

ISSUE #1

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 11. (p. 6): 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:

All antennas are prohibited outside any building without permission from the Architectural Committee.

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).

complying with said notice, then the Club shall have the right to perform said work specified in the Committee's notice to the owner and the cost of same shall be payable by the owner.

Section 3. ARCHITECTURAL COMMITTEE. The Architectural Committee referred to herein shall be composed of three members appointed by the Board of Directors of the Club. The decision of any two members of the Architectural Committee shall be final and binding; however, applications may be resubmitted. Upon failure of the Committee or its designated representative to approve or disapprove any application for a period of thirty (30) days after it has been submitted in writing to the Chairman of the Committee or his designated representative, said application will be deemed to have been approved. Members shall be elected for a term of three (3) years by the majority vote of the Board of Directors of the Club. If any member of the Committee is unable or unwilling to act, the remaining members shall elect a successor to serve out the unexpired term.

Section 4. NO COMPENSATION. No member of the Architectural Committee, however created or constituted, shall receive any compensation from the Club or make any charge for his services

Section 5. CONSTRUCTION BY DECLARANT. This article shall not govern the original construction upon portions of said property owned by the Declarant or its successors or assigns. However, Declarant shall approve in writing all plans for original construction prior to the commencement of such construction.

Article IX. Exterior Maintenance

Each owner, and/or homeowner association shall be responsible for maintaining and keeping in good order and repair the exterior of all residence locations.

If an owner and/or the homeowner association fails to maintain and keep in good order and repair the exterior of any such residence location, the Club, after reasonable notice, may do so and file a lien for such expense pursuant to Article VI, Section 8.

Article X. Use Restrictions

The following restrictions shall be applicable to the real property described on Exhibit "A" and shall be for the benefit of and limitations upon all present and future owners and authorized users thereof of said property or of any interest therein.

Section 1. Unless written approval is first obtained from the Architectural Committee, no sign of any kind shall be displayed to the public view on any residence location except one professional sign of not more than five (5) square feet advertising the residence for sale or rent, or signs used by the developer to advertise the residence location or residence during the construction and sales period.

Section 2. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said property, except dogs, cats or other tame, domestic household pets, provided such household pets are not kept, bred or maintained for any commercial purpose. The number of pets kept at each residence may be limited and the control thereof shall be by rules prescribed by the Directors.

Section 3. No part of said property shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. All incinerators or other equipment for the storage of or disposal of such material shall be kept in a clean and sanitary condition.

Section 4. No noxious or offensive condition or anything which may be or become an annoyance or nuisance to the neighborhood shall be permitted.

Section 5. No trailer, camper-truck, tent, garage, barn, shack or other out-building shall be at any time used as a residence temporarily or permanently on any part of said property.

Section 6. Parking of boats, trailers, motorcycles, trucks, truck-campers and like equipment shall not be allowed on any part of said property nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, and no portion of same may project beyond the enclosed area except under such circumstances, if any, as may be prescribed by written permit approved by the Architectural Committee. All other parking of equipment shall be prohibited except in such areas, fully screened from public view, as may be approved in writing by the Architectural Committee.

If any of the provisions of this Section are violated, the Board of Directors of the Club may employ a tow truck to remove the vehicle after prior written notice to the owner and the owner of the vehicle shall be responsible for any charges arising therefrom.