

# GUDGEON FOR MAYOR MARIJUANA POLICY



## **Gudgel for Mayor on the Enforcement of Marijuana Laws**

The State of Nebraska's current laws regarding the possession of marijuana are currently a burden on law enforcement and disproportionately impact communities of color, despite the fact that marijuana is used proportionately the same amount regardless of race. An incredible amount of money is wasted on enforcing laws that are designed to fine and imprison black, brown, and poor people for engaging in an activity that is legal in a growing number of states.

While the State of Nebraska effectively handcuffs the City of Omaha from making a meaningful difference in legalizing or even decriminalizing marijuana, we pledge to do what we can to empower police officers to improve their relationship with communities of color by passing ordinances to allow them to not make unnecessary arrests and stops. We also pledge to support legislation coming to the state legislature and on statewide ballots which will either decriminalize or even legalize marijuana through the use of the bully pulpit of the Office of the Mayor.

Finally, we will lay the groundwork to ensure that once marijuana no longer has a federal and state prohibition, Omaha will not create any local prohibition laws to punish the use of marijuana. People, regardless of their race, use marijuana to treat pain from terminal cancer, to cope with depression and anxiety, and to relax at the end of a hard day. Cancer patients, people working on their mental health, and people just trying to relax should not have to worry about their life being ruined with unnecessary legal problems.

### **Current Nebraska Penalties for Possession of Marijuana<sup>1</sup>**

<b>Offense</b>	<b>Penalty</b>	<b>Incarceration</b>	<b>Max. Fine</b>
1 oz or less (first offense)	Infraction	N/A	\$300
1 oz or less (second offense)	Misdemeanor	5 days	\$500
1 oz or less (third offense)	Misdemeanor	7 days	\$500
More than 1 oz - 1 lb	Misdemeanor	3 months	\$500
More than 1 lb	Felony	5 years	\$10,000

If a person who works a minimum wage job is found with 1 ounce or less of marijuana, it will take over 48 hours of work after taxes to pay this fine of \$300. If the same person is found a second time with 1 ounce or less of marijuana, it will take almost 63 hours after taxes to pay this fee of \$400. Additionally, five days in jail will cost this person potentially forty hours of work, worth \$255, making the total cost to this person \$655 in lost income.

If the same person is found a third time with 1 ounce or less of marijuana, it will take over 78 hours after taxes, or virtually two weeks, to pay this fee of \$500. Additionally, seven days in jail will cost this person potentially 56 hours of work, worth \$357, making the total cost to this

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<sup>1</sup> Nebraska Revised Statute 28-416  
<https://nebraskalegislature.gov/laws/statutes.php?statute=28-416>

person \$857 in lost income. Serving time in jail could cost this person their job and possibly get them evicted, since they've already lost almost \$2,000 in income and over two weeks of work. For someone who makes minimum wage, \$2,000 is 15% of their annual income.

Not included in these costs is the cost of appearing in court, hiring an attorney, paying for transportation, child care, etc. all of which may cost thousands more. This current policy effectively does not impact someone who has means to pay the fines, and effectively legalizes marijuana for those who can afford it, but it can be devastating to someone who works for the minimum wage or close to minimum wage. This current law perpetuates a cycle of poverty, starting at just an ounce of marijuana.

### **What Can Be Done**

Since these laws and penalties are state laws created by the State of Nebraska, we will not have the legal authority to lessen these penalties. However, we will encourage the City Council to pass an ordinance that will encourage police officers to not make arrests for possession of marijuana less than one pound. Furthermore, we will encourage an ordinance that prohibits police officers from using the smell of marijuana as probable cause to search a vehicle or home without a warrant. Police officers will still have the discretion to enforce the state laws as they deem appropriate; however, now they will have the ability to not endanger themselves or the person they are approaching for just possessing marijuana.

Omaha would not be the first city to make this kind of change to marijuana enforcement. New Orleans, Louisiana, and Miami-Dade, Florida, have passed ordinances which empower police to not make arrests or give citations for possession of small amounts of marijuana. In New Orleans, the city passed an ordinance which did not legalize marijuana, but it decreased the fines to \$40 for the first offense and capped the fines at \$100 for four or more offenses. Per Nola.com, "According to numbers included in the ordinance, there were almost 5,000 fewer arrests and summonses -- a 31 percent decrease -- for marijuana possession in New Orleans from 2011 to 2014 when compared with 2007 to 2010. The data also show similar discretion was applied in issuing summons to black and white suspects from 2011 to 2014 . The summons rate for African Americans over the period was 69 percent, compared with 68 percent for whites."<sup>2</sup> Miami-Dade passed an ordinance that gives police the option not to arrest those caught with less than 20 grams of marijuana.<sup>3</sup>

If Omaha were to pass similar ordinances, we would be able to decrease the likelihood of confrontations and constitutionally dubious searches of vehicles for police officers. Moreover, if we remove the mandate for police officers to arrest and fine civilians for using a substance that is prescribed as medicine in most other states, they will have more time and resources to keep our city safe from legitimately dangerous or violent offenders. We will also be transparent in the racial disparity of marijuana related arrests. Marijuana is used proportionately equally among

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<sup>2</sup>New Orleans to end arrests for marijuana possession, council rules; here's what to know  
[https://www.nola.com/news/article\\_c475cad5-108b-56cd-82b9-051700207dcd.html](https://www.nola.com/news/article_c475cad5-108b-56cd-82b9-051700207dcd.html)

<sup>3</sup>AMEND SECT. 21-ALLOW CIVIL CITATION FOR CERTAIN MISDEMEANORS  
<http://www.miamidade.gov/govaction/matter.asp?matter=150589&file=true&yearFolder=Y2015>

Black and White people, yet Black people are substantially more likely to be arrested than White people for the same action. Under Mayor Gudgel, while marijuana is still prohibited statewide, we will be reporting the racial demographics of our arrests to ensure that we are not disproportionately targeting one group of people over another.

### **Change is Coming**

In 2020, the Nebraska Supreme Court unilaterally decided that the citizens of Nebraska were not able to understand a straightforward referendum question which would have legalized medical marijuana, perpetuating the current prohibition against this medicine. In 2022, the referendum will be re-introduced in a way to avoid interference from the Supreme Court. Once it is on the ballot, the issue will have the full support of Mayor Gudgel's office. We will use the bully pulpit and the resources of the office to share scientific and peer reviewed research for the people of Omaha to understand the benefits of no longer arresting and punishing people for possessing marijuana.

With the incoming Biden administration and Democratic control of the Senate and House of Representatives, it is likely that the federal prohibition is going to be lifted. Once the referendum allowing medical marijuana passes, and the federal ban is lifted, we pledge to not pass any city ordinances that would add any further obstacles to access to legal marijuana. Once marijuana is legal in Nebraska, we will research how the City of Omaha can help citizens participate in the newly taxable practice of safely and legally distributing medicinal marijuana.

### **Conclusion**

The tide is changing in the nation and the state with regard to legalizing marijuana, and we intend to help the City of Omaha be a force for positive change in the policing and enforcement of the current laws until these changes come. We have no intention of filling our jails and prisons with people offending a law that will inevitably change.