and funding.
Recommendations: *Workforce Fairs* The City should support a series of workforce fairs with partners including Invest in Neighborhoods, Small Business Commission and others to provide outreach, education, and ownership support.	**Considerations:** • Bringing events to the community can assist with outreach and help build trust with City agencies.
Recommendation: *Training Personnel with Industry Experience* The City should consider hiring training personnel who are experienced in the industry transitioned from the unregulated market to regulated cannabis industry to ensure curriculum relevance and applicability.	**Considerations:** • Persons with experience in the unregulated and regulated cannabis market may be well positioned to advise individuals looking to join the regulated market. • These positions could create additional workforce opportunities for persons impacted by the War on Drugs. • Much of the City's workforce training partners make independent personnel decisions. • The need for official industry knowledge could be addressed via future RFP's
Recommendation: *Incorporate Local Hire & Refine Requirements* The City should incorporate local hire requirements, and should consider requiring or incentivizing employers to prioritize	**Considerations:** • Given that not all persons who were disproportionately impacted by the War on Drugs are ready to start their own cannabis business, ensuring they have

applicants from then disadvantaged communities.[88]	meaningful access to workforce opportunities in the Cannabis Industry is critical. • Refining Local Hire requirements to target specific areas of the City could allow us to see more persons from disenfranchised communities enter the workforce pipeline. • The City would need to ensure people are hired for full time, fair wage jobs and not just used to obtain the permit. • Cannabis businesses could be required through their CBA's to participate in First Source beyond entry-level positions, providing upwardly mobile career pathways in addition to incorporating mid-level placements. • A large amount of resources and infrastructure is required by the City for enforcement/reporting, therefore, this would require a funding source as well as time to build the internal capacity. • Local Hire and any requirements related to hiring from specific location may add technical human resource burdens to operators when the City should seek to reduce technical burdens.
Finding 6: Existing City legislation can be leveraged to expand equitable employment opportunities.	
Recommendations: *Education on Fair Chance Ordinance* The City should proactively educate all cannabis businesses on the provisions of San Francisco's Fair Chance Ordinance (FCO) that regulates the use of arrest and conviction records in employment decisions.[89]	**Considerations**: • Since the City has determined Prop 47 convictions are "low priority" this would help to ensure those convictions are not used to deny individuals meaningful employment.
Recommendation: *Remove Cannabis Conviction Workforce Barriers*	**Considerations**:

[88] As described in Section III, Subsection E. Disadvantaged Communities.

[89] See Appendix D. Existing Resources.

	The City should look at legislating the removal of employment barriers based on cannabis-related convictions across all sectors.	• Adding this language to Article 49 of the Police Code (the Fair Chance Ordinance) would help ensure that conduct which is now legal under Proposition 64 does not continue to be a barrier to employment.
FINANCIAL & CAPITAL ACCESS	**Finding 7: Individuals and neighborhoods that have been disproportionately targeted for drug enforcement and consequently disadvantaged socio-economically may have a particularly difficult time overcoming financial barriers.**	
	Recommendation: *Existing Operator Participation* The City should incentivize operators that may receive a temporary permit to operate an adult-use business to contribute to the City's equity goals. Any commitments made by operators should remain in place until the operator's Article 16 Community Benefits Agreement is approved.	**Considerations:** • Proactive participation by existing operators will help the City move towards equity goals before mandates meant to further equity are implemented.
	Recommendation: *Access to Banking* The San Francisco Treasurer and Tax Collector should continue to work closely with the State Treasurer to provide more opportunities for applicants to access banking services, and should play a brokering role with California credit unions to teach/partner with San Francisco based credit unions so that they may serve as a resource to San Francisco based operators.	**Considerations**: • Mitigates financial barriers
	Recommendation: *Consideration for Municipal Bank* In line with File No. 170448, *Urging the Office of the Treasurer and Tax Collector to convene a Municipal Public Bank Task Force,* the City should continue to move forward expeditiously with the review of a municipal banking policy to ensure applicants have the opportunity to be provided equitable and transparent access to capital in the absence of federally regulated banks participation.	**Considerations** • Would create access to banking for the industry as a whole. • Money generated from fees and interest could be used to subsidize loans to equity applicants.

	Recommendation: *Fee Waivers* The City should consider waiving application, permit, and inspection fees for some or all equity applicants in their first year to lower financial barriers of entry.	**Considerations:** • There would be substantial cost associated with this on behalf of departments. • "Fairness" for entrepreneurs from disenfranchised communities starting non- cannabis businesses and not receiving such a waiver may become a concern in the business community.
	Recommendation: *Reducing Social Stigma* Recognizing that equity permit holders might have limited access to social and financial capital, which could further be impacted by the social stigma associated with cannabis use and sales, the City should invest in a campaign to acknowledge the impact of the War on Drugs and the stigma and bias associated with both users and businesses.	**Considerations:** • The City's public information campaign could be used to address multiple issues, including facts about the health impacts of cannabis use as well as the racialized history of prohibition and enforcement.
	Recommendation: *Loans* The City should create a fund that could receive funds from Equity Incubator applicants, and use this fund to support Equity Operators.	**Considerations:** • This fund can provide a source of revenue prior to the implementation of a cannabis specific tax. • If needed, it could take time to find a qualified CBO that has no other federal conflicts to administer such a program or internal capacity and staffing would need to be developed.
	Recommendation: *Setting Tax Rate*[90] In order to address the barrier that well-funded businesses may be more capable of building in financial contingencies for things such as unforeseen tax liabilities, the City should consider tax policies that mitigate the tax burden on equity applicants.	**Considerations:** • Contemplating a tax rate that mitigates the tax burden on equity applicants ensures they remain competitive in a market that has better resourced operators. • Higher tax rates can increase the effective price of cannabis causing some consumers to shift spending to other goods or buy their cannabis outside of the regulated market.

[90] See Appendix E Taxation: State Structure & Review of Other Jurisdictions' Tax Structures

TECHNICAL ASSISTANCE

Finding 8: New cannabis businesses may face technical knowledge-based gaps around an industry that has been historically underground. Technical barriers can include aspects of cannabis development as well as business planning and operations. These barriers are more difficult to navigate for lower-income individuals who may not be used to working in regulated environments and/or unable to afford specialized consulting or technical assistance.

Recommendation: *Create a Simple & Transparent Application Process* The City should create a permitting process that is simple, transparent, and employs technological solutions to help speed and make applicants aware of process from day one.	**Considerations:** • A simple intake and application process will make it easier for the applicant to know if they are eligible for a permit, as well as be better informed of what the path towards becoming a permitted business may entail. • To support this, a section for cannabis businesses can be added under Businesses Type in the Permit Locator of the San Francisco Business Portal.
Recommendation: *Leverage Existing Resources* The City should steer Equity Program participants in need of business, compliance, and industry-specific technical assistance and mentorship to the various eligible City entrepreneurship and workforce programs currently available, many of which are referred to in the "Existing Resources" section.[91]	**Considerations:** • Leveraging of existing entrepreneurship and workforce programs minimizes up front cost and resource needs for the Office of Cannabis.
Recommendation: *Matching Opportunities* The City should create a program to match small operators, equity applicants, and interested landlords.	**Considerations:** • Leveraging existing relationships with the landlord community, educating them on the regulatory structure could create more real estate opportunities. • Matching small operators, including equity applicants, creates potential incubator partnership opportunities, and where/when allowed, co-op partnership opportunities.

[91] See Appendix D, Existing Resources

Recommendation: *Partner with Local Non-Profits* The City should also consider partnering with local consultants and non-profit organizations to provide cannabis specific business consulting, such as business plan workshops, and regulatory compliance assistance.	**Considerations:** • Use of contracted organizations minimizes the need to hire additional city staff resources while leveraging local industry expertise. • Contracting for technical expertise will require up-front funding before adult use tax revenue is available • Many business-service-providing nonprofits are funded and/or chartered by the Federal government and will be unable to provide services - substantial time may be needed to develop new CBO partners to create programming in this space.
Recommendation: *Staffing in the Office of Cannabis* The Office of Cannabis should assign a staff member to serve as the primary program coordinator for the program.	**Considerations:** • This staff member will coordinate with City departments, including the Human Rights Commission and the Office of Economic and Workforce Development. • Applicants who meet Equity criteria will receive assistance from this person in completing their application and navigating City processes through coordinated efforts of this program coordinator and staff in the Office of Small Business.
Recommendation: *Creation of Curriculum* The City should encourage local academic institutions such as City College to expeditiously create cannabis specific workforce and entrepreneur training opportunities for San Francisco residents, particularly Equity Applicants, at free or reduced costs.	**Considerations:** • The existing partnership between the City and City College is one that should ensure that San Francisco's residents have access to impactful and meaningful curriculum.

CRIMINAL HISTORY

Finding 9: The War on Drugs has disproportionately affected communities of color. Despite Proposition 64, which allows applicants who have been convicted of drug offenses to be eligible for a cannabis business license in California, a criminal history can limit an individual's ability to gain employment, apply for government assistance, and/or obtain a loan, thereby creating barriers to entry into the adult-use cannabis market.	
Recommendation: *Streamline Expungement Opportunities* The City should ensure community reinvestment programming includes expungement events held in disproportionately-impacted neighborhoods.	**Considerations:** • Bringing events to communities enhances overall outreach for the equity program and reduces barriers to navigating the expungement process. • Such events should be done in coordination with the Public Defender's Office, the Courts, and other relevant partners, and they should provide clients with an expedient expungement process.
Recommendation: *Navigation to Clean Slate Program* The application process within the Once the Office of Cannabis should serve as an additional entry point into the San Francisco Public Defender's Clean Slate Program.[92]	**Considerations:** • Expungement can mitigate some financial barriers to entry into adult-use cannabis.

[92] See Appendix D, Existing Resources.

STAKEHOLDER ENGAGEMENT

Finding 10: Arrest and conviction of cannabis offenses has disproportionately affected communities of color, eroding trust between these communities and law enforcement/government. These communities may be wary of formally entering an industry in which they have been historically targeted for criminal enforcement.

Recommendation: *Creation of Culturally Sensitive + District Specific Outreach* The City, in consultation with each Supervisor, by creating district specific, culturally sensitive outreach.	**Considerations:** • Rebuilds trusts between equity communities and the government. • Surfaces opinions regarding what is effective and not effective from various stakeholders. • Inform regulators' understanding about the unique operating environment for San Francisco cannabis entrepreneurs. • This outreach increases the chances of program success by recognizing opportunities to proactively engage stakeholders in a familiar environment. • Advisory boards or commission can add additional layers of bureaucracy. • Upfront need of program resources to perform outreach and respond to questions from the public.
Recommendation: *Create Informal Relationships* The City should create informal relationships (e.g., listening sessions) between regulating entities and a large stakeholder group that includes equity-eligible community members.	**Considerations:** • The relationships may help to build trust in government. • Creating relationships built on trust between regulatory authorities and the community is necessary for the success of the program and for effective regulation.
Recommendation: *Create Formal Relationships: Task Force Membership* The City should create formal relationship between regulating entities and stakeholders that represent equity eligible communities. To that end, the City should consider amending the San Francisco Cannabis State Legalization Task Force membership to provide membership to representatives from neighborhoods and communities with high concentrations of eligible individuals. These representatives should have a cannabis related conviction history and/or should work	**Considerations:** • The relationships may help to build trust in government. • Creating relationship built on trust between regulatory authorities and the community is necessary for the success of the program and for effective regulation. • Advisory boards or commission can add additional layers of bureaucracy and the more formal nature doesn't always lend itself to relationship/trust building.

	with populations that have cannabis related conviction histories.	
PUBLIC AWARENESS & EDUCATION	**Finding 11: An Equity Program is effective if cities and states conduct the necessary public outreach such that potentially eligible persons are aware of the program and its benefits as early as possible.**	
	Recommendation: *Program Education & Outreach* The City should deploy outreach and educational campaigns that spread awareness of the Equity Program across the city but also target neighborhoods and communities with high concentrations of eligible individuals.	**Considerations:** • Mitigation of ambiguity around what is legal at the local, state, and federal levels. • Allows for mitigation of not knowing what opportunities are available. • Allows for mitigation of distrust between law enforcement and those communities disproportionately affected by cannabis arrests and convictions. • This effort would require upfront resources to perform outreach and respond to questions from the public. • The outreach should contemplate concern from the community about oversaturation of cannabis related information exposure to youth.
	Recommendation: *Culturally Sensitive Outreach* Supervisors should participate in creating district specific community and culturally sensitive outreach strategies, to ensure robust, thorough and multicultural outreach and engagement throughout San Francisco.	**Considerations:** • Rebuilds trusts between equity communities and the government. • Surfaces opinions regarding what is effective and not effective from various stakeholders. • This outreach increases the chances of program success by recognizing opportunities to proactively engage stakeholders in a familiar environment. • Upfront need of program resources to perform outreach and respond to questions from the public.
	Recommendation: *Immediate Outreach* Outreach to potential applicants should begin as soon as a program is established and prior to when Article 16 applications are accepted.	**Considerations:** • Immediate outreach ensures equity-eligible applicants are not crowded out.

DATA COLLECTION & ACCOUNTABILITY

Finding 12: All peer jurisdictions who have implemented adult-use cannabis require data collection to understand the impact of the industry. Oakland and Los Angeles propose tracking data on general and equity applicants on a regular basis to measure the success of its Equity Program.

Recommendation:

The City should incorporate data collection requirements into the application and reporting processes to track that all components of an Equity Program and to measure its impact on the community.

The City should consider incorporating the following data metrics into the application, permitting and permit renewal process:

- Number of equity applicants to apply
  - Types of drug related offenses (aggregate)
  - Income status (aggregate)
  - Race (aggregate)
  - Ethnicity (aggregate)
  - Gender (aggregate)
  - Sexual identity (aggregate)
  - San Francisco residency status
  - Ownership structure
- Total percentage of ownership by and employment of San Francisco residents
- Workforce characteristics
  - Total number of employees
  - Number of local employees
  - Percent of hours of local employees
    - Full time
    - Part time
  - Percent of hours from employees placed through First Source
  - Other factors that align with mandated or recommended workforce guidelines.

Further, to ensure we closely track policing associated with legalization, the City should track and report out on arrest rates, locations of arrests, gender, ethnicity, race, etc.

Considerations:

- Data gathering components should be built into the Equity Program from the outset and baselines should be established early.
- Data should be collected along the entire licensing and monitoring process.
- Quality data (e.g., demographic data) is critical for establishing the case for pre- and post-adult use analyses.
- The source of data, particularly law enforcement data, could span various systems and agencies across the City, potentially adding risk to data reliability and accuracy and requiring coordination.

	Recommendation: *Require Regular Reporting* The City should require a follow-up report from appropriate agencies including the Office of Cannabis and Human Rights Commission. These reports should analyze the implementation and outcomes of the Equity Program, permitting, and geographic distribution and make programmatic recommendations for 2019.	**Considerations:** • Status and outcome reports will be critical for course correction and adjusting the Equity Program to meet community needs.
	Finding 13: Without accountability mechanisms in place in an Equity Program, any equity commitments made by permit holders are unenforceable.	
	Recommendation: *Enforcement of CBAs* The City should ensure that commitments (e.g., real estate by incubator applicants) made by permittees must be enforceable by making compliance with community benefits agreements a permit condition that when not followed, leads to a fine, permit suspension or ultimate revocation. The City should regularly audit community benefit agreements to ensure compliance.	**Considerations:** • Accountability mechanisms should be clearly identified during the licensing application phase. • Equity outcomes could be tied to community benefit commitments. • The auditing of CBA's will require significant staff time and resources.
MODIFICATION & COURSE CORRECTION	**Finding 14: Course correction mechanisms in an Equity Program can mitigate unintended consequences and allow cities to remain flexible in an emerging adult-use cannabis industry.**	
	Recommendation: *Course Correction* The City should plan to mitigate unintended consequences (e.g., worsening of racial disparities in cannabis offenses) through policy implementation changes over time and course-correction mechanisms needed to further equity goals. Examples of course-correction mechanisms include but are not limited to the following: • Licensing in phases (e.g., equity balance initial phases before unrestricting licensing) • Implementation of eligibility requirements in phases to ensure equity outcomes are being met	**Considerations:** • Licensing in phases allows for time to learn and adjust before larger-scaled implementation. • Formal relationships between regulatory agencies and a large stakeholder group can uncover key challenges and needed adjustments as well as build trust in an evolving regulatory environment. • An evolving licensing and regulatory framework could cause confusion and/or mistrust amongst stakeholders. • A formal stakeholder group can add bureaucracy and drown out smaller voices.

	• The creation of formal relationships between regulatory agencies and a large stakeholder group • Flexible incubator options or other incentives to allow for more established retailers to maximize their opportunities for participation in the Equity Program. • The automatic expiration or reduction of provisions and the long-term direction for both governing bodies and revenues.	
LANDUSE & ZONING	**Finding 15: Geographic barriers for low income or disadvantaged individuals can exist if there is a restricted area of opportunity, and scarcity of available land can drive up real estate value.**	
	Recommendation: *Equitable Distribution* The City should consider land use controls that provide for more equitable distribution of cannabis storefront retail to mitigate overconcentration in disenfranchised neighborhoods	**Considerations:** • By reducing the eligible locations for businesses, scarcity creates further challenges for equity applicants.
	Recommendation: *Thoughtful Placement* The City should consider the concentration of cannabis, tobacco and alcohol retailers when issuing land use approvals.	**Considerations:** • Considering alcohol and tobacco outlet density is important to ensure any one neighborhood is not oversaturated with activity associated with potential health harms.
	Recommendation: *Task Force Membership* The City should amend the San Francisco Cannabis State Legalization Task Force membership to provide membership to representatives from disadvantaged communities[93] to ensure that issues related to overconcentration are addressed at the Task Force.	**Considerations:** • Formal relationships between regulatory agencies and a large stakeholder group can uncover key challenges and needed adjustments as well as build trust in an evolving regulatory environment. • A formal stakeholder group can add bureaucracy and drown out smaller voices.

[93] As defined in *Section III, Subsection E. Disadvantaged Communities.*

Appendix A. Center on Juvenile and Criminal Justice Drug Arrests Report, 2017

San Francisco's Drug Arrests Drop 90% through 2016; Disproportionate Arrests of African Americans Persist

By
William Armaline, Ph.D., SJSU HRI and Dept. of Sociology
Mike Males, Ph.D., CJCJ Senior Research Fellow
October 2017

Summary

Over the last 15 years, the Center on Juvenile and Criminal Justice has issued a series of reports detailing the 40+ year pattern of San Francisco's racially discriminatory arrest practices against African Americans, particularly for drug offenses. In the last seven years, a major new development has arisen: policy reforms and San Francisco's mammoth decline in drug arrests have dramatically reduced the impact of drug offense policing on all communities. The context of today's racial disparities is that San Francisco appears to be rapidly moving away from arrest-oriented drug enforcement, with huge declines in drug arrests over the last three decades (even as the city's population rose by 150,000), capped by a dramatic, 91% plummet in the reform era over the last seven years:

1988-89 (peak years for drug arrests): Felonies, 22,500; misdemeanors, 6,700; total, 29,200
2008-09 (peak years prior to reform): Felonies, 14,500; misdemeanors, 4,800; total, 19,300
2015-16 (most recent years): Felonies, 1,700; misdemeanors, <100; total, 1,800

Further research is necessary to investigate the causes and implications of this statistical trend. For instance, it would be reasonable to explore the role of emergent recreational cannabis legalization in California on policing, keeping in mind that over half of all drug arrests nationally are for cannabis,[1] and that cannabis arrests tend to follow the same racially disparate enforcement patterns that have historically characterized the drug war. Indeed, national data suggests that despite using cannabis at approximately the same rate as whites, African Americans are still 4 times as likely to be arrested for it.[2] In San Francisco, cannabis reform would have had a lesser effect on drug arrest totals (since marijuana offenses comprised fewer than one-fifth of drug arrests prior to reform) but may have been an important, added "signal" to law enforcement to de-prioritize drug arrests. The "previous findings" below illustrate a legacy of racially disparate drug arrests in San Francisco, with a particularly disturbing focus on African American girls and young women.

In sum, this report offers a description and initial analysis of the large drug arrest decline amid persistent racial disparities in felony and misdemeanor drug arrests in San Francisco. It also provides some guidance on how these trends might be viewed in the larger context of drug policy reform according to an international human rights framework. Contemporary drug policy solutions that employ an international human rights framework (1) demand equal protection under the law in form and effect; (2) embrace public health (vs. criminal justice) approaches to addressing problematic forms of drug use; and (3) favor

[1] According to studies by the ACLU, marijuana arrests represented 52% of all drug arrests in 2010, and this pattern seems to persist. See more here: https://www.aclu.org/gallery/marijuana-arrests-numbers.
[2] https://www.aclu.org/gallery/marijuana-arrests-numbers

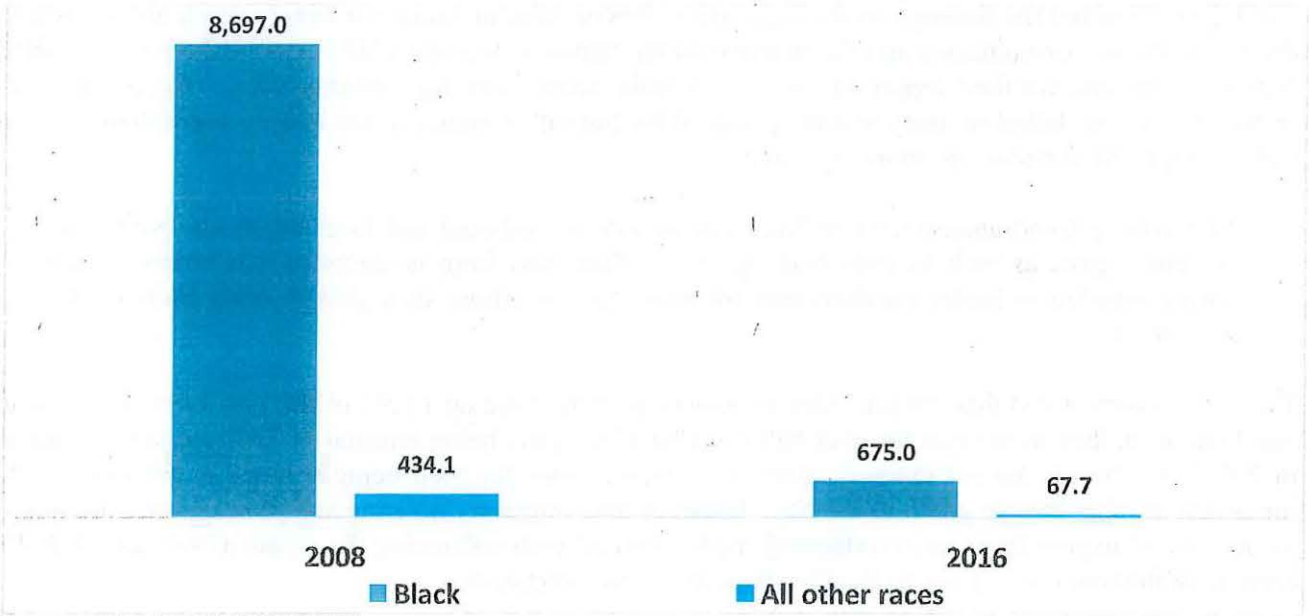
legal, regulated drug markets over criminal prohibition. Legalization first serves to eliminate arrest and incarceration (criminal justice) as the primary responses to illicit drug use and sale. Further, legalization can eliminate the profit motive for organized crime—also reducing the violence necessary to regulate illicit markets. Instead, new revenues and opportunities emerge that can be invested in communities most negatively impacted by decades of the disproportionate, punitive, and largely ineffective enforcement of criminal prohibition. Finally, a major objection to legalization – the purportedly bad effect on young people – has been strongly challenged by California's experience with marijuana and other drug reforms applied to all ages. Declines of 80% in teenaged marijuana arrests since 2010 have accompanied large, *continuing declines* in crime, gun killings, violence, drug offenses, violent deaths, traffic deaths, suicides, school dropout, unplanned pregnancy, and related problems among youth.

Key Findings

- Drug-law reforms, policing changes, and other, unknown factors have apparently reduced drug felony arrest rates drastically in San Francisco (down 92% for African Americans and 85% for other races from their 2008 peak through 2016).
- In 2008, a number equal to 8.7% of San Francisco's African American population was arrested for drug felonies. In 2016, the number had dropped to 0.7%.
- Arrest rates of youths in San Francisco for drug felonies have declined by 94% in recent years, including a decline of 98% among African American youth. Only two San Francisco youth were arrested for marijuana offenses in 2016, down from 53 in 2008.
- San Francisco's explosion in drug felony arrests of African Americans during the 1995-2008 period did not occur elsewhere in the state, nor for other racial categories in San Francisco. Conversely, the city's decline in drug arrests for all races from 2008 to 2016 was larger than occurred statewide.
- While some of the decline in felony arrests is due to the reclassification of many felony drug offenses as misdemeanors during recent reforms, misdemeanor drug arrests also fell by 90% in San Francisco from 2008 to 2015, also a much larger decline than statewide.
- Racial disparities in 2016 have narrowed from the peak year, 2008, when African Americans in San Francisco were 19.2 times more likely than non-black San Franciscans, and 4.5 times more likely than African Americans elsewhere in California, to be arrested for a drug felony.
- Even at today's much lower levels, however, large racial disparities persist. In 2016, African Americans in San Francisco experienced felony drug arrest rates 10 times higher than San Franciscans of other races, and 2.4 times higher than African Americans elsewhere in California. Among youth (a very small sample), Latinos are now twice as likely as African Americans, five times more likely than whites, and nearly 10 times more likely than Asians to be arrested for a drug felony.
- In 2007 (the peak year for youth drug arrests), San Francisco's African American female youth accounted for 40% of the felony drug arrests of African American female youths in California and had arrest rates 50 times higher than their counterparts in other counties. In 2014-2016, only one African American female youth was arrested in San Francisco for a drug felony.

- In 2007, 125 of the city's 265 youth drug felony arrestees were Latinos, 112 were African Americans, and 12 were Asians. In 2016, seven were Latinos, one was African American, two were Asians, and none were White.
- Racial patterns in drug arrests still do not match racial patterns in drug abuse. Of the 816 people who died from abusing illicit drugs in San Francisco during the five-year, 2011-2015 period, 55% were non-Latino Whites, 22% were African Americans, 10% were Latinos, and 9% were Asians. In contrast, 43% of the city's 6,587 drug felony arrests during this period were African Americans (other races are not detailed by San Francisco police).

Figure 1. San Francisco drug felony rates drop 92% for African Americans, 85% for Non-blacks from 2008 to 2016



Sources: DOJ (2017); DRU (2017).

Background

Previous Findings and Reports

Historically, San Francisco's drug war has been waged vigorously, disproportionately affecting communities of color while failing to address the city's serious drug abuse problem. Beginning in 2002, CJCJ issued a series of reports showing San Francisco's arrest rate of African Americans for drug offenses far exceeded that of other racial categories, and of African Americans elsewhere in California (CJCJ, 2002, 2004, 2004a, 2005, 2012). Using detailed arrest figures, CJCJ found staggering racial disparities in local policing that far exceeded the worst of those found in other cities and counties. During that time, San Francisco's African American female youth were arrested for drug offenses at rates 19 times those of local female youth of other races and at 29 times the drug felony rate of African American female youth elsewhere in California. The disproportionate policing of African American female youth for drug offenses did not seem to be driven by relevant research on local drug abuse, which showed 60% of the thousands of deaths over the last decade from illicit drug overdoses involved non-Latino whites,

overwhelmingly concentrated in men and those over 30 years of age. Research by the American Civil Liberties Union of Northern California (2002) produced similar findings on racial profiling by San Francisco authorities in drug law enforcement.

CJCJ's findings in 2002 led to presentations to the San Francisco Board of Supervisors (CJCJ, 2004; updated 2005: see Appendix A) in an April 2004 hearing called specifically "to consider why the arrest and incarceration rates for young African American women are the highest of any California jurisdiction," along with a complaint to the city's Human Rights Commission (CJCJ, 2004a, see Appendix A). These studies and complaints resulted in referrals to various committees and departments but did not result in concrete action, to our knowledge.

CJCJ also submitted the findings on the high arrest rates of African American female youth and women to the San Francisco Commission and Department on the Status of Women (2003), established under United Nations covenants, for their report on the city's female youth. Yet, the Commission's *A Report on Girls in San Francisco*, failed to analyze this critical issue, but rather stated it was simply a problem "among girls" it depicted as becoming more criminal:

> An alarming trend among girls in San Francisco defies national and local trends for boys. San Francisco girls, as well as girls coming to San Francisco from neighboring communities, are getting arrested in higher numbers and for more serious crimes than girls in other parts of the state (p. 6).

The Commission noted that, "While African American girls make up 12.5% of the 10-17 year old girls in San Francisco, they accounted for over half (57.1%) of the girls being arrested or cited for law violations in 2000" (p. 15). It did not examine alternative explanations for their being arrested at rates nearly 10 times that of other female youth in the city. Issues of discriminatory policing and policies were not raised as one would expect from an investigatory body charged with enhancing the status of women. CJCJ's critique of the report in a letter to the Commission expressed dismay,

> ...that the report states that girls actually are committing these crimes without raising the alternative possibility of a shift in police and program attention. There are reasons within the arrest trends to suggest official policy change rather than girls' behavior—evidence that girls' assaults charged as misdemeanors elsewhere are charged as felonies in SF, the absolutely unbelievable "fact" that SF girls are 10 times more likely to be arrested for drugs and robberies than LA girls, the fact that 1 in 4 African-American girls age 10-17 are arrested every year, etc. I hope that press and officials are not left to assume (as they have so far) that girls (that is, black girls) are factually and obviously becoming more criminal (CJCJ, 2002, p. 2).

An updated Commission (2009) report also failed to address racially disproportionate arrest issues. In the few instances in which the issue has been discussed, authorities did not consider alternative explanations for the city's arrest trends or engage in a comprehensive analysis of policing policies. As a result, San Francisco's pattern of significant racial disparities in drug law enforcement persisted through 2009.

Since 2009, as noted, the 91% decline in drug arrests in San Francisco (declines particularly pronounced among African Americans and youth) has constituted a major reform in and of itself. Whether the city's higher than average decline in drug arrests is due to deliberate policy and policing changes or is a

spontaneous reaction by law enforcement to reform measures would be illuminating to determine. In either case, it appears proactive policy changes will be required to confront persistent racial disparities in arrest.

Method

Data for this report are taken from San Francisco Police (SFPD) and Sheriff's Department (SFSO) arrest statistics for 1977 through 2016 as well as comparable statewide statistics, published by the state Criminal Justice Statistics Center and posted on the Attorney General's Open Justice site (DOJ, 2017). SFPD data have numerous shortcomings. Alone among California's counties, SDPD and SFSO do not separate arrests by Hispanic ethnicity but instead distribute them among White and Other racial categories. Further, the SFPD classifies 44% of its felony arrests in 2016 as unspecified "other" offenses (not violent, property, drug, sex, or public order offenses). These failings render San Francisco arrest statistics for Whites, Hispanics, and Asians largely useless, arrest totals for specific offenses understated, and both incomparable to state arrests – and also distort state arrest totals. **They also raise the possibility that *none* of the racial statistics released by the SFPD, including for African Americans, are accurate.**

Thus, statistics from the San Francisco Juvenile Probation Department (SFJPD) (2017) tables on duplicated juvenile drug arrest counts in 2016 by gender, race/ethnicity, and offense are used to estimate the correct proportions by race for this report. No similar adjustments appear possible for adult arrestees. Rates of arrest are calculated by dividing totals by state Department of Finance populations for each age group, gender, and race.

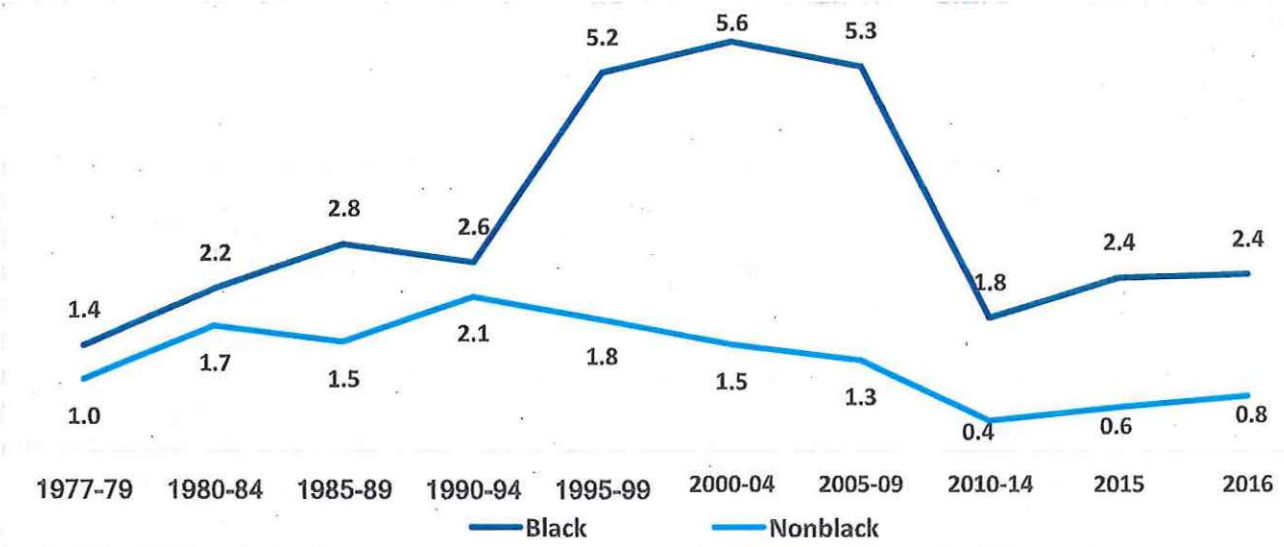
Figures for drug mortality by county, race, ethnicity, gender, and age are from the Centers for Disease Control's (CDC) (2017) mortality files for 2000-15. Included are all deaths that involved residents of San Francisco.

Analysis

San Francisco drug felony enforcement, 1977-present

San Francisco's policing of drug felonies (manufacture, sale, and large-quantity drug possession) falls into three distinct periods of interest: the late 1980s, the 1990-2009 period, and the post-2009 period. The city's drug law enforcement displayed significant fluctuations, primarily involving African American arrest rates, including sudden eruptions in drug arrests that characterized both of these periods.

Figure 2. Ratio of San Francisco felony drug arrest rates by race vs. respective demographics in California, 1977-2016



Sources: DOJ (2017); DRU (2017).

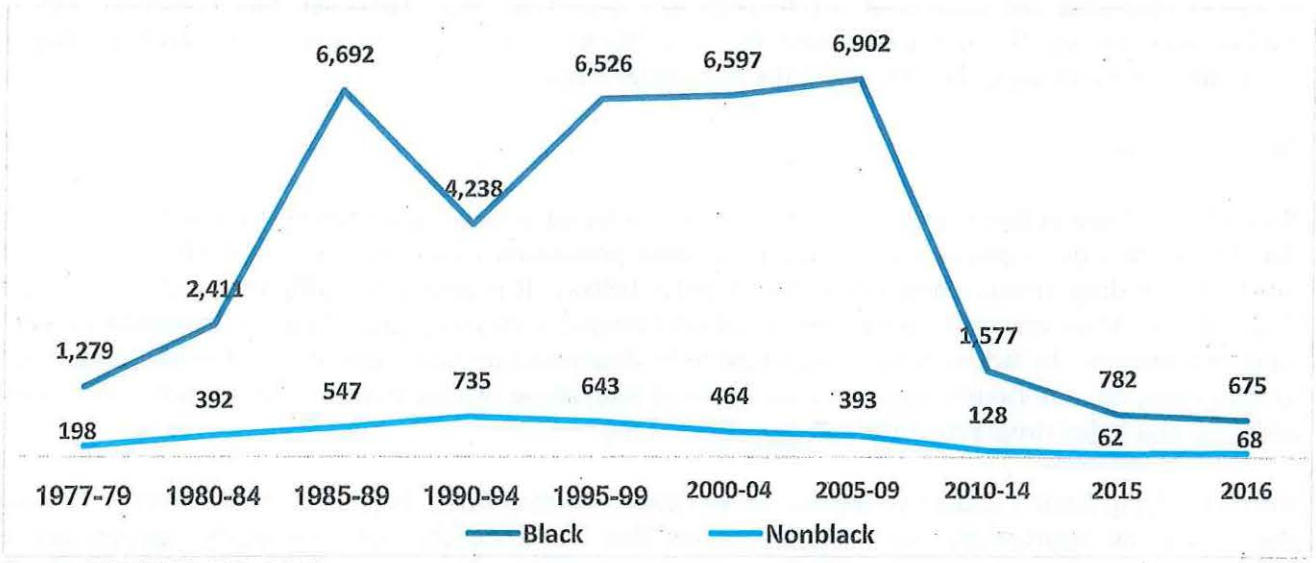
The 1977-1990's period

From 1980 to the mid-1990s, San Francisco's racial patterns in enforcement of drug laws roughly resembled those statewide. While the city's African Americans had considerably higher rates of drug felony arrest than African Americans elsewhere in California, so did the city's other racial categories (Figure 2). Much like African Americans statewide, those in San Francisco were 4 to 5 times more likely to be arrested for drug felonies prior to the mid-1990s than their proportions of the total population would predict (DOJ, 2017; DRU, 2017). Thus, while evidencing troubling racial disparities, San Francisco's drug law enforcement arrests by race were in the range of other major cities and patterns statewide, ones that also affected, to a much lesser degree, San Franciscans of other races.

The 1990-2009 period

These patterns changed suddenly and radically after the early 1990s. From the early to the late 1990s, the rate of San Franciscan African American drug felony arrests rose by 54% as that of other races fell by 12% (Figure 2). Over the next decade, the rate of drug felonies among San Francisco African Americans continued to rise to a peak in 2009 even as they plummeted among other races in the city.

Figure 3. San Francisco felony drug arrests by race, per 100,000 population, annual averages, 1977-2016



Sources: DOJ (2017); DRU (2017).

San Francisco's explosion in drug felony arrests of African Americans during the 1995-2009 period did not occur elsewhere in the state. From 2.6 times the state average in the early 1990s, San Francisco's African American drug felony arrest rate abruptly rose to 5.1 times higher by the late 1990s and **7.6 times higher by 2009**. Even as the city's African American population declined precipitously from 88,000 (11% of the city's population) in 1990 to 48,000 (6%) in 2010, the proportion of African American felony drug arrestees in San Francisco rose from around 45% in the 1990s to 55% in the 2000s, with little variation over the decade.

While the city's African American drug felony totals had risen (by around 500 in annual arrests) from the 1990s through 2009, those for other measured racial categories declined (by about 1,500 arrests) (DOJ, 2017). In fact, the city's non-African American residents displayed significant reductions in drug felony rates during the period, which declined even faster than for non-African Americans statewide. While non-African American San Franciscans were twice as likely to be arrested as their statewide counterparts in the early 1990s, by 2009, they were 1.6 times more arrest prone.

When the city conducted a periodic crackdown on drugs, arrest increases nearly always focused wholly or overwhelmingly on African Americans—a pattern not found elsewhere in the state. CJCJ has been unable to find an empirical basis for this sharp increase in arrests of African Americans in the city. If city law enforcement authorities were responding to a generalized drug abuse crisis, arrests of other races should have risen sharply as well – particularly for whites. The unique explosion in arrests of San Francisco African Americans for drugs in the 1995-2009 period compared to residents of other races and compared to African Americans elsewhere in California stems from imperatives and/or policies so far unexplained.

The 2010-2016 period

Drug arrests fell sharply for all races in San Francisco from 2010 through 2016 (Figure 3). From their 2008 peak, drug felony rates fell 92% among African Americans and by 84% among non-black races in the city (DOJ, 2017). These declines were much larger than occurred elsewhere in California (79% for

African Americans, 68% for other races). As a result, the ratio of black arrests in San Francisco to those of blacks statewide fell from over 5-1 in 2009 to 2.4-to-1 by 2016. However, San Francisco African Americans remained 10 times more likely than non-blacks in the city to be arrested for drug felonies in 2016, down from 19 times in 2009 but still a substantial disparity.

Drug Mortality

Who abuses drugs in San Francisco? This is a more relevant question than simply who uses drugs, given San Francisco's de-emphasis on policing mere drug possession (note the city's generally low level of misdemeanor drug arrests, shown in Tables 3 and 4 below. It is also more difficult to determine, since drug "abuse" is an expansive term that is not coextensive with mere drug "use" as measured on self-reporting surveys. In fact, surveys, which tend to be dominated by high rates of use of milder drugs such as marijuana, are notoriously inaccurate measures of drug abuse, which tends to involve more rarely-used addictive and lethal drug, polydrug, and drug/alcohol use.

Although dying from overdose or organic failure due to abusing illicit drugs is a limited measure of drug abuse, it is an appropriate and accessible index that is reasonably and consistently applied across demographic groups and over time. **Of the more than 1,000 San Francisco residents and nonresidents in the city who have died from abuse of illicit drugs (a large majority of these from poisoning by overdose) in the five-year period from 2011 through 2015, 57% were non-Latino Whites, and 22% were African American, and more than two-thirds were age 45 and older** (Table 1).

Table 1. Illicit drug-abuse death rates per 100,000 population by race/ethnicity and age, 2010-2015 (6-year rates)

Age	All races	White	Latino	African American	Asian	All other	N
<15	1.9	3.5	0.0	4.8	0.5	157.0	11
15-24	4.4	10.1	2.7	0.0	1.0	52.1	23
25-34	8.1	9.9	6.9	22.1	3.1	61.8	90
35-44	24.2	32.7	18.1	69.4	7.1	38.6	197
45-54	40.3	51.1	31.2	139.5	8.1	426.6	276
55-64	52.0	65.9	42.0	201.3	8.9	871.7	316
65+	16.2	20.0	1.5	84.2	3.6	280.9	114
Total	20.5	27.0	12.4	76.0	4.7	248.4	1,027
N	1,027	583	95	227	84	38	

Source: CDC (2017).

The city's lethal-drug abusing population differs from its drug arrestee population in several respects. African Americans do have the highest rates of drug abuse mortality, though not among its teenagers and young adults. The second highest mortality rate is found among non-Latino Whites. If drug deaths predicted drug arrest rates, African Americans would constitute 22% (not 42%) of the city's drug arrests—still highly disproportionate to their population (6%) but at least reflective of drug abusing proportions by race. Below is a more in depth review of San Francisco's most complete and recent drug arrest data, distinguishing distinct trends in San Francisco's policing

If drug deaths predicted drug arrest rates, African Americans would constitute 22% (not 42%) of the city's drug arrests.

practices.

Youth Drug Felonies, 2009-2016

San Francisco's drug arrest situation among youths changed so dramatically from 2009 to 2016 that few racial conclusions can be drawn now. In 2009, a San Francisco African American youth was 9 times more likely, and an Hispanic youth nearly 4 times more likely, to be arrested for drugs than their respective African American and Hispanic counterparts statewide (DOJ, 2017; DRU, 2017). Though less than 9% of the city's youth population in 2009, African Americans then comprised 56% of San Francisco's juvenile drug felony arrests. Latinos showed a smaller but still disproportionate felony drug arrest rate. Further, San Francisco female youth were 6 times more likely to be arrested for drug felonies than female youth elsewhere in California; male youth, 2.5 times more likely. The city's African American female youth accounted for over 40% of the felony drug arrests of African American female youths in California in 2009 and had arrest rates 50 times higher than their counterparts in other counties.

San Francisco's drug arrests among youth of all races have fallen dramatically since 2009.

Table 2. Juvenile felony drug arrests per 100,000 population age 10-17, San Francisco v. rest of California, 2016 v 2009[3]

	Male				Female			
Felony drug Arrest rate	African American	White	Hispanic	Asian	African American	White	Hispanic	Asian
2009								
San Francisco	2,531.6	237.9	915.1	92.7	2,419.4	69.3	20.8	38.4
California outside SF	486.6	200.6	211.0	120.8	48.1	61.9	29.9	19.4
Ratio, San Francisco's drug felony rate versus rest of California	5.2	1.2	4.3	0.8	50.3	1.1	0.7	2.0
2016								
San Francisco	76.8	19.4	63.4	25.6	0.0	0.0	62.3	0.0
California outside SF	90.4	38.1	66.9	29.5	11.2	12.2	10.9	4.2
Ratio, San Francisco's drug felony rate versus rest of California	0.8	0.5	0.9	0.9	0.0	0.0	5.7	0.0

Sources: SFJPD (2017); DOJ (2017); DRU (2017).

Table 2 compares the very different picture for San Francisco's (and California's) youth drug arrests in 2016 with 2009. In just seven years, a series of reforms downgrading several drug offenses from felonies to misdemeanors and decriminalizing (for all ages), then legalizing (for those 21 and older) marijuana, and a general decline in youth crime all have contributed to massive drops in youthful drug arrests among both sexes and all races, especially in San Francisco. Even the high rate among Latina females is produced by just four arrests in the city in 2016, while all other race/sex categories now show lower rates of drug arrests than corresponding groups statewide – a situation very unlike the pre-2010 era.

Finally, the very large drop in San Francisco's (and California's) youthful drug arrests, including the virtual disappearance of drug misdemeanors, appears to have had **none of the consequences drug-war**

[3] San Francisco's 2009 juvenile probation report's detailed table on duplicated petitions can be used to estimate drug arrests by race/ethnicity and gender for drug felonies, but not for drug misdemeanors, which are too few to provide a reliable basis.

proponents feared. Drug abuse, gun killings, violence, other crimes, suicide, school dropout, unplanned pregnancy, and related ills generally have continued to decline in the post-2009 period through 2015-16, indicating that arresting and incarcerating youths for drug offenses is not necessary for their well-being or public safety (CJCJ, 2014).

Adult Drug Felonies, 2009-2016

San Francisco African Americans in 2016 experienced felony drug arrest rates 2.4 times higher than African Americans in other areas of California.

The picture for adult drug arrest rates in San Francisco is considerably different than for youths. In 2009, a number equal to roughly **10% of San Francisco's African American population between the ages of 10-69**[4] **was arrested for drug felonies** (DOJ, 2017; DRU, 2017). This was 19 times higher than the rate of drug felony arrests for all other races combined in the city. In addition, San Francisco African Americans experienced felony drug arrest rates nearly 8 times higher than African Americans in other areas of California (Figure 2). These trends were also found in misdemeanor (low-quantity possession) offenses, and all drug offenses, although to varying degrees.

In 2016, San Francisco African Americans experienced felony drug arrest rates 10 times higher than nonblacks in the city, and 2.4 times those of African Americans elsewhere in California. With 2.1% of the state's African American adult population, San Francisco arrests 4.9% of California's African American adult drug felons – disproportionate, but much less so than the 14.6% registered in 2009. Nonblacks in the city have drug arrest rates comparable to nonblacks in the rest of the state.

Misdemeanor Drug Arrests

In contrast to its high rate of felony drug policing—albeit with large racial discrepancies—San Francisco generally de-emphasizes arrests for drug misdemeanors (low-quantity possession). In addition, law changes since 2010 have demoted several drug felonies to misdemeanors. Drug felonies and misdemeanors occasion arrests in virtually equal numbers elsewhere in California, but San Francisco law enforcement charges three times more drug arrestees with felonies than with misdemeanors.

In 2016, **the city's rate of arrests for simple possession was 66% below the state average for juveniles** (Table 3). However, though arrest rates have fallen substantially, the city's African American youth are arrested for possession at levels similar to those of African American youth in other counties. The drug arrest rate for San Francisco juvenile females declined particularly sharply, though it should be noted that the city's rates and trends are based on very small numbers.

[4] This does not mean 10% of the city's African American population was arrested that year; some individuals were arrested more than once, and some were not San Francisco residents, offset by San Franciscans arrested in other jurisdictions.

Table 3. SF youth misdemeanor drug arrest rate, per 100,000 population age 10-17, by race, sex, v. California, 2009

Misdemeanor Drug Arrest rate	Total	African-American	All other races	Male	Female
2009					
San Francisco	130.0	567.0	87.5	219.5	37.2
California outside SF	389.7	571.5	376.7	640.4	125.8
Ratio, San Francisco arrest rate vs. rest of CA	0.33	0.99	0.23	0.34	0.30
2016					
San Francisco	42.3	168.7	64.5	71.9	12.2
California outside SF	123.3	273.9	172.5	178.0	66.2
Ratio, San Francisco arrest rate vs. rest of CA	0.34	0.62	0.37	0.40	0.18

Sources: DOJ (2017); DRU (2017).

Drug Arrest Trends by Race and Drug Type

Between 1980 and 2009, the disparity between San Francisco African American arrests and all other races in the city for all types of drug offenses increased sharply (Table 4). This disparity widened the most dramatically from 1995 to 2009, with general declines in drug-related arrests of other races, and increases in drug-related arrests of African Americans. For the largest and most racially disparate drug arrest category, narcotic felonies, African Americans were 6.4 times more likely than non-African Americans to be arrested in 1980, 10.3 times more likely in 1995, and a staggering 27.5 times more likely in 2009.

Table 4. Ratio, San Francisco African American drug arrest rate v. all other races drug arrest rate, 1980-2015

Ratio, African American versus all other races, drug arrest rates					Change in ratio	
Type of drug offense	1980	1995	2009	2015	1980-2009	2009-2015
All drug arrests	**4.5**	**7.6**	**16.9**	**14.6**	**+276%**	**-14%**
All drug felonies	5.7	7.7	19.3	12.6	+239%	-35%
Narcotics	6.4	10.3	27.5	13.4	+330%	-51%
Marijuana	5.3	3.8	9.6	21.1	+81%	+120%
Dangerous/other drugs	5.7	2.5	5.6	7.6	-2%	+36%
All drug misdemeanors	3.0	6.9	11.2	17.1	+273%	+53%
Marijuana	3.3	5.1	9.7	11.6	+194%	+20%
Dangerous/other drugs	2.8	8.5	11.7	17.4	+318%	+49%

Sources: DOJ (2017); DRU (2017).

In 2009, African Americans accounted for just 6% of San Francisco's population, but 63% of narcotics felony arrests. The African American arrest volume for narcotics (3,169) then was equivalent to 1 in 12 of the city's African American population age 10 and older (39,400). Other drug offenses, both felony and misdemeanor, showed similar if less extreme disparities and trends, but in no case did the black-v.-other races drug arrest rate disparity fall below 550% by 2009.

Over the next six years (2015 is the most recent year for detailed statistics), the rate of drug arrests fell sharply (by 85% or more) for all races. The disproportionate drug arrest rate for African Americans fell from 16.9 to 14.6 for all drugs, and from 27.5 to 13.4 for narcotics. The decrease in black disproportionality was due to the larger reduction in black than nonblack drug felony arrests; drug misdemeanors declined more for non-black races. The result was that the disproportionate level of black drug arrests rose substantially for misdemeanors over the 2009-2015 period.

Discussion: Drug Policy Reform in San Francisco

Defining and Applying an International Human Rights Framework

The Global Commission on Drug Policy[5] formed in 2011 in an attempt to provoke scientific, evidence based reform to the global drug war. Their first report (2011, pg. 2) begins with the admission: "The global war on drugs has failed, with devastating consequences for individuals and societies around the world. Fifty years after the initiation of the U.N. Single Convention on Narcotic Drugs, and 40 years after President Nixon launched the U.S. government's war on drugs, fundamental reforms in national and global drug control policies are urgently needed." The Commission's mission is to research and propose such fundamental reforms, arguing that "drug policies must be based on human rights and public health principles" (Global Commission on Drug Policy, 2011, pg. 5). It is worth taking a moment here to examine how human rights principles might guide domestic policy.

Generally speaking, international human rights apply to U.S. policy and governance in two ways:

(1) Legally: Through binding international treaty law, based on U.S. ratification of human rights instruments; and customary law, based on collective, long-standing respect for certain fundamental human rights.

(2) Ethically: As a set of international standards defined by human rights instruments and declarations, informed by the experience, research, and recommendations of human rights scholars, NGOs, international legal experts, and U.N. oversight bodies working to implement human rights practices in the U.S.

Following World War II, the U.S. played a leading role in the development of the United Nations Charter and the Universal Declaration of Human Rights [UDHR]. By the end of the 20th century the U.S. had helped to author the International Criminal Court [ICC], and signed every major international human rights instrument. However, to date, the U.S. has only *ratified*[6] the Convention Against Torture [CAT], the International Convention on the Elimination of All Forms of Racial Discrimination [ICERD], and the International Covenant on Civil and Political Rights [ICCPR].

Despite the legal ambiguities that result from U.S. reservations in the ratification of international human rights instruments,[7] human rights discourse is far from irrelevant when it comes to foreign and domestic U.S. policy. For example, recent U.S. Supreme Court decisions referenced international human rights laws and practices to rule that people who commit crimes as minors should not be subject to the death

[5] It should be noted that the Commission is by no means a radical organization. It is composed of former heads of state, former U.N. Secretary General Kofi Annan, former Chair of the U.S. Federal Reserve Paul Volcker, elites from the international business community, as well as researchers, diplomats, and policy experts. Find more on the Commission here: https://www.globalcommissionondrugs.org/about-usmission-and-history/.

[6] Human rights instruments enter into force as legally binding treaties at the point of ratification. Upon ratification, state parties must "respect, protect, and fulfill" their obligations according to the instrument.

[7] "Reservations" refer to the legal exceptions and specifications that state parties may submit as conditions of ratification. The most common and notorious reservation applied by the U.S. is that the instrument is "not self-executing"—meaning that the instrument would only apply as determined by U.S. courts and Congress.

penalty or life without the possibility of parole. This reveals how international human rights norms and practices can inform the interpretation of domestic laws and regulations, and can provide a common reference point to evaluate and inform local practices.

Human rights offer a powerful, universal framework that provides a standard for government agencies and authorities to evaluate existing laws and policies and to develop programs that advance and strengthen human rights in local communities and institutions. Many strategies for implementing human rights practices in the U.S. are based on the ratification and recognition of human rights instruments as the benchmark for local government policy and practices.

Non-Discrimination and Equal Protection Under the Law

As noted at the beginning of this section, the Global Commission on Drug Policy has since 2011 advocated for the application of a human rights framework to guide policy alternatives to the dominant global policy model of aggressive, coercive criminal prohibition. A fundamental principle of all human rights instruments is that of "non-discrimination" that undergirds the notion of human universality and centrally defines civil and political human (ICCPR Articles 14 and 26) and Constitutional (14th Amendment) rights to equal protection under the law.

This report and its predecessors (CJCJ, 2002, 2004, 2004a, 2005, 2012) have so far illustrated the persistence of racially disparate drug arrest patterns in San Francisco, particularly acute for African American communities. U.S. agencies and courts have self-imposed limitations as to what constitutes "racism" or "racial discrimination" such that it is difficult if not impossible to address racial inequality in the contemporary era through Constitutional case law. As Alexander (2010, p. 113) summarizes,

> In the years following *McCleskey* [*v. Kemp*], lower courts consistently rejected claims of race discrimination in the criminal justice system, finding that gross racial disparities do not merit strict scrutiny in the absence of evidence of explicit race discrimination—the very evidence unavailable in the era of colorblindness.

Generally speaking, charges of racial discrimination directed at public authorities in the United States require some proof of conscious racial animus. Case history suggests that this is particularly true for any attempt to address racial disparities in policing or sentencing. However, no such burden of proof is required to legitimate claims of racial discrimination under formal human rights instruments incorporated into international law.

The United States signed (1965) and ratified (1994) the International Convention on the Elimination of Racial Discrimination (ICERD) and has not evidenced the best compliance record since. This in part results from the differences in how "racial discrimination" is defined under international and federal (U.S.) law and in the apparent problems in getting the U.S. government to "protect, respect and fulfill" its legal obligations according to human rights instruments. Policy researchers Fellner and Mauer (1998, p. 22) pointed out these legal differences twenty years ago:

> ICERD wisely does not impose the requirement of discriminatory intent for a finding of discrimination. It requires states' parties to eliminate laws or practices which may be race-neutral on their face but which have "the purpose or effect" of restricting rights on the

> basis of race. Regardless therefore, of whether they were enacted with racial animus…they unnecessarily and unjustifiably create significant racial disparities in the curtailment of an important right.

The conceptualization of racial discrimination and the legal measures of non-discrimination and equal protection under the law articulated by the ICERD[8] demonstrate the unique characteristic of a human rights framework here: that discrimination is to be measured by disparate outcomes and impact rather than proven intent. Further, the city of San Francisco has proactively adopted the practical, results-based international definition and has established its own Human Rights Commission to defend human rights within city limits.

A human rights framework would demand that cities like San Francisco pay particular attention to addressing the persistence of racial disparities as drug policy alternatives and their implications emerge. As we see from this report, the city failed to address its highly discriminatory record of racialized policing prior to 2010, and though drug arrests have been reduced dramatically in San Francisco across the board, African Americans still find themselves systematically targeted for drug arrests at a disproportionate rate of approximately 10 to 1.

Shift from Criminal Justice to Public Health

One overarching theme in the international global drug policy reform movement has been to define and address problematic forms of drug use (addiction, overdose death, etc.) through the prism of public health rather than criminal justice. The international human rights community has been relatively consistent on this issue for over 20 years, pointing to the systematic violation of drug users' fundamental human rights to life (ICCPR Article 6), equal protection under the law (ICCPR Articles 14 and 26), protection against arbitrary arrest, detention, or exile (ICCPR Article 9), health (ICESCR 12), and humane treatment when deprived of liberty (ICCPR Article 10) under aggressive criminal prohibition. As pointed out by former High Commissioner for Human Rights, Navi Pillay (2009), "Individuals who use drugs do not forfeit their human rights." A human rights framework recognizes the tendency for the criminalization of drug users to result in the derogation of their human and Constitutional rights.

International human rights frameworks also tend to be grounded in research, encouraging the development of effective solutions based in demonstrated best practices rather than political interest or expediency. The Global Commission on Drug Policy (2011, p. 6) illustrates this tendency in their definition of drug addiction as a social problem:

> In reality, drug dependence is a complex health condition that has a mixture of causes—social, psychological and physical (including, for example, harsh living conditions, or a history of personal trauma or emotional problems). Trying to manage this complex condition through punishment is ineffective—much greater success can be achieved by providing a range of evidence-based drug treatment services. Countries that have treated citizens dependent on drugs as patients in need of treatment, instead of criminals deserving punishment, have demonstrated extremely positive results in crime reduction, health improvement, and overcoming dependence.

[8] See specifically ICERD General Recommendation XIV (42), Article 1, paragraph 1.

Countries that have recently embraced a public health approach include Portugal.[9] In 2001 as the U.S. hardened its drug war stance at home in conjunction with the building of a new police and surveillance state post-9/11, Portugal went in the opposite direction, decriminalizing nearly all forms of drug use and devoting resources to outreach and treatment for drug users. As a result (Kristof, 2017):

- Overdose death in Portugal sank 85% since drug policy reform, and now has the lowest rate in Western Europe and about one fifteenth that of the U.S., where overdose death has been on the rise in part due to the persistent opioid epidemic.
- The Portuguese Health Ministry estimates regular heroin users at 25,000, down 75% since implementing drug policy reform.
- Portuguese harm reduction programs (such as needle exchanges) helped to bring drug related HIV cases down 90% since their height in 1999 when Portugal had the highest rate of drug related infection in Europe.
- Portugal illustrates the cost efficiency of treatment over incarceration for drug use. Portugal's drug programs cost approximately $10 per citizen annually, while the U.S. has spent over $1 trillion (about $10k per American household) on criminal prohibition.

Even though the advantages of public health approaches are uncontroversial in the research community, criminal prohibition persists in places like the U.S. and the Philippines where "tough on drugs/crime" discourses continue to dominate politics. Legal experts have explicitly argued for California to "pave the way for progressive U.S. drug reform" (Whitelaw, 2017, p. 83) and adopt the Portuguese model. In cities like San Francisco, shifts in policing, drug policy reform (including the legalization of cannabis), and a dedication to international human rights standards present opportunities to realize a shift from failed criminal prohibition to more effective and cost efficient forms of drug treatment, harm reduction, and community investment to address problematic forms of drug use. While decriminalization is an obligatory first step in such a transition; legal, regulated drug markets provide additional resources for public health and drug war alternatives through savings in law enforcement costs and increased public revenues from licensing and regulated sales (Global Commission on Drug Policy, 2016).

Legalization and Sustainable Development

One of the most useful features of a human rights framework as it applies to drug policy reform is an emphasis on producing desired *outcomes*—"less crime, better health, and more economic and social development"—rather than exclusively focusing on *process* or procedural justice in determining whether or not actions are taken according to the law (Global Commission on Drug Policy 2011, pg. 5). In this sense, the international human rights community and the Global Commission on Drug Policy see benefits to legalization beyond the potential pivot from criminal justice to public health solutions, or the potential to undercut organized criminal activity in the illicit market. Indeed, curbing drug related violence and corruption is extraordinarily important for realizing human rights practice and a sense of justice for communities most deeply affected by the failed drug war. The illicit drug trade still represents the largest global source of revenue for organized crime (Global Commission on Drug Policy, 2016; McFarland Sánchez-Moreno, 2015). But legalization presents an opportunity to do more than simply reduce the flow

[9] For thorough reporting and analysis on Portugal's drug policy reforms, see: Greenwald, G. (2009). Drug decriminalization in Portugal: Lessons for creating fair and successful drug policies. *The CATO Institute.* Retrieved on 09/29/17 from https://www.cato.org/publications/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies.

of arrests or illegal contraband. It provides a new resource environment to address the structured inequalities resulting from and exacerbated by the failed war on drugs.

In its 2016 report, the Global Commission on Drug Policy takes special care to call for nations to go beyond decriminalization to create legal, regulated markets designed according to U.N. Sustainable Development Goals [SDG].[10] That is, legal markets should be designed in order create solutions to related social problems, specifically including systemic poverty, structured inequality (along lines of race and gender in particular), and the need for economically and ecologically sustainable cities/communities. The Commission encourages legalization models where the benefits "must apply to every individual, including people who use drugs (Global Commission on Drug Policy, 2016, p. 27). Put simply, a human rights framework suggests that legal markets and drug policy alternatives should be designed in order to serve and re-invest in the communities and individuals systematically disenfranchised by 50 years of aggressive criminal prohibition.

Noted in previous reports (CJCJ, 2002, 2004, 2004a, 2005, 2012) and established in at least 40 years of critical criminological research,[11] the most disastrous effects of the drug war—including vastly disparate enforcement/sanction, punitive sentencing, civil penalties, subjection to drug abuse/addiction (and associated threats to public health), subjection to drug related violence, loss of property value/community degradation, loss of educational/employment opportunities, and geographic dislocation—have been shouldered by the poor and people of color, African American and Latinx populations in particular. As we have attempted to point out in San Francisco, African Americans and to a lesser extent (with the recent trend in youth arrests as an exception) Latinx residents have been the most aggressively policed, arrested, and sanctioned for a drug addiction and overdose death epidemic dominated by middle-age "non-Latino whites" (CJCJ 2012). In addition, African American girls and young women were until recently targeted for criminal law enforcement at staggering rates in San Francisco, suggesting their paying of a heavy price for failed enforcement policies in comparison to all other demographic groups in the city.

Being targeted for drug arrest and sanction can result in any number of short and long term effects on individuals targeted, as well as their families and communities. The Global Commission on Drug Policy (2016, p. 17; see also Chin, 2002, pgs. 260-265) also recognize that,

> In the US, for example, felony convictions for drugs, which include possession of certain substances, can lead to: exclusion from juries; voter disenfranchisement in a number of states; eviction or exclusion from public housing; refusal of financial aid for higher education; revocation or suspension of a driver's license; deportation and in some cases permanent separation from their families of those considered "non-citizens;" exclusion from certain jobs, and denial of welfare.

In addition, studies of San Francisco and other "progressive" U.S. cities demonstrate historical and contemporary connections between racially disparate drug law enforcement (and additional forms of "order maintenance" policing) and politics of space—including gentrification (Lynch, M., M. Omori, A. Roussell, and M. Valasik, 2013). The systematic targeting of working class people of color for drug arrests in one of the most brutally expensive housing markets in the country serves as a structural barrier

[10] See the U.N. Sustainable Development Goals from 2015 here: http://www.un.org/sustainabledevelopment/sustainable-development-goals/.

[11] For illustrations see: Ostertag and Armaline, 2011; Johnson and Bennett, 2016; Jensen, Gerber and Mosher, 2004.

to the sustainability of working class communities of color in the city. The impacts of criminal prohibition should be understood beyond the individual to encompass effects on communities and the broader racial politics of place in San Francisco.

A human rights framework suggests that the resources, opportunities, and cost savings made available through legal, regulated markets—like the legal cannabis market emergent in California—be re-invested in the individuals and communities most impacted by the legacies of a failed drug war. From research, we know that these tend to be poor communities of color—African Americans and Latinx populations in particular, with a special focus on African American women and girls. Research on the effects of the drug war and on international best practices for reform suggest that the new resource environment created via cannabis and other forms of legalization in cities like San Francisco should be employed to address the poverty, unemployment, housing instability, mental/physical health problems, and geographic displacement of these heavily impacted individuals and communities.

Conclusion

In recent decades, as San Francisco's population has grown and become somewhat older and wealthier, the city's African American population has declined sharply and become poorer and more concentrated in isolated districts. One anecdotal explanation for the racial disparities has been the ease of frequent and multiple arrests of drug dealers in open-air markets in the poorer areas of the city as opposed to the more difficult task of policing the larger, more discreet drug supply networks serving affluent areas.

By CJCJ's repeated analyses during the 2000s, San Francisco authorities have not responded to apparent, serious and uniquely extreme racial disparities in policing of drug offenses and have not provided rational explanation for the disparities or policies to ameliorate them. Nor have authorities explained why the city's drug policing, already racially discriminatory, became radically more so from the early 1990s to around 2009. If objective criminal justice goals and standards to justify San Francisco's arrest trends exist, then local authorities would seem obligated to provide detailed explanation. In particular, what changed in the 1990s, and only in San Francisco, to dramatically boost the fixation on African Americans as the city's drug criminals?

The analysis suggests that prior to 2010, the San Francisco Police Department might have been re-arresting the same African-Americans over and over, then releasing the large majority, and re-arresting them again within a short period of time. The overall result of this policy was to combine the worst of both worlds: injustice and ineffectuality. Corralling African American drug dealers produced impressive arrest numbers but was not effective policy to prevent drug abuse. San Francisco's already excessive drug overdose/abuse death rate continued to climb through 2009, though in fairness, drug tolls have been rising elsewhere in the state and nation as well. Moreover, while it may have partitioned drug marketing violence to certain areas of the city, levels of violence in those areas remain concentrated and high. The policy did appear effective at creating a multiple-felony population with no employment prospects and significant challenges and barriers to success in the community. These barriers arose even though San Francisco sent drug offenders to state prison at a rate less than half the state average.

Whatever its underlying imperatives, the city's drug arrest policy prior to recent reforms has yielded to a dramatic new situation after reforms ameliorated drug policing in major ways from 2010 to the present. Drug arrests have fallen so dramatically that an African American in San Francisco is now less likely to

be arrested for drugs than a non-black resident was 10 years ago. However, despite the impressive reduction of 90% or more in the impact of drug arrests on local communities since 2009, reform has not much reduced the racial disparities in drug policing. African Americans are still 15 times more likely to be arrested for a felony or misdemeanor drug offense in San Francisco than other races, and neither the proportions of blacks in the city's population (6%) or drug mortality toll (22%) even begins to justify such a huge disparity.

Whether intentional or not, such consistent disparities in drug war policing in San Francisco should be viewed as a human rights violation. As noted previously, formal human rights discourse defines racial discrimination not in terms of overt, conscious racial animus, but in terms of its evident effects. The city is subject to national, state, and local requirements to enforce laws in a non-discriminatory fashion and is signatory to international human rights accords imposing even stricter non-discrimination standards. San Francisco's ongoing, extreme racial disparities in drug law enforcement and authorities' paralysis in addressing them conflict with the city's commitment to the egalitarian ideals it champions. Further, an international human rights framework provides specific guidance on how cities like San Francisco can go beyond halting racially disparate and largely ineffective criminal justice models to models focusing on public health and sustainable community re-investment.

In light of these observations, we respectfully recommend the San Francisco Board of Supervisors:

1. **Initiate a multi-agency investigation into San Francisco's policing policies and practices to explore policy decisions that contribute to these trends.**

2. **Require the San Francisco Police Department and all other arresting agencies to conform to state standards observed by all other agencies in California in reporting arrests by race and Latinx ethnicity and by specific offense rather than classifying excessive arrest numbers as "other" offenses.**

3. **Develop and adopt a concrete plan to address these racial discrepancies in San Francisco's drug arrest practices, monitored through periodic, results-based evaluations.**

4. **Reaffirm San Francisco's commitment to upholding its obligations under the International Convention to End Racial Discrimination (ICERD) and the anti-discriminatory clause of the International Covenant on Civil and Political Rights (ICCPR).**

5. **Assess the trends in drug abuse, drug related crime, and other drug-related health and safety issues in San Francisco by demographic and other variables.**

6. **Include a robust "Equity Platform" in the design of Adult Use of Marijuana [AUM] regulations such that opportunities, savings, and revenue from the legal cannabis market serve to benefit those systematically criminalized and impacted by the drug war in San Francisco: working class people of color, African American women in particular.**

SJSU | HUMAN RIGHTS

References

Alexander, M. (2010). *The New Jim Crow.* New York, NY: The New Press.

American Civil Liberties Union of Northern California. (2002). San Francisco Police Department Fails to Address Racial Profiling - Rampant Underreporting of Stops and Searches. October 7, 2002. At: http://www.aclunc.org/news/press_releases/san_francisco_police_department_fails_to_address_racial_profiling_-_rampant_underreporting_of_stops_and_searches.shtml?ht=

Bureau of the Census. (2012). 2010 Census Data. Washington, DC: US Department of Commerce. At: http://2010.census.gov/2010census/data/

Centers for Disease Control's (CDC) (2017). WONDER Compressed Mortality File, 2000-2015. At: https://wonder.cdc.gov/mortsql.html

Center on Juvenile and Criminal Justice (CJCJ) (2002). Letter of San Francisco Commission on the Status of Women. Mike Males, Center on Juvenile and Criminal Justice.

Chin, G.J. (2002). Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction. *The Journal of Gender, Race & Justice* 2002(6): 255-262.

CJCJ (2004). Testimony to San Francisco Board of Supervisors on Disproportionate Arrest/Confinement of African-American Young Women for Drug Offenses. Mike Males, Center on Juvenile and Criminal Justice, July 8, 2004.

CJCJ (2004a). Complaint to Human Rights Commission, Toni Delgado, Secretary. Mike Males, Center on Juvenile and Criminal Justice, January 4, 2004.

CJCJ (2005). San Francisco Black Girls: Mass Criminals, or Mass Targets? Mike Males, Center on Juvenile and Criminal Justice, November 11, 2005.

CJCJ (2014). Reforming marijuana laws: Which approach best reduces the harms of criminalization? At: http://www.cjcj.org/news/8200

California Department of Justice (DOJ) (2017). *California Criminal Justice Profile,* San Francisco County, and Statewide (annual, 1980-2009). Criminal Justice Statistics Center. At: https://oag.ca.gov/cjsc/pubs Open Justice, Arrests. At: https://openjustice.doj.ca.gov/crime-statistics/arrests

Demographic Research Unit (DRU) (2017). Population projections. California Department of Finance. At: http://www.dof.ca.gov/research/demographic/reports/projections/

Fellner & Mauer. (1998). *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States.* Washington D.C.: Joint Report from Human Rights Watch and The Sentencing Project. Retrieved on 03/30/12 from http://www.sentencingproject.org/doc/File/FVR/fd_losingthevote.pdf.

Global Commission on Drug Policy. (2011). War on drugs: Report on the global commission on drug policy. Retrieved on 09/25/17 from https://www.globalcommissionondrugs.org/reports/the-war-on-drugs/.

_____. (2016). Advancing drug policy reform: A new approach to decriminalization. Retrieved on 09/25/17 from http://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf.

International Convention to End Racial Discrimination [ICERD], 660 UNTS 195, entered into force Jan. 4, 1969. The United States ratified ICERD on October 21, 1994.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, Art. 25. The U.S. ratified the ICCPR on June 8, 1992.

Jensen, E., J. Gerber, and C. Mosher. (2004). Social consequences of the War on Drugs: The legacy of failed policy. *Criminal Justice Policy Review*, 15(1): 100-121.

Johnson, L. & J. Bennett. (2016). Drug markets, violence, and the need to incorporate the role of race. *Sociology Compass*, e12411. DOI: 10.111/soc4.12441.

Kristof, N. (09/22/2017). How to Win a War on Drugs: Portugal treats addiction as a disease, not a crime. *The New York Times*. Retrieved on 09/25/17 from https://www.nytimes.com/2017/09/22/opinion/sunday/portugal-drug-decriminalization.html.

Lynch, M., M. Omori, A. Roussell, & M. Valasik. (2013). Policing the 'progressive' city: The racialized geography of drug law enforcement. *Theoretical Criminology*, 17(3): 335-357.

McFarland Sánchez-Moreno, M. (2015). Winding Down the War on Drugs: Reevaluating Global Drug Policy. *Harvard International Review*, 36 (4). Retrieved on 09/29/17 from http://hir.harvard.edu/winding-down-thewar-on-drugs-reevaluating-global-drug-policy/.

Office of the United Nations High Commissioner for Human Rights. (2009). High Commissioner calls for focus on human rights and harm reduction in international drug policy. Geneva: United Nations. Retrieved on 09/25/17 from http://www.ohchr.org/documents/Press/HC_human_rights_and_harm_reduction_drug_policy.pdf.

Ostertag, S. & W. T. Armaline. (2011). Image isn't everything: Contemporary systemic racism and anti-racism in the age of Obama. *Humanity and Society*, 35(3).

San Francisco Commission and Department on the Status of Women. (2003, 2009). *A Report on Girls in San Francisco.* On file with author. A brief update in March 2009, San Francisco girls: A snapshot report, is at: http://coe.ucsf.edu/coe/ywhc/SF_Girls_Report_Update_030609.pdf

San Francisco Juvenile Probation Department (SFJPD) (2017). Publications and documents, 2016, 2009. At: http://sfgov.org/juvprobation/publications-documents.

Tonry, M. and M. Melewski. (2008). The malign effects of drug and crime control policies on black Americans. *Crime and Justice*, 37(1):1-44.

Whitelaw, M. (2017). A path to peace in the U.S. Drug War: Why California should implement the Portuguese model for drug decriminalization. *Loyola L.A. Int'l & Comp. L. Review*, 40(1): 81-113.

***Please note**: Each year, every county submits their data to the official statewide databases maintained by appointed governmental bodies. While every effort is made to review data for accuracy, CJCJ cannot be responsible for data reporting errors made at the county level.*

About the Authors

Mike A. Males, Ph.D., Senior Research Fellow, Center on Juvenile and Criminal Justice

Mike A. Males is a Senior Research Fellow at the Center on Juvenile and Criminal Justice and content director at www.YouthFacts.org. He has contributed research and writing to numerous CJCJ reports, including the "The Color of Justice, an Analysis of Juvenile Adult Court Transfers in California," "Drug Use and Justice: An Examination of California Drug Policy Enforcement," and "The Impact of California's Three Strikes Law on Crime Rates."

Dr. Males has a Ph.D. in social ecology from U.C. Irvine and formerly taught sociology at U.C. Santa Cruz. With over 12 years of experience working in youth programs, his research interests are focused on youth issues like crime, drug abuse, pregnancy and economics. He is the author of dozens of articles and four books, the latest of which are *Teenage Sex and Pregnancy; Modern Myths, Unsexy Realities* (Praeger, 2010), and *Kids and Guns: How Politicians, Experts, and the Press Fabricate Fear of Youth* (Common Courage Press, 2000). Recent articles and op-eds have appeared in the *New York Times, The Los Angeles Times, The American Journal of Public Health, The Lancet, Journal of School Health*, and *Scribner's Encyclopedia of Violence in America.*

William Armaline, Ph.D., Associate Professor, San José State University

Dr. William Armaline is the founder of the Human Rights Minor Program, Director of the emergent Human Rights Institute, and an Associate Professor in the Department of Sociology and Interdisciplinary Social Sciences [SISS] at San José State University. His formal training and professional experience spans sociology, education, and human rights. As an interdisciplinary scholar and public intellectual, Dr. Armaline's interests, applied work, and scholarly publications address social problems as they relate to political economy, environmental sustainability, racism and anti-racist action, critical pedagogy and transformative education, inequality and youth, mass incarceration, and drug policy reform. Follow his work and the SJSU Human Rights Institute and Minor Program on Twitter: @SJSUHumanRights

His recent publications include: (1) W. Armaline. Public education against neoliberal capitalism: Strategies and opportunities. In Shannon, D. and J. Galle (Eds.), *Interdisciplinary Approaches to Pedagogy and Place-Based Education* (2017, Palgrave-Macmillan). (2) W. Armaline, D. Glasberg, and B. Purkayastha. *The Human Rights Enterprise: Political sociology, state power, and social movements* (2015, Polity Press). (3) W. Armaline, C. Vera Sanchez, and M. Correia. "The Biggest Gang in Oakland: Rethinking police legitimacy" (2014, *Contemporary Justice Review*).

SJSU | HUMAN RIGHTS

For more information please contact:

Center on Juvenile and Criminal Justice
40 Boardman Place
San Francisco, CA 94103
(415) 621-5661
cjcjmedia@cjcj.org
www.cjcj.org

www.cjcj.org/blog
facebook.com/CJCJmedia
twitter.com/CJCJmedia

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development, and technical assistance in the criminal justice field.

SJSU | HUMAN RIGHTS

Appendix A

Testimony to San Francisco Board of Supervisors on Disproportionate Arrest/Confinement of African-American Young Women for Drug Offenses

Mike Males, 8 July 2004

The attached charts show the arrest rates of San Francisco African-American juvenile girls ages 10-17 for several offenses compared to African-American girls elsewhere in California, as well as to San Francisco girls of other races. They indicate that **San Francisco has vastly disproportionate arrests of young black women even compared to the rest of the state.**

The figures forming the basis of these calculations are the latest for California and San Francisco from the state Department of Justice's Criminal Justice Statistics Center (*California Criminal Justice Profiles*, at http://caag.state.ca.us/cjsc/) and San Francisco Juvenile Probation Department (annual *Statistics* report). Population figures are from the California Department of Finance's Demographic Research Unit (http://www.dof.ca.gov/HTML/DEMOGRAP/Druhpar.htm).

Excessive black arrest rates are of concern throughout California and the nation. Note that in California outside San Francisco, black girls are 3.5 times more likely to be arrested for felonies, 4.6 times more likely to be arrested for assault, and 1.8 times more likely to be arrested for felony drug offenses than California girls of other races.

Racial arrest discrepancies are stark enough elsewhere. San Francisco's are massively worse. In San Francisco, black girls are 11.4 times more likely to be arrested for felonies, 10.6 times more likely to be arrested for assault, and 18.9 times more likely to be arrested for felony drug offenses than are San Francisco girls of other races.

San Francisco white, Latina, Asian, and other/mixed-race (that is, non-black) girls display a varied, though relatively normal pattern of urban arrests for felonies--about 30% higher than the statewide average for non-black girls, including rates slightly higher for assault, slightly lower for property offenses, 2.8 times higher for drug felonies, and considerably lower for drug misdemeanors.

This is not the case for San Francisco black girls, who display arrest rates 4.3 times higher for felonies, 2.5 times higher for assault, and **29.2 times higher for drug felonies than BLACK girls elsewhere in California.**

Looked at another way, **San Francisco has 1.8% of the state's young black women but accounts for 35.2% of the arrests of young black women for drug felonies, and 7.5% for all felonies, in the state.**

Within the city, **blacks comprise 12.2% of San Francisco's population of girls but comprise 61.4% of San Francisco girls' arrests for felonies, 66.7% for robbery, and 72.3% for drug felonies.**

Blacks account for 57% of total arrests, two-thirds of the felony petitions sustained, and three in five incarcerations of juvenile girls in the city.

San Francisco's pattern forms a gigantic anomaly found nowhere else. While (a) San Francisco boys of all races, (b) San Francisco girls of other races, (c) California black girls, and (d) California boys and girls of all races ALL show declining rates of arrest and imprisonment over the last decade, (e) **San Francisco black girls are the ONLY youth population in the state showing skyrocketing rates of arrest and incarceration.**

Finally, there is no evidence of a serious drug abuse problem among San Francisco black girls that would explain their massively excessive arrest rate. **The city's drug abusing population is mostly white and overwhelmingly over age 30.** The drugs they abuse are exactly the same ones implicated in violence

among drug dealers: heroin, cocaine, methamphetamine, illicit drug combinations, and drugs mixed with alcohol.

In the last seven years (1997 through 2002), federal Drug Abuse Warning Network show 2,260 deaths in the city were directly related to illegal-drug abuse. Of these, 1,486 were whites (66%), and 1,793 (79%) were over age 35. DAWN reports also show a staggering 52,400 San Franciscans treated in hospital emergency rooms for illegal-drug abuse over the last seven years. Of these, 65% were white, and 88% were over age 30.

Meanwhile, **none of the city's drug abuse deaths and fewer than 2% of the city's hospital emergency treatments for drug abuse were younger black women (age 10-24). Emotional anecdotes gracing the city's media aside, there is little evidence of a serious drug abuse problem among younger African Americans in San Francisco, and especially not among young black women.** There has not been a drug overdose death of any kind involving an African-American female under age 25 in San Francisco since 1996 (figures through 2002).

Compared to their contribution to the city's drug abuse problem, young blacks (ages 15-29) are 60 times more likely to be arrested for drugs that whites over age 30.

San Francisco may pride itself on its enlightened policies toward drugs, but in point of fact, this city's drug situation is very disturbing. **This city is failing to address both its massive drug abuse problem among older whites (three times the rate of other cities in California) and its massively excessive drug over-arrest problem of younger black women (29 times the rate elsewhere in California).** I am certainly not suggesting arresting more people of any race for drugs; the city's felony drug arrest rate is already substantially higher than the state's as a whole. I am suggesting a major revision in the way we confront drug abuse and law enforcement in light of San Francisco's extreme discrepancies with regard to race, gender, and age.

Arrests, San Francisco vs. California girls, 2000-02

Arrests per 100,000 population age 10-17
African American girls, 2000-02

Rate	San Francisco	Rest of CA
Felony	6,715	1,546
Assault	1,042	401
Robbery	926	138
Property	1,598	796
Fel drug	2,362	81
Misd drug	93	143
All drug	2,455	224

Arrests, girls of other races

Rate	San Francisco	Rest of CA
Felony	587	440
Assault	98	87
Robbery	64	12
Property	219	244
Fel drug	125	44
Misd drug	35	153
All drug	161	197

SJSU | HUMAN RIGHTS

Arrests, all girls

Rate	San Francisco	Rest of CA
Felony	1,334	525
Assault	213	111
Robbery	169	21
Property	387	287
Fel drug	398	47
Misd drug	42	152
All drug	441	199

Thank you for your consideration.

Mike Males
Sociology Department, 214 College Eight
University of California, Santa Cruz, CA 95064
tel 831-426-7099
email mmales@earthlink.net

Item 040470 will be heard at approximately 10:45 am at the Board of Supervisors, special hearing on the issue of the over-arrest of African American girls in San Francisco. The hearing will be at the City Services Committee meeting on Thursday, July 8 at City Hall. Supervisors Maxwell, Dufty, Alioto-Pier, Ma

Hearing to discuss the juvenile justice system with regard to the arrest and incarceration rates of adolescent girls; to consider the criminal justice programs serving this population, and to consider why the arrest and incarceration rates for young African American women are the highest of any California jurisdiction.

4/13/04, RECEIVED AND ASSIGNED to City Services Committee.

4/20/04, REFERRED TO DEPARTMENT. Referred to Youth Commission for comment and recommendation.

http://www.sfgov.org/site/bdsupvrs_page.asp?id=26009

SJSU | HUMAN RIGHTS

4 January 2004

Commission Secretary
Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, CA 94102-6033
Phone: 415.252.2500
Fax: 415.431.5764
TDD: 800.735.2922
E-mail: hrc.info@sfgov.org

Dear Commissioners:

I am writing to ask for Commission investigation of the excessive arrest and incarceration of African-American juvenile females in San Francisco, specifically for drug offenses. I believe the extreme pattern documented below constitutes age-based, racial and sexual discrimination.

1. San Francisco law enforcement authorities arrest juvenile black females for felony drug offenses at a rate far exceeding that of California as a whole, and comparable California cities.

The 2000 Census shows 3,016 black females ages 10-17 in San Francisco, 2.1% of the state's total population of 146,012 black females ages 10-17.

In 2002, California Criminal Justice Statistics Center (Department of Justice) figures show there were 56 black juvenile females arrested for drug felonies in San Francisco, 35.7% of the 157 black juvenile females arrested for drug felonies in all of California.

At 1,857 per 100,000 population, the arrest rate for black juvenile females in San Francisco is 26 times the rate of arrest of black juvenile girls for drug felonies elsewhere in the state. Nor is 2002 an isolated year. In 2001, San Francisco black girls comprised 69 of the 191 arrests of black girls statewide for drug felonies, also 36% of the total.

San Francisco black girls comprise 12.5% of the 24,119 juvenile females ages 10-17 in San Francisco, but 70% of the arrests of juvenile females for drug felonies and 77% of the petitions sustained for drug felonies (San Francisco Juvenile Probation Department annual report, 2000). The drug felony arrest rate for San Francisco black girls is 15 times the rate for other girls in the city (123.2 per 100,000 population). The drug felony conviction (petition sustained) rate for black girls is 23 times that of other girls in San Francisco.

2. There is no evidence of a drug abuse problem among San Francisco black girls that would justify such a drug arrest and incarceration excess.

In 2001, black juvenile girls comprised none of the city's 104 drug overdose deaths, and 1 of the city's 517 illegal-drug-related hospital emergency treatments--less than one-fifth of 1% of the city's drug abuse total (California Center for Health Statistics, and Epidemiology and Injury Control, Department of Health Services).

3. Every measure of drug abuse shows the city's drug abuse problem, overwhelmingly, is white and over age 30.

In 2001, whites over age 30 comprised 81 of the city's 104 drug overdose deaths, and 302 of the city's 517 illegal-drug-related hospital emergency treatments--60% to 80% of the city's drug abuse total.

Federal Drug Abuse Warning Network figures show the same pattern for all deaths and hospital emergency room treatments (whether accident, suicide, or undetermined) classified as directly related to abuse of illegal drugs. In 2002, persons over age 35 comprised 84%, and whites 64%, of the city's 273 drug abuse fatalities.

Yet despite their overwhelming contribution to San Francisco's drug abuse toll, city whites over age 30 comprise just 19.6% (1,577 of 8,035) of felony arrests for drug offenses, and 24.8% (373 of 1,504) of misdemeanor drug arrests. Meanwhile, blacks under age 30, who account for just 1% of the city's drug abuse deaths, comprise 22.7% (1,827 of 8,035) of felony, and 12.6% (190 of 1,504) of misdemeanor drug offenses.

Whites over age 30 are arrested for drugs at a rate one-third of what their contribution to San Francisco's drug abuse toll would predict, while blacks ages 15-29 are arrested at a rate 22 times higher than their drug abuse proportion would predict. Thus, compared to their level of drug abuse, younger blacks are more than 60 times more likely to be arrested for drugs than older whites.

4. This racial disparity in arrest exists for adult African American women, though not to the extreme extent as for juvenile females.

Comprising 2.7% of the black female population statewide, San Francisco black females comprise the following proportions of arrests for drug felonies of females in their age groups statewide: ages 18-19, 42%; ages 20-29, 34%; ages 30-39, 12%, and ages 40-older, 12%.

Comprising 8% to 10% of San Francisco's female population, blacks age 18-19 comprise 73% of the arrests 18-19 year-old women citywide for drug felonies; 66% for age 20-29, 56% for ages 30-39, and 70% for those ages 40 and older.

5. San Francisco's law enforcement policy toward drugs cannot be justified on the grounds of practicality. It is of dubious effectiveness in reducing drug abuse. According to Drug Abuse Warning Network tabulations, San Francisco's rate of drug-related mortality (37.2 per 100,000 population in 2001) is three times higher than for Los Angeles (12.2) and San Diego (12.8), and its rate of drug-related hospital emergency treatments (1,121.9 per 100,000 population in 2002) is 4.5 times higher than for Los Angeles (250.7) and 4.8 times higher than for San Diego (12.2).

6. This complaint does not allege a violation of civil rights in any individual case. Rather, it alleges that the extreme nature of these statistics clearly shows that San Francisco's pattern of drug law enforcement results in discrimination against younger black people, particularly younger black women, and excessive leniency toward older whites whose drug abuse is driving the city's illicit drug use and distribution. These are, by far, the most racially extreme figures I have seen for any city statewide.

SJSU | HUMAN RIGHTS

Although precise race-by-age figures are not available for cities, San Francisco arrested more juvenile girls by number in 2002 for drug felonies (83) than the city of Los Angeles (74) or all jurisdictions in Alameda County (32), the latter of which have youth populations six and three times higher than San Francisco, respectively. As seen, San Francisco's arrests are disproportionately of blacks.

7. I believe San Francisco's method of enforcing drug laws constitutes a race-, gender-, and age-based human rights violation that is unfair on its face and which damages the lives of young people while failing to address the city's serious drug abuse problem among older age groups. I ask that these racial disparities be examined and that the city pursue policies that are more equitable and effective in light of the age, race, and gender characteristics of its drug abuse problem.

thank you for your attention,

Mike Males, Ph.D.
Sociology Department
214 College Eight
University of California
Santa Cruz, CA 95064

tel 831-426-7099
email mmales@earthlink.net
homepage http://home.earthlink.net/~mmales

Appendix B. Full List of Cannabis Specific Statutes Reviewed

Class	Statute	Description
Felony	11357(a) HS/F	Possession of concentrated cannabis
	11358 HS/F	Cultivation of marijuana
	11358(d) HS/F	Cultivation of marijuana with priors
	11359 HS/F	Possession of marijuana for sale
	11359(c) HS/F	Possession of marijuana for sale with priors
	11359(d) HS/F	Possession of marijuana for sale involving a person age 20 or younger
	11360(a) HS/F	Transportation, sale and giving away of marijuana
	11360(a)(3) HS/F	Transportation, sale and giving away of marijuana
	11361(a) HS/F	Employment of a minor to sell or carry marijuana
	11361(b) HS/F	Furnishing marijuana to minor over 14
	11362.3(a)(6) HS/F	Manufacturing concentrated cannabis using a volatile solvent without a license
Misdemeanor	11357(a) HS/M	Possession of concentrated cannabis
	11357(b) HS/M	Possession of marijuana 28.5 grams or less
	11357(b)(2) HS/M	Possession of marijuana more than 28.5 grams or concentrated cannabis more than four grams
	11357(c) HS/M	Possession of marijuana 28.5 grams or less or concentrated cannabis four grams or less at school
	11357(d) HS/M	Possession of marijuana 28.5 grams or less at school

	11357(e) HS/M	Possession of marijuana upon grounds of k - 12 school
	11357.5(a) HS/M	Selling or distributing a synthetic cannabinoid compound
	11357.5(b) HS/M	Use or possession of a synthetic cannabinoid compound with prior offense
	11358(c) HS/M	Cultivation of marijuana
	11359(b) HS/M	Possession of marijuana for sale
	11360(a)(2) HS/M	Transportation, sale and giving away of marijuana
	11360(b) HS/M	Transportation of not more than 28.5 grams of marijuana other than concentrated cannabis
	11362.3(a)(5) HS/M	Possession of marijuana upon school grounds
	23222(b) VC/M	Possession of marijuana while driving
	34014(a) RT/M	Operating a business in cultivation and retail of marijuana products without a permit
Infraction	11357(a) HS/I	Possession of marijuana 28.5 grams or less or concentrated cannabis four grams or less
	11357(b) HS/I	Possession of marijuana 28.5 grams or less
	11357(b)(1) HS/I	Minor in possession of marijuana more than 28.5 grams or concentrated cannabis more than four grams
	11357(d) HS/I	Minor in possession of marijuana 28.5 grams or less or concentrated cannabis four grams or less at school
	11357.5(b) HS/I	Use or possession of a synthetic cannabinoid compound
	11358(a) HS/I	Cultivation of marijuana by a minor under 18
	11358(b) HS/I	Cultivation of marijuana by a person between 18 and 20 years of age

	11359(a) HS/I	Possession of marijuana for sale by a minor under 18
	11360(a)(1) HS/I	Transportation, sale and giving away of marijuana by a minor under 18
	11360(b) HS/I	Transportation of not more than 28.5 grams of marijuana other than concentrated cannabis
	11362.3(a)(1) HS/I	Smoking marijuana in a prohibited public place
	11362.3(a)(2) HS/I	Smoking marijuana where tobacco is prohibited
	11362.3(a)(3) HS/I	Smoking marijuana within 1,000 feet of a school
	11362.3(a)(4) HS/I	Possession of an open container of marijuana while in a vehicle
	23222(b) VC/I	Possession of marijuana while driving

Appendix C. Equity Program Components and Targeted Barriers to Entry

		Barrier to Entry									
		Financial			Technical				Criminal	Geography	Perception
Program Type	**Specific Program**	Access to Capital	Access to Real Estate	Licensing Fees	Business	Legal & Regulatory	Tax	Awareness of Equity Programs	Background Checks	Access to Opportunity	Distrust in Government
Financial & Capital Assistance	Incubators	✓	✓								
	Loans	✓	✓	✓							
	Real Estate		✓								
	City Property		✓								
	Fee Waivers	✓		✓							
	Tax Incentives	✓									
	Community Reinvestment	✓									✓
	Conditional Approval	✓	✓								
Technical Assistance	Business Training				✓						
	Cannabis Training				✓						
	Regulatory Training or Assistance					✓	✓				
	Mentorship & Learning							✓			
Public Awareness	Advertisements							✓			✓
	Neighborhood Outreach/Education							✓		✓	✓
Licensing	Priority					✓					
	Clarity				✓	✓					
	Streamlining	✓				✓					
	Equitable Zoning									✓	
Criminal History	Disregarding Cannabis Offenses								✓		
	Expungement Assistance/Events								✓		✓

Appendix D. Existing Resources

San Francisco has numerous existing resources that can serve as important tools for Equity Applicants and the existing industry. While this is not meant to serve as an exhaustive inventory, this section provides background for existing programs referenced in the report. These are a few of the programs that can be leveraged to help create a more inclusive industry and ensure the success of Equity Applicants.

General Support from the Office of Small Business

The Office of Small Business (OSB) and the SF Business Portal serve as a central point of information and assistance for small businesses and entrepreneurs located in San Francisco and provides one-to-one case management assistance including information on required license and permits, technical assistance, and other business resources.

The OSB specializes in servicing business clients that are unfamiliar or challenged by language in understanding the business regulatory environment and can help navigate business to technical services managed by other portions of OEWD and service providers.

Business Assistance

Office of Small Business services include providing potential operators with a customized checklist for starting a business; Business Registration Requirements; Business License and Permit Info; Zoning & Land Use Info & Assistance; Technical Assistance Providers & Business Support; ADA Requirements / and Assessments; Business Classes and Workshops; Legal Resources for Entrepreneurs; Employer Mandates - Hiring Employees; Building Permit Process Overview; various other Business Resources and Programs.

Legal Assistance

The Office of Small Business can also refer to programs such as the San Francisco Bar Association Lawyer Referral and Informational Services. This costs approximately $35 for 30 minutes.

Human Resources Assistance

The Office of Small Business can also refer to resources such as the California Employers Association, a not for profit employers association.

Open in SF

Mayor Lee has created Open in SF and set a priority to support the 80,000 small businesses that are at the core of San Francisco's identity, economy, and workforce, and to make it easier for San Franciscans to open, operate, or grow a small business. The program is an interagency collaboration that provides direct services to assist individuals in San Francisco who are working through the permitting process to open a small business.

First Source

This program requires cannabis businesses to post any new entry level positions with San Francisco's workforce system before posting positions publicly through other platforms. The City's workforce

system is a robust network of community based organizations, job development providers, and vocational training programs working primarily with unemployed, underemployed, and low-income San Franciscans. Participants in the workforce system often access this system because they represent populations that have historically faced discrimination and disenfranchisement and as a result lack the professional networks that are so critical to gaining a foothold in a career. The workforce system worked with over 8,000 people last year, 92% of which represented households earning less than 50% AMI and 37% of which were African American. The workforce system targets specific populations that have unique barriers to employment, including formerly incarcerated individuals, veterans, and newly arrived immigrants. These are the individuals that the cannabis industry has made a priority and by incorporating First Source hiring practices into cannabis businesses, businesses have a direct connection to the job seekers that it is looking for. In San Francisco's tight labor market, First Source offers an invaluable pool of qualified entry-level talent that small businesses can struggle to find.

Neighborhood Access Points

San Francisco funds several Neighborhood and Specialized Access Points in order to connect workforce services to specific communities with a disproportionate rate of unemployment and/or poverty and for targeted populations who face barriers to employment. The Neighborhood Access Points are community- based workforce centers that offer participants support in seeking and connecting to employment. They also partner with neighboring businesses within a community in order to connect local businesses to local jobseekers. The Specialized Access Points deliver customized workforce services for populations who often face barriers in finding employment, including a Re-Entry Access point, to address the specific job readiness needs for individuals who have interfaced with the criminal justice system, including those with cannabis-related convictions. Collectively, these workforce services further expand pipelines of qualified candidates for training and employment opportunities and supporting growing industries, as the marijuana sector, in San Francisco.

Skill Building Programs

Hospitality Academy - The Hospitality Academy is designed to coordinate training with employment opportunities in order to support the growth of a diverse and well-qualified hospitality sector workforce in San Francisco. It makes targeted trainings available to prepare San Francisco residents for employment opportunities in the hospitality sector – from food preparation and guest services to the maintenance and security needs that hospitality businesses require. The Hospitality Academy serves to fulfill the hiring needs of hospitality sector employers with qualified candidates that are job ready, possess the skills and abilities to be an attribute to the workforce, and hold knowledge and passion for the industry. Participants successfully completing programming from the Hospitality Academy would be natural candidates for retail positions, cannabis food businesses as well as security guard positions.

CityBuild

CityBuild Academy aims to meet the demands of the construction industry and our dynamic economy by providing comprehensive pre-apprenticeship and construction administration training to San Francisco residents. CityBuild began in 2006 as an effort to coordinate City-wide construction training and employment programs and is administered by OEWD in partnership with City College of San Francisco,

various community non-profit organizations, labor unions, and industry employers. CityBuild furthers the City's social justice and employment equity goals by recruiting disadvantaged jobseekers who face or have overcome barriers to employment, including formerly incarcerated workers in communities negatively impacted by the failed war on drugs. CityBuild graduates would be natural candidates for machine operator positions within the cannabis industry as well as the ancillary jobs with construction firms building out new cannabis businesses and at HVAC companies serving these businesses. Taking into account emerging cannabis apprenticeship programs such as the Laborers' Local 261 Cannabis Horticultural Apprenticeship, with some time and resources CityBuild has the potential to expand and create new partnerships to provide pre-apprenticeship and a proven pathway to employment for workers in the cultivation side of the industry as well, helping to ensure diversity and reduce barriers to equitable opportunity in the growing cannabis industry.

Health Care Academy

The Health Care Academy is designed to improve the responsiveness of the workforce system to meet the demands of the growing health care industry. The health care industry has been identified both nationally and locally as a priority for workforce investment due to stable and/or increasing demand for new workers, replacement of retirees, and the need for skills development in response to new technologies and treatment options. Because the health care sector encompasses occupations in such a wide variety of settings and requiring various levels of education and skill, it presents excellent opportunities for a broad spectrum of local jobseekers. With the Academy offering both clinical and non-clinical training opportunities, partnership with the emerging marijuana sector would enhance workforce efforts for employment opportunities as through pharmacy technician (fill and refill marijuana prescriptions) and patient access reps (clinical customer service representatives that are trained with providing service to those with medical conditions).

Apprenticeship Programs

Apprenticeship is a means of addressing the workforce needs of our dynamic economy's core and emerging industries by providing paid, on-the-job training and a structured pathway to career advancement. Participants in state-certified apprenticeship programs earn specific wages and benefits that increase as employment hours are accumulated, resulting in the attainment of journey-level status over a period that typically ranges from two to four years. Apprenticeship is a key foundation of the City's workforce development strategy, particularly with respect to the construction and technology sectors. By investing in pre-apprenticeship programs such as CityBuild and TechSF, the Office of Economic and Workforce Development provides an opportunity for economically disadvantaged jobseekers and workers that face or have overcome barriers to employment to become job ready and secure life skills before they become an apprentice. Partnering with employers and labor organizations within a specific sector to craft a pre-apprenticeship curriculum allows OEWD to offer pre-apprenticeship graduates guaranteed or priority access to apprenticeship and the career benefits that await as they work to become journey-level workers in their field. Capacity and resources within our training programs may need to be evaluated depending on how this model evolves. Policy framework for such an apprenticeship program should be robust enough to scale, but should also recognize the naissance of this industry and lack of data for accurate predictions related to job creation.

Clean Slate

Clean Slate is a program of the San Francisco Public Defender's Office that can help people "clean up" their criminal records. The type of cases the Public Defender handles through this program includes: Expungements (misdemeanor & felony convictions including, but not limited to drunk driving, theft, prostitution, burglary, drug offenses, domestic violence, robbery, and assault and battery) and Certificates of Rehabilitation such as State Prison Cases.

Fair Chance Ordinance (FCO)

The Fair Chance Ordinance (FCO) went into effect on August 13, 2014 and regulates the use of arrest and conviction records in employment decisions for certain employers, affordable housing providers, and City contractors. The FCO applies to private employers that are located or doing business in San Francisco, and that employ 20 or more persons worldwide. This 20-person threshold includes owner(s), management, and supervisorial employees. Job placement, referral agencies, and other employment agencies are considered employers. You can learn more about the Fair Chance Ordinance here: https://sfgov.org/olse/sites/default/files/FileCenter/Documents/12136-FCO%20FAQs%20Final.pdf.

Financial Empowerment

The Office of Financial Empowerment (OFE), housed within the Office of the Treasurer, designs, pilots and expands programs and policies that help low income families build economic security and mobility. Programs such as Smart Money Coaching, which provide one-on-one financial coaching, could be expanded to specifically serve the needs of employees in the cannabis industry.

Smart Money Coaching provides free financial coaching to low income San Franciscans at 27 sites in partnership with the Human Services Agency, the Mayor's Office of Housing & Community Development, the Office of Economic and Workforce Development and the Housing Authority. Integrating coaching into existing social service delivery can improve both financial and programmatic outcomes, as well as help scale a high touch coaching service.

Other programs available to assist employees in the cannabis industry include:

- SaverLife, an online program that rewards individuals for consistently saving at least $20 each month. The program lasts for 6 months and savers can earn a maximum of $60.
- Bank On San Francisco helps residents access safe, affordable accounts at responsible banks and credit unions.

Community Business Priority Processing Program

The Planning Department has assembled a designated staff to help navigate the application process. The Community Business Priority Processing Program (CB3P)* streamlines the Conditional Use review process for certain small and mid-sized business applications and provides a simplified and efficient system to get help you out the door faster and open your business sooner. Projects that qualify for and

enroll in the CB3P are guaranteed a Planning Commission hearing date within 90 days of filing a complete application, and placement on the Consent Calendar. Applicants for the CB3P must a) complete a checklist documenting eligibility for participation, b) complete the Conditional Use application and provide associated materials, c) conduct a Pre-Application Meeting prior to filing, and d) provide interior and exterior photos, per Resolution #19323 that established the program. Certain limitations do apply, and CB3P applications are subject to the same level of neighborhood notice, the same Planning Code provisions, and the same (if applicable) CEQA review requirements; and may still be shifted from Consent to Regular Calendar if requested by a Planning Commissioner or member of the public.

Appendix E. Taxation: State Structure & Review of Other Jurisdictions' Tax Structures

New cannabis taxes have also been authorized under Proposition 64. All cannabis is subject to a 15 percent state excise tax and local governments may also levy their own excise taxes. Standard sales taxes apply as well, although medicinal cannabis is exempt from sales taxes. Further, the state will collect taxes from cultivators at a rate of $9.25/oz for cannabis flowers and $2.75/oz for leaves. State tax revenue will fund cannabis-related administrative and enforcement activities as well as new programs to support law enforcement, environmental impact mitigation of cannabis cultivation, university research, and community reinvestment grants.

Anticipating the passage of Prop. 64, over 30 cities and counties in California put cannabis tax measures before voters last November, and nearly all of these measures passed. The average local tax rate on cannabis is around 10 percent, which is in addition to the state's tax of 15 percent.

In some cities, the tax is variable. In San Diego, for instance, the rate starts at 5 percent, increases to 8 percent in 2019, and City Council is authorized to increase the tax by ordinance to a maximum 15 percent. In the City of Los Angeles, voters approved a 10 percent tax on adult-use cannabis sold at retail stores, a 5 percent tax on medicinal cannabis, and lesser taxes on non-retail cannabis businesses, such as testing and manufacturing. All new local taxes that have passed since November 2016 are general fund taxes, meaning tax revenue will support general services in each city or county, rather than a dedicated fund with specific spending requirements.

Locally, the cities of San Jose, Oakland, and Berkeley have levied taxes on cannabis sales since 2010, although prior to Proposition 64, taxes only applied to medicinal cannabis. Each of these cities will tax adult-use cannabis at 10 percent. In Oakland and Berkeley, medicinal cannabis is taxed at lower rates.

While San Francisco does not currently tax cannabis beyond the standard sales tax, local officials and members of the public are beginning to convene to decide on a tax measure to put before voters in an upcoming election.