

HOW TO REMOVE REDLINE LANGUAGE FROM CC&Rs THROUGH AMENDMENT

BACKGROUND:

This document describes how the *San Carlos Neighborhood Association* (SCNA) of Tucson, Arizona, in 2023, amended our subdivision's original *Conditions, Covenants, and Restrictions* (CC&Rs) to remove legally invalid language. Amendment of our CC&Rs was necessary because the neighborhood was established in 1946, during a period in US history when legal restrictions established "redlines" to prevent specific racial or ethnic groups from owning property in certain areas. Many subdivisions established before passage of the 1964 Civil Rights Act and 1968 Fair Housing Act have CC&Rs with such language, as ours did.

In 2013, to correct this problem, the then-residents of San Carlos Place amended the CC&Rs by filing results from a petition of all owners called a "Sense of San Carlos" that adamantly and overwhelmingly rejected the invalid language. However, while that amendment attached the petition results to the CC&Rs, the actual CC&Rs remained unchanged. As a result, new residents received CC&Rs with the legally invalid language and too easily inferred current residents still shared those attitudes.

Our 2023 amendment has corrected the entire problem once and for all while retaining the "Sense of San Carlos" petition results.

PREMISES OF THIS PROCESS:

1. The 1964 Civil Rights Act and 1968 Fair Housing Act, as well as subsequent Arizona State laws, rendered "Redline" language invalid and, thus, to have no legal force nor effect.
2. CC&Rs with redline language must also have a clause that (a) allows removal any condition, restriction, covenant, or reservation found to have invalid language and (b) allows all remaining CC&Rs to remain legally unimpaired and in full force and effect.
3. Amending CC&Rs by redacting legally invalid language and making no other change has no legal effect because all legally valid language is retained and only legally invalid language is removed, as allowed by the CC&Rs.
4. Any Neighborhood Association chartered to, among other reasons, protect the integrity of their neighborhood's CC&Rs has the authority to amend those CC&Rs.
5. Amendment of CC&Rs through an action that has no legal effect is ministerial and within the authority of the Neighborhood Association officers.

CONTACT:

This document was developed by the *San Carlos Neighborhood Association* (SCNA), Tucson, Arizona, based on the San Carlos Addition subdivision 1946 CC&Rs and 1992 SCNA By-Laws. Revision may occur when needed. For additional information, please contact the following:

Dr. Peter B. Williams, PhD
Chair, San Carlos Neighborhood Association
PBWILLIAMS.SCNA@GMAIL.COM

PROCESS:

1. Notify all neighborhood residents:

- a. Raise this issue for discussion during a neighborhood association meeting.
- b. Document the discussion in the Minutes of that meeting.
- c. Distribute those Minutes to the neighborhood association membership.
- d. Invite further discussion of any questions or concerns.
- e. Document the invitation and any subsequent discussion.
- f. Have the neighborhood association's elected leaders vote to proceed.
- g. Document that vote in the Minutes and send those to the membership.

2. Modify CC&Rs:

- a. Obtain an electronic copy of the current official CC&Rs in PDF format.
- b. Locate any redline language to be removed.
- c. Locate language that allows any element found to be invalid to be declared null and void (severed) without impairing the remainder of the CC&Rs.
- d. Using a PDF editing program, "redact" all redline language, usually at least one full paragraph, thereby severing it from the remaining CC&Rs.
- e. Save the redacted file as a PDF under a new name (Example: "oldname_severed_date")

3. Write a cover-letter:

- a. Your cover letter will need to be signed by the person authorized to file an amendment, such as the Neighborhood Association Board Chair or President.
- b. It is an official, legal document, so make it look professional.
- c. State the action taken (amendment of CC&Rs to remove invalid language).
- d. State the authority to take the action (see step 2.c)
- e. State that the remainder of the CC&Rs are unimpaired and in full force.
- f. State that any copy of the CC&Rs showing the invalid language was null and void.

4. Get your cover letter notarized:

- a. VIP: the remaining CC&Rs do not need re-notarization because they remain in full force.
- b. Find a notary and explain what you are doing, recognizing that this is rare and may take time for the notary to understand.
- c. Swear to the truthfulness and correctness of your cover letter.
- d. Sign your letter when directed by the notary.

5. File your amended CC&Rs with your cover letter

- a. Prepare a basic cover page for your filing that has the name of your amendment, the original Recorder's page of your CC&Rs, and the neighborhood location (i.e., Section, Township, and Range). This information is found through the Pima County Recorder's Office website.
- b. Go to Pima County Recorder's Office with the following:
 - i. Your cover letter,
 - ii. A hardcopy of your redacted CC&Rs,
 - iii. Your prepared cover page.
- c. Have the Recorder's Office record your amended CC&Rs.
- d. Pay the filing fee.

Example of Redacted CC&Rs

DECLARATION OF ESTABLISHMENT OF
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That C. M. Nielsen, hereinafter called the Owner, is the owner in fee simple of that certain tract of land known and referred to as San Carlos Addition, Pima County, Arizona, as shown on the map or plat thereof recorded in Book 7 of Maps and Plats at page 75 in the Pima County Recorder's office, and

That the Owner does hereby establish a general plan for the improvement, development, ownership, use and sale of said property, and each and every part thereof, and does hereby establish the manner, conditions and covenants upon and subject to which said property, and each and every block and lot shown on said map above referred to, shall be used, owned, sold and conveyed, and

That the Owner does declare that henceforth said property shall be used, owned, sold and conveyed subject to the restrictions, conditions and covenants herein set forth, which shall bind the present Owner, his heirs, administrators, executors and assigns, and the successors in interest of said blocks and lots, all of which shall constitute a servitude in favor of each and every block and lot in said property.

The restrictions, conditions, covenants and reservations which apply to said San Carlos Addition are as follows:

1. Said property and the whole thereof shall be used for private residential purposes only.
2. No business of any nature shall be conducted on any part of said property, and no building or structure intended for or adapted to business purposes. No bill boards or advertising signs of any character shall be erected, placed, permitted or maintained on said property, or any part thereof, other than reasonable signs relative to the sale or rent of said property, or portions thereof.
3. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of said property; and no oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances shall be produced or extracted therefrom; and no wells shall be bored or dug for water, except by the Owner, or by a company or person authorized to supply water for all residences in said subdivision.
4. No residence placed or erected on said property shall be occupied in any manner while in the course of construction, or at any time prior to its being fully completed as herein required. No garage, guest house or other out-building erected on said property shall be used for any purpose except in connection with the residence already constructed thereon, and shall never be used as a temporary or permanent residence. Any such garage, guest house or other out-building shall be constructed of material and of such a design as to be in keeping architecturally with the main residence on said property. No trailers, tents, shacks or tin buildings of any kind shall ever be placed, erected or maintained upon any part of said property.
5. No cattle, sheep, hogs, horses, rabbits, poultry or other livestock shall be kept or maintained upon said property or any part thereof. This paragraph shall not be construed, however, as prohibiting or in any manner interfering with the keeping of ordinary domestic pet animals upon said property.



7. No structure whatever other than one first class, one story, private, one-family residence with the customary out-buildings, shall be erected, placed, or maintained on any lot in said property, provided, however, that Lots 1, 3, 10 and 12 in Block 1, Lots 1 and 3 in Block 2, Lots 1, 5 and 8 in Block 3, Lots 1, 6, 7 and 12 in Block 4 and Lots 1, 11 and 14 in Block 5, may, at the option of the owner or owners thereof, be re-subdivided into two lots only, and the resubdivisions shall be considered as lots for the purpose of this paragraph. An ownership or single holding comprising all of one lot and parts of one or more lots adjacent thereto, shall, for the purposes of this paragraph, be deemed as constituting a single lot.

Adjacent text rendered moot and inapplicable by two federal laws--the 1964 Civil Rights Act (78 Stat. 241) and the 1968 Fair Housing Act (82 Stat. 73)--as well as by the 2013 "Sense of San Carlos" passed by San Carlos Neighborhood Association residents.

8. Sewage disposal on said Addition shall be by septic tank systems only, which shall not be located closer than thirty feet to any lot line, a "lot" for this purpose being defined as in paragraph "7" above, nor closer than 75 feet to the South property line of said Addition.
9. No building shall be located on any inside lot as defined in "7" above nearer than thirty feet to the front lot line, nor nearer than six feet to any side lot line, except that building on side lots facing Goyette Avenue may be not less than twenty-five feet from the front lot line. No building shall be located on any corner lot as defined in "7" above nearer than thirty feet to the front line of said corner lot, nor nearer than thirty feet to the side line of said corner lot, except that building on corner lots on Goyette Avenue may be not less than twenty-five feet from the front lot line and not less than twenty-five feet from the side line.
10. An easement is reserved, as indicated on the recorded map and plat of said subdivision, over many of the lots in said subdivision for erection and maintenance of water, gas, electric, sewer, telephone and other public utility lines. The Owner, his heirs, executors, administrators or assigns shall be entitled to enter upon said premises at any time in connection with the furtherance of any such use.
11. All provisions herein shall be binding on all lots and parcels of real estate and the owners thereof, regardless of the source of title of such owners, and any breach thereof, if continued for a period of thirty days from and after the date that the Owner or other property owner in said Addition shall have notified in writing the owner or lessee in possession of the lot upon which said breach has been committed to refrain from a continuance of such action and to correct such breach, and a failure to do so shall warrant the Owner, or other lot owner in said Addition to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief, and if such relief is granted the Court may in its discretion award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorney's fees.
12. Any breach of any of the conditions, restrictions, covenants or reservations, herein contained shall not defeat or render invalid the lien of any mortgage, contract or deed of trust made in good faith for value as to any lot or lots in said Addition, but the provisions, conditions, restrictions and covenants shall be binding upon and effective against such mortgagee or other person whose title thereto or the title of whose grantor thereto is or was acquired by foreclosure, judicial sale, termination of contract, trustee's sale or otherwise.
13. In the event that any one or more of the conditions, restrictions, covenants and reservations herein contained shall be declared to be null and void, the remainder thereof shall be unimpaired and in full force and effect.
14. These restrictions, conditions, covenants and reservations shall run with the land and continue and remain in full force and effect at all times and against all persons for twenty-five years from the date hereof, at which time they shall be automatically extended for a period of ten years, and thereafter in successive ten year periods, unless on or before the end of one of such extension periods the owner or owners of a majority of the lots in said Addition shall by written instrument duly recorded declare a termination of the same.
15. No residence, exclusive of its garage and other auxiliary building shall be erected on any lot, unless it shall cost to erect, and when erected to be fairly worth, at least the following sums of money, and the main structure (exclusive of open porches and garages) shall contain not less than the following ground areas, to-wit:

	AREA	AMOUNT
Lots 1,5,6,7,8,9,10,11, 12, in Block 1	1500 Sq. Ft.	\$7,500.00
Lots 1 and 12 in Block 4	"	"
Lots 1,2,3,4,5,6 in Block 5	"	"
Lots 2,3,4, in Block 1	1200 sq. ft.	\$5,000.00
Lots 1,2,3,4,5,6,7,8 in Block 3	"	"
Lots 2 through 11 in Block 4	"	"
Lots 7 through 14 in Block 5	"	"

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	AREA	AMOUNT
All of Block 2	1200 sq. ft.	\$5,000.00
Lots 9 through 16 in Block 3	1,000 sq. ft.	\$4,000.00
Lots 15 through 22 in Block 5	" "	" "

IN WITNESS WHEREOF the Owner has hereunto set his hand at Tucson, Arizona, this 30th day of August, 1946.

El Paso, Texas
STATE OF TEXAS
COUNTY OF EL PASO

C. M. Nielsen

This instrument was acknowledged before me this 30th day of August, 1946 by C. M. Nielsen.

Amelia Vela
Notary Public in and for
El Paso County, Texas

(NOTARY SEAL)
My commission expires:
June 1, 1947

Filed and recorded at request of Tucson Title Insurance Co. October 11 at 2:05 PM 1946

Anna Sullinger, County Recorder
by: /Josephine Benton, Deputy

#27652

Example of Cover Letter

SAN CARLOS PLACE
NEIGHBORHOOD ASSOCIATION
—SINCE 1948—



62/15/27

BOARD

PETER WILLIAMS
CHAIR

CLAIRE SCHEUREN
VICE CHAIR

MARY THILTGES
SECRETARY

JEREMY FRUMKIN
TREASURER

TIM LUSK
MEMBER

CAROLYN ELDRIDGE
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MICHAEL WILEY
MEMBER

JOYCEEN BOYLE
MEMBER

July 11, 2023

To Whom It May Concern:

As of today, the *San Carlos Neighborhood Association* has filed a revised version of the 1946 Conditions and Restrictions, also known as *Conditions, Covenants, and Restrictions* (CC&Rs) of San Carlos Addition, a neighborhood in the City of Tucson, County of Pima, and State of Arizona. This revision, through redaction, formally severs paragraph #6 of the previous version. No other change occurs.

Revision of our CC&Rs is necessary because the text of the severed paragraph was rendered invalid by two federal laws—the 1964 Civil Rights Act (78 Stat. 241) and the 1968 Fair Housing Act (82 Stat. 73)—as well as by the 2013 "Sense of San Carlos" passed overwhelmingly by all then-residents of San Carlos. In 2013, the latter was filed with the Pima County Recorder's Office as an attachment to the CC&Rs and remains part of the records.

Accordingly, since at least 1964, paragraph #6 has been null and void, thus severable from our CC&Rs. The action we have taken formalizes that severability by, one, redacting the referenced paragraph to revise our CC&Rs and, two, filing those CC&Rs with the Pima County Recorder's Office as the official version.

Authority for this action is found in paragraph 13 of the same CC&Rs:

In the event that any one or more of the conditions, restrictions, covenants and reservations herein contained shall be declared to be null and void, the remainder thereof shall be unimpaired and in full force and effect.

Consistent with that paragraph, the remaining CC&Rs are unimpaired and in full force and effect.

As of this date, only the revised CC&Rs with paragraph #6 severed and redacted have any force and effect. All copies of San Carlos CC&Rs containing the text of paragraph #6 unredacted, and, thus, not formally severed, are null and void.

Respectfully,

Dr. Peter B. Williams, PhD, Chair
San Carlos Neighborhood Association
pbwilliams.scna@gmail.com

State of Arizona County of Pima
Subscribed and sworn before me on 7/11/23
(Date)

(Notary Signature)

TUCSON AZ, 85712

Example of Cover Page for Recorder's Office

When recorded, mail to:

Peter B. Williams, Chair
San Carlos Neighborhood Association
4435 E. San Carlos Pl. N.
Tucson, AZ 85712

DOCUMENT TITLE: *Amended Conditions, Covenants, and Restrictions (CC&Rs) for San Carlos Addition* and cover letter explaining the need for revision, authority to make it, and effect of it.

Originally recorded by Pima Registrar in Book 7, page 75.

San Carlos Addition is in Section 34, Township 13 S., and Range 14 E.

Date: July 11, 2023