

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

**Sec. 30 (p. 40): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.**

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

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

**CURRENT WORDING IN DOCUMENT:**

Antenna, External Fixtures, Etc. No television or radio poles, antenna, television satellite reception dishes, flag poles, clothesline, or other external fixtures except those approved by the Environmental Control Committee, shall be constructed, erected or maintained on any Lot.

**SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):**

**Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).**

(ii) A side yard set back area, the minimum width of which shall be ten feet along any single inner side lot line of such Lot. The ten foot side yard set back is required in order to avoid snow shedding from the Residence onto the adjacent Lot and to prevent a row house appearance of adjoining Residences. The Committee shall be entitled to permit exceptions to this side yard set back requirement to a minimum of five feet, without compliance with the variance procedures specified in Article V, section 8, when such is deemed necessary to accommodate special circumstances which would otherwise lead to burdensome costs to the Owner. Side yard set backs shall be measured from the eave of the Residence's roof, rather than from the foundation.

(iii) A rear yard, the minimum depth of which, having an area equal to at least 20 percent of the gross area of such Lot. The resulting depth shall not in any case be less than 25 feet.

(d) Parking. Each Residence Lot which is improved after the effective date of this Declaration shall have paved off-the-road parking facilities for at least two automobiles.

(e) Exterior Lighting. There shall be no exterior lighting of any sort either installed or maintained on any Lot, the light source of which is visible from neighboring property or streets, except as permitted by the Environmental Control Committee Rules. In no event shall fluorescent, mercury vapor, sodium, amber vapor or similar outdoor security lights be permitted. The Committee shall establish rules, as necessary or appropriate, to assure the serene, peaceful and rural nature of the Tahoe Donner common interest development.

(f) Roofing Materials. Natural wood or shingle roofing materials or composition roofing materials shall not be permitted on any Residence within the Properties unless they are treated with fire retardant materials. The use of other roofing materials, such as metal, tile, gravel or artificial shingles or shakes that have the appearance of natural wood shingles shall be permitted, subject to prior Environmental Control Committee approval of the appearance and quality of the material.

(g) Siding Materials. The exterior walls of any Residence, garage or other structure shall be finished with natural wood. Rock or stucco may be used in combination with wood. Metal, Masonite or other manufactured siding shall not be permitted. No siding composed in whole or part of artificial or "fake" stones, stucco stones or manufactured used brick shall be permitted unless an exception is granted by the Environmental Control Committee.

(h) Antenna, External Fixtures, Etc. No television or radio poles, antenna, television satellite reception dishes, flag poles, clothesline, or other external fixtures except those approved by the Environmental Control Committee, shall be constructed, erected or maintained on any Lot. No wiring, insulation, air-conditioning or other machinery or equipment, other than those approved by the Committee, and their duplicate replacements shall be constructed, erected or maintained on or within the exterior of any structure within the Properties

Section 3. Minimum Construction Standards — Multiple Family Residential Lots. Those Multiple Family Residential Lots within Tahoe Donner Unit Nos.2, 3 and 6 which are subject to this Declaration, as set forth in Exhibit "B" attached

ISSUE #1