



Couple cited for smoking medical pot in plaza

by Seth Hemmelgarn

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A San Francisco couple was cited last weekend for smoking medical marijuana in the Castro neighborhood's Jane Warner Plaza.

The citations point to something many may not have realized about rules governing the plaza that were approved by the Board of Supervisors and signed by Mayor Ed Lee earlier this year: Smoking marijuana (or tobacco) in the public space is prohibited.

The rules, introduced by gay District 8 Supervisor Scott Wiener, who represents the Castro and other neighborhoods, also cover Harvey Milk Plaza. Both plazas are at the intersection of Market and Castro streets.

Robert Blitzer, 66, said that he and his husband, Xenry, 63, were in the parklet sharing a joint Sunday afternoon, March 11. Xenry goes only by one name.

Blitzer said they have a home nearby on States Street and consider the plaza "our living room in the Castro." He said they had been smoking medical marijuana in the plaza since it began as a temporary installment in 2009.

He said that Sunday, San Francisco Police Officer Matt Loya asked them if what they were smoking was tobacco, and Blitzer responded that it was marijuana. He said that Loya checked their medical marijuana ID cards and their drivers' licenses and spent half an hour with them.

"People around us were horrified," Blitzer said. "... They couldn't believe a senior citizen couple was being harassed for smoking medical marijuana."

Blitzer and Xenry have been together for 42 years. They were married in Marin County in 2008, before California voters passed the Proposition 8 same-sex marriage ban. The state recognizes their marriage as legal.

Blitzer said that he uses marijuana because he has severe glaucoma and is losing his sight. Xenry has had an abdominal bypass and is frequently in pain.

The citation that each man received refers to state health and safety code that says, "except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than ... \$100."

Their citations instruct them to appear in front of a judge by April 11.

Asked about the couple's situation, Wiener said that the intent of his legislation "was to prohibit smoking in the plaza. We didn't distinguish between tobacco and cannabis."

Referring to older rules for "public spaces such as parks and certain sidewalk areas," he said, "We never distinguished between tobacco and cannabis, so this legislation is consistent with the previous ways we've addressed bans on public smoking."

However, Wiener said, "The police in San Francisco should follow our city's policy of making marijuana enforcement the lowest priority."

He added, "I don't think we should be prosecuting people for personal consumption of marijuana ... absent extraordinary circumstances."

Blitzer said there was another officer with Loya, but he didn't know that officer's name. Loya didn't respond to an interview request. San Francisco Police Department spokespeople didn't reply to emailed questions about the incident.

Responding to emailed questions about how the district attorney's office would handle the citations, DA spokeswoman Stephanie Ong Stillman said that "generally speaking," people receiving infractions similar to Blitzer and Xentry's should be able to take their case to a neighborhood court. Blitzer and Xentry's citation would be in the jurisdiction of the Mission Station court.

"A neighborhood prosecutor will review their citation and determine if they are a good candidate for neighborhood court," Ong Stillman said.

Through that program, local residents are trained in restorative justice to adjudicate matters, instead of having cases charged and heard in criminal courts.

Ong Stillman noted that, "a medical marijuana card allows an individual to possess, but not smoke, in public."

[Updated 3/16/12: Officer Albie Esparza, a spokesman for the San Francisco Police Department, reiterated smoking is prohibited in the plaza and said that Loya made contact with the men "for smoking, not for marijuana."

He also said that at the scene, Loya couldn't verify if their medical marijuana ID cards were legitimate. After he returned to Mission Station, Loya verified that their cards were legitimate.

"After checking with his supervisor, it was determined they should not have been cited" for the marijuana violation because they had the card, Esparza said.

Loya went back to the plaza, but he couldn't find Blitzer or Xentry. He returned to the station again and submitted a request for dismissal. Esparza said that the court normally grants such requests, but he

didn't know whether that has happened in this case.

"This was never about medical marijuana," Esparza said. "It was the smoking in the plaza."]

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