

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. i (p. 5): 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:

h. Operation of drones, model airplanes, unmanned aerial vehicles, or any remotely controlled flying devices from, on, or in the Common Elements is prohibited, except as otherwise first approved in writing by the Board.

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).

- a. No person shall place, store, or maintain on the walkways, grounds, or other Common Elements, any object of any kind or otherwise obstruct transit through any element, or leave any personal belongings on any of the Common Elements. No refuse, garbage, or trash of any kind shall be thrown, placed, or kept on any Common Elements not designed for such purpose.
- b. Units may have one wooden storage box on the entryway. The box should be no larger than 63"L x 30"H x 28"W. (Storage Boxes must be smaller in Buildings A and C, due to space limitations.) Boxes must be well maintained and close completely. There may be no excess clutter in that area, both to enhance appearance and to ensure safe entrance and egress during emergencies. Up to four (4) chairs may be stacked neatly behind the boxes. In those units with generous space on the entryways, non-obstructive items in good condition, such as chairs, tables, benches, and potted plants may be placed in an orderly manner.
- c. Any sports or activities that may cause damage to the Common Elements or create a nuisance are prohibited. Roller skates, skateboards, scooters, and bicycles may not be ridden but may be walked on the Common Element.
- d. No Owner or Occupant shall remove any furniture, furnishings, or equipment from the Common Elements. Any person who willfully or negligently defaces, litters on, damages, or destroys any portion of the Common Elements or any other property or equipment belonging to or under the control of the Association, shall be liable for the full cost to repair, clean, and/or replace such portion, property, or equipment.
- e. Abusive and/or harassing language, obscenity, swearing, abusive drunkenness, threatening behavior, and other behaviors that create an unreasonable disturbance to other Occupants are forbidden.
- f. The planting and care of foliage in the Common Elements are within the sole discretion and responsibility of the Association, as carried out by or on behalf of the Board. Owners, Occupants, and Guests are not permitted to plant or place shrubs, trees, vines, or other types of plants within the Common Elements, nor do any trimming on their own volition. Reasonable portions of herbs may be gathered from the herb gardens.
- g. Common area cooking is permitted only in areas designated by the Board, and such cooking shall be on gas grills provided by the Association. Hibachis, fire pits, and similar open flame devices fueled by wood, charcoal, or similar combustible fuels are prohibited.

ISSUE #1

- h. Operation of drones, model airplanes, unmanned aerial vehicles, or any remotely controlled flying devices from, on, or in the Common Elements is prohibited, except as otherwise first approved in writing by the Board.