### Section 10.05. - Sample Provision Excerpt (Public Preview)

No Above Surface Utilities Withour Approval. No facilities, including without limitation poles, antennas, dishes or wires transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shali be placed or maintained above the surface of the ground on any portion of

ISSUE #1

MARKUP #1 ->



MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

**Sec. 10.05. (p. 23): 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:

No Above Surface Utilities Withour Approval. No facilities, including without limitation poles, antennas, dishes or wires for the transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shali be placed or maintained above the surface of the ground on any portion of

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

**No Above Surface Utilities Withour Approval. No facilities, including without limitation poles, antennas, dishes or wires for the transmission of electricity, electronic or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shali be placed or maintained above the surface of the ground on any portion of [FEDERAL OTARD CARVEOUT]: 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...**