

# **STANTON FAIR TREATMENT OF VETERANS AND DISABLED CITIZENS ACT**

## **OF 2017**

The People of the City of Stanton do ordain as follows:

### **SECTION 1. TITLE**

These provisions of the Municipal Code shall be known as the FAIR TREATMENT OF VETERANS AND DISABLED CITIZENS ACT (“FTVDCA”). This Chapter shall be applicable in the City of Stanton.

### **SECTION 2. FINDINGS AND DECLARATIONS**

The People of the City of Stanton find all of the following to be true:

- A. We strongly support protecting the rights of seriously ill and disabled individuals, shall the City of Stanton repeal Chapter 9.38 of the Stanton Municipal Code and repeal Stanton Ordinance 1060 and then replace both laws in their entirety with the following Chapter to recognize and protect the rights of seriously ill, permanently injured and disabled citizens?
- B. WHEREAS, physical or mental disabilities, including serious illness, in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities and illness have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability, serious disease, mental or other illness also have been subjected to discrimination; and
- C. WHEREAS, historically, society has tended to isolate and segregate individuals with disabilities, disease or illness and, despite some improvements, such forms of discrimination against individuals continue to be a serious and pervasive problem; and
- D. WHEREAS, discrimination against individuals with disabilities, including but not limited to veterans with Post-Traumatic Stress Disorder (PTSD), persists in the area of medical cannabis despite studies showing cannabis used medicinally is very effective for people with cancer, AIDS, epilepsy, multiple sclerosis, anorexia, chronic pain, arthritis, migraines, glaucoma, Parkinson’s disease and PTSD; and
- E. WHEREAS, unlike individuals who have the ability to invoke the protections of the federal Americans with Disabilities Act and California’s Disabled Persons Act, many Californians, including veterans with PTSD, children with Dravet’s Syndrome and people with cancer for whom the voters of California have provided medical cannabis since 1996 are without protection from discrimination that has resulted in continuing persecution by government despite the growing number of studies showing how effective medical cannabis is for children with severe epilepsy, people with cancer and veterans with PTSD; and
- F. WHEREAS, despite the state’s 1996 voter-approved Compassionate Use Act and the 2016 voter-approved Adult Use of Marijuana Act, individuals with disabilities who have been recommended medical cannabis by their respective physicians continually encounter various forms of discrimination, including outright intentional exclusion, overprotective rules and policies, exclusionary qualification standards, discriminatory and overprotective zoning laws and criteria, segregation and relegation to lesser services, programs, activities, health care services and medication access; and
- G. WHEREAS, people suffering from physical and mental conditions that limit major life activities and who have been recommended medical cannabis by their physicians have suffered improper arrest and persecution including, but not limited to, a 2015 raid of a medical cannabis dispensary in the City of Santa Ana captured on video and showing discriminatory statements made about a disabled woman in a wheelchair by Santa Ana police officers who were later charged with theft and vandalism by the Orange County District Attorney; and
- H. WHEREAS, the City’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, economic self-sufficiency, access to medication and access to health services for all citizens, including but not limited to those who have been recommended medical cannabis; and
- I. WHEREAS, while people suffering from illness and disabilities who use traditional prescription drugs including but not limited to dangerous opiates, amphetamines and benzodiazepines are not charged sales tax for their prescriptions under California law, citizens suffering from cancer, AIDS, Dravet’s syndrome as well as veterans

suffering from PTSD who have been recommended medical cannabis by physicians are charged sales tax despite their illnesses and disabilities; and

- J. WHEREAS, the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our City has worked hard to ensure;
- K. WHEREAS, there is a need in our community for safe and affordable access to medical cannabis and it is necessary for the City to adopt policies, guidelines and regulations for the purpose of providing such access;

**SECTION 3. REPEAL OF CHAPTER 9.38 of the Stanton Municipal Code and repeal Stanton Ordinance 1060 and then replace both laws in their entirety with CHAPTER 9.46**

Chapter 9.46, entitled, FAIR TREATMENT OF VETERANS AND DISABLED CITIZENS ACT Municipal Code will read as follows:

Chapter 9.46 –

- Sec. 9.46.010 – Purpose and Intent
- Sec. 9.46.015 – Definitions
- Sec. 9.46.020 –Discrimination
- Sec. 9.46.025 – Limits on Providers
- Sec. 9.46.030 – Verification of Provider Eligibility
- Sec. 9.46.035 – Adult use and Personal Cultivation of cannabis
- Sec. 9.46.040 – Civil Remedies
- Sec. 9.46.045 – Enforcement
- Sec. 9.46.050 – General Provisions

**9.46.010 PURPOSE AND INTENT.**

It is the purpose of this Chapter:

- (A) To provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities, disease and mental or physical illness; and
- (B) To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities, disease and mental or physical illness including those people with cancer, AIDS and other limiting mental and physical conditions who have been recommended medical cannabis by their respective physicians; and
- (C) To ensure that the City Government plays a central role in enforcing the standards established in this Chapter on behalf of individuals protected by this Chapter; and
- (D) To ensure that citizens are treated equally regardless of aides and equipment that may be used to address illness or disability, medications that may be recommended or prescribed and used to treat illness or disability or services of animals or personal caregivers that may be employed to gain access to services and facilities; and
- (E) To address the major areas of discrimination faced day-to-day by people with disabilities, disease and mental or physical illness including but not limited to those people who have been recommended medical cannabis by their respective physicians for physical or mental conditions that limit major life activities; and
- (F) To ensure that City residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician; and
- (G) To ensure that qualified patients and their caregivers who obtain or cultivate cannabis for the patient's medical treatment are not subject to criminal prosecution or sanction.

**9.46.015 DEFINITIONS.**

As used in this Chapter:

(A) Disability

The term “disability” means, with respect to an individual

- (1) a physical or mental condition that limits a major life activity as defined in California Government Code Sections 12926 and 12926.1;
- (2) a record of such a condition; or
- (3) being regarded as having such a condition (as described in Paragraph (B)); or
- (4) any “serious medical condition” defined in California Health and Safety Code § 11362.7(h)(1) through (h)(12).

(B) Regarded as having such an impairment

For purposes of paragraph (A)(3):

- (1) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this Chapter because of an actual or perceived physical or mental impairment whether the impairment limits or is perceived to limit a major life activity.

(C) Rules of construction regarding the definition of disability

The definition of “disability” in Paragraph (A) shall be construed in accordance with the following:

- (1) The definition of disability in this Chapter shall be construed in favor of broad coverage of individuals under this Chapter, to the maximum extent permitted by the terms of this Chapter and in no case shall be deemed to be more restrictive in scope than the definition of “disability” as provided in California Government Code Sections 12926 and 12926.1 or the federal Americans with Disabilities Act.
- (2) An impairment that limits one major life activity need not limit other major life activities to be considered a disability.
- (3) An impairment that is episodic or in remission is a disability if it would limit a major life activity when active.
- (4) The determination of whether an impairment limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as
  - (1) medication (as defined in Paragraph VI), medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices or oxygen therapy equipment and supplies; or
  - (2) use of assistive technology; or
  - (3) reasonable accommodations or auxiliary aids or services; or
  - (4) learned behavioral or adaptive neurological modifications.

(D) The term “medication” means a substance administered by mouth, applied to the body or introduced into it to treat or relieve the symptoms caused by a disability, disease, mental or physical illness as defined in Section 9.46.015(A) of this Chapter.

(E) Medication provider

The term “medication provider” includes

- (1) Pharmacies that provide medication for patients; and
- (2) Any person, organization or entity that provides medical cannabis for patients recommended by a physician, including medical cannabis related entities.

(F) The term “medical cannabis related entity” shall mean any medication provider as defined in Section 9.46.015(F)(2) operating under the state criminal liability exemptions, exceptions or defenses provided for in California Health and Safety Code § 11362.775 or any other provision of state law. Medical cannabis related entities shall include, but are not limited to, medical cannabis patient collectives, dispensaries, cultivation, delivery, processing, packaging, distribution, and manufacturing sites.

(G) The term “health care professional” means a person who assists in identifying or preventing or treating illness or disability.

(H) The term “health care provider” means an organization or person who delivers health care services, medication, equipment or aides to any individual in need of health care products or services.

(I) The term “Provider” shall mean a health care professional, health care provider or medication provider as defined in this Chapter.

(J) The term “City” means the City of Stanton and its elected officials including but not limited to, its Mayor, City Council, and any department, division or entity that the City operates, controls or contracts with to provide the City with products or services.

(L) The term “Code” means the Stanton Municipal Code.

(M) For purposes of this entire Chapter, should California state law, including but not limited to Section 54 of the Civil Code and Sections 12926 and 12926.1 of the Government Code or federal law, including but not limited to, the Americans with Disabilities Act as amended, be more protective than the provisions set forth herein, the provisions of the more protective law shall apply.

(N) It is the intent of the City of Stanton to provide more protection for disabled citizens than is provided in state or federal law. No provision of this Chapter shall be interpreted to restrict or reduce protections for seriously ill, disabled, and/or permanently injured individuals to levels below the protections provided for by state or federal law. During the time while state or federal disability anti-discrimination laws do not provide protections for medical cannabis patients, this Chapter provides such protections for medical cannabis patients in the City of Stanton.

**9.46.020 DISCRIMINATION.**

(A) Subject to the provisions of this Section, no person with a disability shall, because of such disability, be excluded from participation in or be denied the benefits of, services, programs or activities of the City or be subjected to discrimination by the City including, but not limited to people who have been recommended medical cannabis by a licensed physician or under then applicable state law.

(B) The City shall not enact a law or regulation that imposes permit fees on any health care provider, health care professional or medication provider that is more than the permit fee charged for other similar health care providers.

(C) The City shall not enact laws or regulations that impose any fee on medication providers as defined in Section 9.46.015(F)(2), including but not limited to business license fees, that exceeds the fees charged to similar health care providers as set forth in this Code or by the City without first proposing such fees to the voters and, after proper election by ballot held on the proposed fee initiative, the voters by majority have approved such fees.

(D) The City shall not enact any zoning law, general law, regulation, policy or rule or adopt any policy that facially discriminates, or when applied discriminates, against any medication provider based on the type of medication provided, dispensed, cultivated, manufactured or distributed.

(E) The City shall not enact any zoning law, general law, regulation, policy or rule or adopt any policy, regulation or rule that prohibits, or has the impact of prohibiting, health care providers, health care professionals or medication providers from operating within the City in compliance with this Chapter.

(F) The City shall ensure it does not prevent or frustrate access to health care services, health care professionals, equipment, aides and medication and shall ensure it will not discriminate against any disabled individual, health care provider, health care professional or medication provider based on type of health care service, product, equipment or medication provided to or used by a disabled individual.

(G) Each provision of this Section affecting local zoning laws and regulations shall be subject to state law and shall conform with and incorporate such state law unless such state law excludes from protection medication providers as defined in this Chapter or individuals recommended medical cannabis by a licensed physician, in which case the broader protections of this Chapter shall apply.

## **9.46.025 LIMITS ON PROVIDERS.**

To ensure consistent and convenient access to health care and medication products and services required by disabled individuals and to protect the health, safety and welfare of citizens, the following limits are established:

(A) Any limitation provided by a state law or regulation related to zoning for or location of any health care provider, health care professional or medication provider, including but not limited to state laws or regulations limiting proximity to schools, are hereby implemented and incorporated by the City except that in no case shall the City implement laws, regulations, policies, practices or procedures that are more restrictive than state law and in no case shall any federal law that excludes from protection disabled individuals using medical cannabis such use be implemented or effectuated by the City.

(B) No provision of this Code shall criminalize conduct that has been decriminalized by state law or that is exempted or excepted from state criminal liability when state law is applied.

(C) In no case shall the City enforce any criminal provision of this Chapter, state or federal law against any eligible individual with a disability, health care provider, medication provider, health care professional or landlord, employee, manager or contractor of a medication provider to enforce the provisions this Chapter or any other provision of this Code with the exception of business licensing, building and zoning and regulatory provisions of this Code which are applicable to all other businesses.

(D) In no case shall the City enforce any criminal or civil provision of this Chapter against any landlord, contractor, volunteer or employee of any eligible health care provider, health care professional or medication provider to enforce this Chapter or any other provision of this Code with the exception of business licensing, building and zoning and regulatory provisions of this Code applicable to all other businesses.

(E) All health care providers, health care professionals and medication providers are required to obtain a City general business license before commencing operations in the City. The City shall not, based on type of health care provider, health care professional or medication provider, refuse to issue a business license or delay issuance of a business license under this Chapter or Code.

(F) There shall be no more than three (3) medication providers as defined in Section 9.46.015(F)(2) in the City unless the City determines citizens with disabilities would be adversely affected by or suffer discrimination as a result of this limitation and enacts legislation to increase the number of medical cannabis entities. In no case shall the City limit the number of medication providers defined in Section 9.46.015(F)(2) to fewer than three (3).

(G) Except as set forth in this Chapter, in no case shall the City implement any law, regulation, policy or practice further limiting or regulating medication providers as defined in Section 9.46.015(F)(2) of this Chapter.

(H) Any medication provider as defined in Section 9.46.015(F)(2) of this Chapter that would be subject to criminal liability under state law because of ineligibility or inapplicability of the exemptions, exceptions and defenses provided for in California Health and Safety Code § 11362.775 as applied at the time of enactment of this Chapter is excluded from and ineligible for the protections provided by this Chapter and the medication provider shall be subject to the provisions of Sections 9.46.100(A) and 9.46.100(B) of this Chapter.

(I) Failure of any medication provider as defined in Section 9.46.015(F)(2) of this Chapter to abide by state laws, state regulations or state guidelines promulgated by state agencies, state officers or enacted by the state government that apply to medication providers shall result in exclusion from and ineligibility for the protections provided in this Code and the medication provider shall be subject to the provisions of Sections 9.46.100(A) and 9.46.100(B) of this Chapter.

(J) Failure of any medication provider as defined in Section 9.46.015(F)(2), except those provided for in Sections 9.46.030(K) and 9.46.030(M), to comply with state laws or state regulations governing proximity to schools or any other applicable state law or state regulation governing the operation of medication providers as defined in Section 9.46.015(F)(2) of this Chapter shall be ineligible for a City business license and shall be subject to the provisions of Section 9.46.100(A) of this Chapter;

(K) Any medication provider as defined in Section 9.46.015(F)(2) that operated prior to the effective date of this Chapter without a City business license or permit and that would otherwise remain eligible under Sections 9.46.030(H), 9.46.030(I) and 9.46.030(J) shall remain eligible for the protections provided in this Chapter provided that:

(1) No more than one hundred eighty (180) days after the effective date of this Chapter, the medication provider obtains a City business license; and

(2) The provider remains eligible under Sections 9.46.030(H), 9.46.030(I) and 9.46.030(J) of this Chapter at all times; and

(3) For any provider that is too close in proximity to a school under state law, the provider will remain eligible if the subject location is moved within one hundred twenty (120) days of the effective date of this Chapter.

(L) The City shall not make claims or threats, whether criminal or civil in nature, to any eligible disabled individual, health care provider, health care professional or medication provider or to the landlord, contractor, employee or volunteer of any health care provider, health care professional or medication provider regarding compliance with this Chapter or any state or federal law related to type of service provided or medication provided to or used by eligible disabled individuals unless expressly provided for in this Chapter. The City may notify health care providers, health care professionals and medication providers of deficiencies or violations of other provisions of this Code including but not limited to provisions related to building safety and construction permits.

(M) The medical cannabis dispensary located at 8871 Katella Avenue shall be granted a business license and shall be permitted to operate in the City.

#### **9.46.030 VERIFICATION OF PROVIDER ELIGIBILITY.**

In order to protect the health, safety and welfare of citizens and to ensure the eligibility of health care professionals, health care providers and medication providers:

(A) In the event the City has probable cause to believe a violation of this Chapter or state law is taking place by or at the location of any medication provider as defined in Section 9.46.015(F)(2), it may apply for and obtain an Inspection Warrant pursuant to Code of Civil Procedure §1822.50.

(B) Any inspection of any medication provider as defined in Section 9.46.015(F)(2) conducted by the City shall be done in a manner that comports with and that is similar to inspections conducted of any other type of business.

(C) During any inspection of any medication provider as defined in Section 9.46.015(F)(2), City personnel and officers shall not disconnect or disable any electronic recording device, security camera or any other monitoring system.

(D) The City shall give meaning and effect as well as comply with the provisions of the privacy and security regulations of the Health Insurance Portability and Accountability Act (45 C.F.R. §§160-164) and any and all medical record privacy and security provisions of California law.

#### **9.46.035 ADULT USE AND PERSONAL CULTIVATION OF CANNABIS.**

(A) The City shall not limit the right of individuals to personally cultivate, possess or use cannabis beyond the limits provided for under state law.

(B) The City shall give meaning and effect to the state voter-enacted Adult Use of Marijuana Act and shall not enact legislation limiting or restricting implementation of that Act in respect to the rights of individuals to cultivate, possess or use cannabis under that law.

(C) The City shall give meaning and effect to state medical and adult-use marijuana laws and shall not enforce differing federal law on the same subject.

(D) The City shall not impose licensing fees, inspections, registration lists, or otherwise burden or restrict the personal cultivation of medical cannabis by patients or the personal cultivation of cannabis by adults who are over the age of 21 and the City may not otherwise act in a manner that is more restrictive than the minimum standards set by state law.

#### **9.46.040 CIVIL REMEDIES.**

Disabled individuals, health care providers, health care professionals or medication providers eligible for protection under this Chapter:

A) Shall, upon showing by preponderance of evidence of violation of this Chapter by the City, its employees or contractors that causes an adverse impact for the party seeking relief:

- (1) Be awarded an order enjoining the City from continuing violation;
- (2) Be awarded a monetary judgment for actual damages suffered and proved;
- (3) Be awarded an order requiring the City to conform its laws and regulations to the provisions of this Chapter;
- (4) Be awarded a \$500.00 monetary judgment for each day the violation occurred; and
- (5) Be awarded reasonable attorney fees and costs.

(B) The City shall make no claim of sovereign immunity for any action brought under this Chapter and any party alleging a violation of this Chapter may seek judicial relief without first claiming or reporting violation to any administrative body.

#### **9.46.045 ENFORCEMENT.**

When specifically provided for in this Chapter, the following enforcement provisions are applicable:

(A) After a minimum ten (10) days following notice in writing, health care providers, health care professionals or medication providers that are deemed ineligible under this Chapter:

- (1) Must immediately cease operation in the City of Stanton; and
- (2) Are deemed a danger to public safety and welfare, a public nuisance and are subject to civil action seeking injunctive relief to abate their operation; and
- (3) Subject to all penalties, whether criminal or civil, provided for in this Code.

(B) A medication provider as defined in Section 9.46.015(F) that is deemed ineligible under Section 9.46.030(H) or 9.46.030(I):

- (1) Is subject to immediate closure by the City through abatement action; and
- (2) Shall allow City personnel to post conspicuous notices at all entry points that provide: "This facility has been deemed ineligible for protection under the Stanton Fair Treatment for Disabled Citizens Act. The following notice is provided to help protect disabled individuals, including patients suffering from serious physical or mental illness: Participation in activities conducted by this Provider may subject participants to criminal liability under state drug laws" and any other information the City deems appropriate to help ensure the safety, welfare and protection of its disabled citizens, including helping them avoid arrest, prosecution and detainment based on the mistaken belief that a medication provider is eligible for state criminal law exemptions, exceptions or defenses; and
- (3) Any person removing the posted notice provided for in Section 9.46.100(B)(2) shall be guilty of a misdemeanor punishable by up to one (1) year in jail or up to \$1,000.00 fine or both; and
- (4) Within 24-hours of a determination by the City, if any, that the medication provider is no longer ineligible under Sections 9.46.030(H) and 9.46.030(I), City personnel shall remove any notice posted pursuant to Section 9.46.100(B)(2).

#### **9.46.050 GENERAL PROVISIONS.**

(A) No person shall be deemed a person with a disability for purposes of this Chapter who claims as their disability the addiction to a medication the possession of which would subject the person to criminal liability under state law except:

- (1) if the person's use of the medication does not disqualify the person from protection under state or federal law.

(B) The protections afforded in this Chapter shall in no way reduce or limit the protections provided by the federal Americans with Disabilities Act or state law, including but not limited to Cal. Civil Code §54 and Cal. Government Code §§12926 and 12926.1. Furthermore, the protections afforded in this Chapter extend protections for rights protected by the entire federal Americans with Disabilities Act, including Title II of that law. This Chapter does not incorporate stricter qualification provisions of the federal Americans with Disabilities Act or state law, including but not limited to the federal provisions found at 42 U.S.C. §12210(D).

(C) The protections afforded in this Chapter shall in no way reduce or limit the protections provided by any state or federal law.

(D) Should any provision of this Chapter be found to be invalid, unenforceable, void or otherwise inapplicable, the remaining provisions shall remain in force.

(E) With the exception for changes made under the provisions of Section 9.46.030(F) of this Chapter, the City may not amend or alter this Chapter without approval of the voters.