

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 12. (p. 25): 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:

on any Lot without the prior approval of the ARC. Satellite receiving dishes must be installed in accordance with the rules of the Association and applicable governmental ordinances, and with the approval of the ARC. No such installation shall be allowed within setback or easement areas, or on rooftops. All must be completely screened from any adjacent property and street by fencing and/or landscaping as 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).

ISSUE #1

BOOK PAGE
3610 1316
VOLUSIA CO., FL

Section 9. Dumping Prohibited. No Lot shall be used or maintained for dumping or discharge of rubbish, trash, garbage, or other waste material. All Lots shall be kept free of the accumulation of rubbish, trash, garbage, other solid waste materials, and all unsightly weeds and underbrush. No incinerators or other fixed equipment shall be used for the collection, storage or disposal of solid waste material. All trash, garbage or waste materials shall be kept in sanitary containers either inside the garbage or, when outside, in enclosures adjacent to the Owner's dwelling, suitably screened from view from streets and adjoining Lots. It shall be the responsibility of each owner to remove all debris caused by any and all construction work occurring on such Owner's Lot.

Section 10. Restrictions on Walls, Fences, or Hedges. No wall, fence, or hedge, over six (6) feet in height shall be erected, placed, altered, maintained, or permitted to remain on any Lot unless and until the height, type, and location thereof have been approved by the Architectural Review Committee.

Section 11. Swimming Pools. No above ground pools shall be permitted on any Lot. All swimming pools proposed to be erected, altered or modified on any Lot require the approval of the ARC.

Section 12. Antennas. No external television or radio antennae or other similar devices or structures shall be erected on any Lot without the prior approval of the ARC. Satellite receiving dishes must be installed in accordance with the rules of the Association and applicable governmental ordinances, and with the approval of the ARC. No such installation shall be allowed within setback or easement areas, or on rooftops. All must be completely screened from any adjacent property and street by fencing and/or landscaping as approved by the ARC.

Section 13. ~~At least four (4) trees with a minimum diameter of two (2) inches at four and one-half (4½) feet DBH, or as otherwise required by the tree protection ordinance of the City of Ormond Beach as from the time amended, whichever is more~~