

MARKUP #1 ->

ARTICLE FIVE

SAN DIEGO CITY ORDINANCES AND MUNICIPAL CODES

Several San Diego City Ordinances have been issued which are designed to improve and preserve the appearance of San Diego as a place to live and work. A copy of the San Diego City Municipal Code is available for reference in the Rancho Bernardo branch of the public library or online at <https://www.sandiego.gov>

If there is a City Ordinance or Municipal Code violation, the homeowner should call the appropriate City Department. Violations or compliance issues related to a City Ordinance or Municipal Code violation are not the responsibility of the Architectural Committee.

Copies of City Ordinances may be obtained from the City Clerk’s office.

ARTICLE SIX
USE PROVISIONS

SECTION I - AIR CONDITIONERS

1. Air conditioning units extending from windows are not permissible.
2. Compressors and equipment are to be screened from view by fencing or landscaping.
3. If air conditioning was offered as an option and was not installed by builder at time of purchase, equipment installed later must be in the same area as the optional unit would have been installed.

ISSUE #1

SECTION II - ANTENNAE, SATELLITE DISHES, AND OTHER RECEPTION DEVICES

No radio antennas or any other reception devices other than satellite dishes used to receive Direct Broadcast Satellite (DBS) services, including direct-to-home satellite services, or to receive or transmit “fixed wireless signals” via satellite, shall be constructed, installed or maintained in or on any Lot. “Fixed wireless signals” means any commercial non-broadcast communications signal transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM Radio, FM Radio, amateur (“HAM”) radio, Citizen’s Band (CB) radio, and Digital Audio Radio Services (DARS) signals. Direct Broadcast Satellite (DBS) Dishes measuring one meter or less in diameter or diagonally (hereinafter referred to as a "device") shall be permitted only as follows:

1. No device shall be constructed, installed, or maintained in or on any Lot prior to a “Notification of Intent to Install Direct Broadcast Satellite Dish” form being submitted and signed off by the Architectural Committee.
 - 2.1 The application will be processed by the Architectural Committee in the same manner as an application for approval of any exterior architectural improvement to the property.
 - 2.2 The issuance of a decision on the application by the Architectural Committee shall not be willfully delayed.
2. The “Notification of Intent to Install Direct Broadcast Satellite Dish” form includes a field for a description of installation. The description should include the proposed location and method of construction and/or installation along with any structural or design alterations which are necessary to accommodate the device.
3. A description of the installation should be made available by the Service Provider or their Authorized Representative upon request at time of purchase. The Authorized Representative should be made aware of the regulations outlined in these guidelines (see points a through g below).
4. If the proposed installation deviates for any reason, the owner and a member of the Architectural Committee must establish a mutually convenient time to meet to discuss the installation plan/methods. Installation regulations include, but are not limited to:
 - 4.1 The device shall be located toward the rear sidewall/roof portion of the residence or rear yard, or yard area, within the lot. Ideally, the device should not be visible from any public street or any part of the Common Area unless acceptable signal quality is unavailable.
 - 4.2 If a signal cannot be received from the back of the building the device may be installed on the side of the chimney in a location that is least visible to neighbors (both vertically and which side of the chimney-wise).
 - 4.3 If acceptable signal quality still cannot be obtained, the device may be installed toward the front

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. II (p. 10): FCC OTARD Satellite Dish / Antenna Preemption Defect: Clause imposes a blanket ban, prior-approval delay, or sub-1-meter size cap on residential reception antennas/satellite dishes preempted by 47 C.F.R. § 1.4000.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: Under the FCC Over-the-Air Reception Devices (OTARD) Rule, 47 C.F.R. § 1.4000, promulgated under § 207 of the Telecommunications Act of 1996, any covenant or rule that prohibits, requires prior architectural approval before installation, or restricts satellite dishes/antennas measuring one meter (39.37 inches) or less in diameter on property within the owner's exclusive use or control is federally preempted and void.

CURRENT WORDING IN DOCUMENT:

ANTENNAE, SATELLITE DISHES, AND OTHER RECEPTION DEVICES No radio antennas or any other reception devices other than satellite dishes used to receive Direct Broadcast Satellite (DBS) services, including direct-to-home satellite services, or to receive or transmit “fixed wireless signals” via satellite, shall be constructed, installed or maintained in or on any Lot.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section II to incorporate the mandatory statutory safe harbors of 47 C.F.R. § 1.4000 (FCC OTARD Rule); Cal. Civ. Code §§ 4000 - 6150 (Davis-Stirling Common Interest Development Act), permitting OTARD reception antennas (up to 1 meter in diameter without prior approval) and solar/EV/water-wise installations within statutory parameters.