ISSUE #1

Section 10. - Sample Provision Excerpt (Public Preview)

Garbage can storage will be in a garage or behind a fence. No structure, tower or antenna shall be erected, altered, placed or permitted on the site which exceeds the height of the peak of the roof of the residence constructed on the Lot. No more than one (1) satellite dish per residence. Placement to be determined by homeowner and satellite company.

MARKUP #1 ->

MARKUP #1 · POTENTIAL FED LAW CONFLICT

BOARD & COUNSEL REVIEW

Sec. 10. (p. 1): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas on exclusive-use property 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 (39.37 inches) 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. Under 47 C.F.R. § 1.4000(a)-(b), associations may only restrict installations on shared/general common elements, dishes exceeding 1 meter in diameter, or where necessary for a specific documented safety objective (§ 1.4000(b)(1)) or a National Register of Historic Places site (§ 1.4000(b)(2)).

CURRENT WORDING IN DOCUMENT:

Garbage can storage will be in a garage or behind a fence. No structure, tower or antenna shall be erected, altered, placed or permitted on the site which exceeds the height of the peak of the roof of the residence constructed on the Lot. No more than one (1) satellite dish per residence. Placement to be determined by homeowner and satellite company.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000), subject only to restrictions on shared common elements, dishes exceeding one meter in diameter, documented safety objectives (§ 1.4000(b)(1)), or historic preservation requirements (§ 1.4000(b)(2)).