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Friday, November 28, 2008

Ferndale pot ordinance under fire

Jennifer Chambers / The Detroit News

FERNDALE -- Does this city have a future as the state's first medical marijuana dispensary?

It depends who you ask.

Voters in this funky, progressive suburb overwhelmingly supported a local medical marijuana initiative Nov. 4 that allows one man and his group to distribute pot in Ferndale with a court order.

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But city officials say state law still prevents Carl Swanson from selling marijuana in Ferndale. And the Police Department says it will do all it can to stop Swanson from trying.

"He will be met with legal roadblocks at every juncture he tries to cross. There is nothing in the law that allows him to operate this way," said Ferndale Police Capt. Timothy Collins. "I don't care what your opinion of what medical marijuana is: The ordinance is ridiculous."

The ordinance says Swanson and his group, the National Organization for Positive Medicine, are allowed to obtain "court orders" to distribute medical marijuana and "to take all actions necessary and proper to carry out the function of distributing medical marijuana to sick patients."

Ferndale City Attorney Dan Christ issued a legal opinion Wednesday that said Swanson's ordinance is inconsistent with state law.

"It's the city's decision ... that the initiative would be pre-empted by the state law," Christ said.

Swanson, a Massachusetts resident, said he plans to come to Michigan in February to seek a declaratory judgment in state court giving him the right to distribute marijuana in Ferndale. Swanson, who plans to relocate to Michigan, hired a Ferndale resident to collect the necessary signatures to place the measure on the ballot.

"We are going for a standing court order, and I will seek the same in federal court. It may take a while. I would be hoping the federal rules would be changing by the time," Swanson said by phone recently.

After the election, Swanson -- a convicted felon who is a disbarred Michigan attorney and a certified public accountant -- said he told Ferndale Mayor Craig Covey he would wait a while before coming to Michigan "so they have time to prepare."

"I don't know what the courts will do. It will be whatever the courts will let me do," Swanson said. "The courts would have to read my law and state law together somehow and come up with some kind of ruling to make this work."

Michigan's new statewide medical marijuana law fails to address how eligible patients can obtain marijuana. It simply states that a patient can possess up to 2.5 ounces of marijuana or grow 12 plants in a secure facility. It won't actually be implemented until spring.

Three times, voters in Ferndale have shown they support medical marijuana.

In 2005, they approved a symbolic measure that removed local criminal penalties for medical pot. On Election Day, 80



Swanson



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percent of Ferndale voters approved the statewide proposal, and 77 percent voted for Swanson's ordinance.

Ferndale resident John Mielke III said he isn't surprised Ferndale's ordinance is drawing flak.

"I voted for it, but I knew it wouldn't happen. The government has too much fighting against this," Mielke, 61, a retired mold maker and machine tool builder.

Lawrence Dubin, a professor of law at [University of Detroit Mercy](#), said in seeking the judgment, Swanson is asking the court to define certain rights or obligations that exist under the law.

One question, Dubin said, is whether Swanson would have sufficient standing under the ordinance because he is not a Michigan resident.

"Ultimately, the courts will have to decide some of the issues on how to resolve that ambiguity. Who are the parties who can distribute marijuana? Will the legislature need to enact further legislation here?" he said.

Covey said city officials still don't understand all the ramifications of the new law.

"Even while Ferndale is at the forefront of this issue, I don't believe anytime soon you will see a dispensary in this town. It's still a very gray area," Covey said.

"I don't want people to think Ferndale is Berkeley or San Francisco," he said. "It's going to take a while to shake out."

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