ISSUE #1

Section 2 - Sample Provision Excerpt (Public Preview)

After the filing of this Amended and Restated Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, antenna, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed,...

MARKUP #1 ->

MARKUP #1 · POTENTIAL FED LAW CONFLICT

BOARD & COUNSEL REVIEW

Sec. 2 (p. 1): FCC OTARD preemption conflict (47 C.F.R. § 1.4000): Outright antenna/satellite-dish prohibition, sub-1-meter diameter cap, mandatory cable-hookup removal, permit fee, or unqualified front-elevation/street-visibility ban is unenforceable as applied to covered <= 1-meter reception devices on exclusive-use property.

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

Statutory Comparison: Under the FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, including FCC 21-10), preemption applies to covered direct-broadcast satellite (DBS/DSS) dishes one meter (39.37 inches) or less in diameter, television broadcast antennas, and fixed wireless broadband antennas installed within areas under the owner's or occupant's exclusive use or control. Outright bans, sub-1-meter diameter caps, monetary permit fees, mandatory removal upon cable availability, and unqualified front-elevation or street-visibility prohibitions that preclude an acceptable quality signal are preempted unless justified by a documented safety objective (§ 1.4000(b)(1)) or a National Register historic site (§ 1.4000(b)(2)).

CURRENT WORDING IN DOCUMENT:

After the filing of this Amended and Restated Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, antenna, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed,...

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that for covered reception antennas and satellite dishes one meter (39.37 inches) or less in diameter installed within areas under the owner's or occupant's exclusive use or control, this provision shall be administered in accordance with 47 C.F.R. § 1.4000 without outright prohibition, permit fee, or placement/size limits that preclude an acceptable quality signal, while preserving association authority over shared common elements, dishes exceeding one meter, documented safety objectives (§ 1.4000(b)(1)), and historic preservation sites (§ 1.4000(b)(2)).