MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 10 (p. 19): 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:
Antennas, Discs and Flagpoles. No outside antennas, discs, acrials. satellite dishes, poles, electronic devices, or llagpoles shall be permitted on any portion of the Property excepi as may be approved by the ARC.

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).

MARKUP #1 ->

ARTICLE 4
USE RESTRICTIONS

4.1 Restrictions

The Project shall be held, used and enjoyed subject to the following limitations and restrictions; provided, however, (i) none of the restrictions contained in this Article 4 shall apply to Declarant, Affiliates or any property owned by Declarant or Affiliates, and (ii) any of the following restrictions, or any created by Land Use Classifications under Article 3 hereof, may be modified by or added to by specific provisions of any Supplemental Declaration or amendment to this Declaration executed by Declarant:

A. Structures and Other Improvements. No Structures or Improvements of any kind, including, but not limited to, any building, wall, fence, sculpture, sign, mailbox, landscaping, planting, swimming pool, tennis court, basketball structure, outdoor play equipment, screen enclosure, driveway, sidewalk, sewer, drain, water area, or outside lighting, shall be erected, placed, planted, removed or maintained on any portion of the Property without the consent of the Architectural Review Committee pursuant to Article 10 hereof. This restriction shall not apply to ornaments and lights placed at any Dwelling Unit during a time reasonably surrounding a holiday period for the purpose of commemorating the holiday period, as may be determined by the Board in its sole discretion.

B. Antennas, Discs and Flagpoles. No outside antennas, discs, acrials, satellite dishes, poles, electronic devices, or flagpoles shall be permitted on any portion of the Property except as may be approved by the ARC, and further conditioned on compliance with applicable statutes or ordinances and the obtaining of applicable governmental approvals, if any.

C. Temporary Structures. No tents or temporary Structures shall be permitted on any portion of the Property unless their size, appearance and temporary location have first been approved in writing by the ARC, and by the City or its appropriate review committee. Any signs to be used in conjunction with any tent or temporary Structure must (i) be approved by the ARC; and (ii) be in compliance with City ordinances and, if applicable, conditioned on procuring required governmental approvals.

D. Parking. Parking shall be permitted only at such locations specifically designated by Declarant or the Board, or as otherwise permitted in the Rules.

E. Residential Purposes and Occupancy. Dwelling Units shall be used for Residential Purposes only. No trade, business, profession or other type of commercial activity may be conducted in any Dwelling Unit; provided, however, rental of Dwelling Units for residential occupancy shall not be deemed commercial activity. Moreover, this provision shall not prevent an Owner from utilizing a home office, as long as the office is not used for visits by clients or customers and providing that the office does not have an adverse effect upon neighbors or the neighborhood.

ISSUE #1