



THE CITY OF SAN DIEGO

CEASE AND DESIST NOTICE

Name of Business:

Name of Business Owner:

Business Address:

Names of Property Owners:

YOU ARE HEREBY placed on formal notice that the above-referenced business has been specifically identified for illegally selling and/or offering for sale **DRUG PARAPHERNALIA** in violation of California Health and Safety (H&S) Code section 11364.7.

YOU ARE FURTHER HEREBY ordered to immediately cease and desist from selling and/or offering for sale any and all items of **DRUG PARAPHERNALIA** in violation of H&S Code section 11364.7. Your failure to voluntarily do so will result in criminal and/or civil prosecution.

PLEASE BE ADVISED that each violation of H&S Code section 11364.7 constitutes a misdemeanor which is punishable by up to one year in custody and/or \$1,000 fine. Additionally, pursuant to this provision, all **DRUG PARAPHERNALIA** defined in H&S Code section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to section 11471.

PLEASE BE FURTHER ADVISED that the sale and/or offering for sale of illegal **DRUG PARAPHERNALIA** as well as the "furnishing of the means" to do so will subject you to civil prosecution under California Business and Professions (B&P) Code section 17200, et seq. which prohibits unlawful and/or unfair business practices. Each violation of B&P Code section 17200, et seq. can result in a \$2,500 civil penalty and the issuance of a court-ordered permanent injunction. Each item of illegal **DRUG PARAPHERNALIA** and/or each date that such items were offered for sale can constitute a separate and distinct violation.

DATED: November 15, 2007

Michael J. Aguirre
City Attorney



CHRISTOPHER S. MORRIS
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ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Michael J. Aguirre
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CRIMINAL DIVISION
DRUG ABATEMENT RESPONSE TEAM
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CALIFORNIA 92101-4103
TELEPHONE (619) 533-5500
FAX (619) 533-5696

November 15, 2007

Based on community complaints, direct observations and/or other intelligence, it is our understanding that you are selling or have sold illegal drug paraphernalia as listed in Health and Safety Code section 11014.5 in violation of Health and Safety Code section 11364.7. Enclosed you will find a formal Cease and Desist Notice demanding that you and your employees immediately refrain from selling and/or allowing the sales of narcotic paraphernalia from the above-referenced establishment. If you are not or have never sold drug paraphernalia, please disregard this letter.

Please be advised that the sale of drug paraphernalia is illegal pursuant to California Health and Safety Code section 11364.7. The term "drug paraphernalia" is defined in California Health and Safety Code section 11014.5. Pursuant to this section, the term "*drug paraphernalia*" includes "*all equipment, products and materials of any kind which are designed for use or marketed for use, in . . . converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.*"

Attached you will find copies of both sections. It does not matter that these items are alleged to be "oil burners" or if they are alleged to be used to smoke tobacco when their actual or true purpose is to be used to ingest illegal controlled substances or if they are marketed for such purpose. In addition, lack of knowledge is no *legal* defense if you *reasonably should know* that the items that you are selling are used to ingest a controlled substance. Based on this notice letter, you are now on formal notice and have actual knowledge that the glass pipes and any other items listed in Health and Safety Code section 11014.5 you are selling at this establishment constitute illegal drug paraphernalia.

November 15, 2007

As such, you as the business owner and your employees are subject to immediate arrest and prosecution for any further sales or display for sale of these items that violate California Health and Safety Code section 11364.7. Each violation of this section is punishable as a misdemeanor which carries a maximum penalty of one year in jail and/or \$1,000 fine or both. Each sale or display for sale of narcotic paraphernalia from your establishment is punishable as a separate offense.

Please be aware that both property owners and business owners who engage in this illegal activity or who aid and abet this activity by allowing it to continue may be held criminally and/or civilly liable. In addition to criminal liability under Health and Safety Code section 11364.7, property owners and business owners are civilly liable for engaging in unlawful business practices under Business and Professions Code section 17200, et seq. Among other things, each violation of this section subjects you to a court-ordered injunction and civil penalties of up to \$2,500.

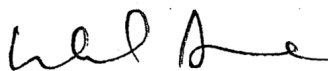
Please entirely remove all items of narcotic paraphernalia from your establishment no later than November 30, 2007.

If you have any further questions or concerns, please feel free to call my DART Unit prosecutors at (619) 533-5675. In particular, if you have any questions as to what items constitute narcotic paraphernalia, we have enclosed photos of a **non-exhaustive** list of items which are considered drug paraphernalia. Although we cannot give you legal advice, should you have any questions about what items are drug paraphernalia after reviewing the enclosed Health and Safety sections and the photographs, please contact DART Detective Catherine Millett at (619) 531-2726.

We look forward to your anticipated cooperation to bring your establishment in full compliance with the law.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney



By

Michael J. Aguirre
City Attorney

KRS:ls

Enclosures

cc: Catherine Millett, DART Narcotic Detective

California Health and Safety Code § 11014.5 "Drug paraphernalia"

(a) "Drug paraphernalia" means all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this division. It includes, but is not limited to:

- (1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.
- (5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.
- (6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.
- (7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.
- * (8) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (A) Carburetion tubes and devices.
 - (B) Smoking and carburetion masks.
 - (C) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - (D) Miniature cocaine spoons, and cocaine vials.
 - (E) Chamber pipes.
 - (F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

~~(J)~~ Bongs.

(K) Ice pipes or chillers.

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

(3) Descriptive materials accompanying the object which explain or depict its use.

(4) National and local advertising concerning its use.

(5) The manner in which the object is displayed for sale.

(6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(7) Expert testimony concerning its use.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

California Health and Safety Code § 11364.7 "Trafficking in drug paraphernalia"

(a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

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