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MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. VIII (p. 20): 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:

antennae, satellite dishes or other electronic signal receivers. During the Development Period, Declarant shall provide television cable hook-up capability for each Dwelling Unit. No external antennae, satellite dishes or other electronic signal

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).

- p. Perform any act or create, allow or suffer any condition on an Owner's Lot that would increase the rate of insurance or cause a cancellation of insurance required to be maintained by the Association.

ISSUE #1

Install or place on any part of a Lot or any improvement thereon any external antennae, satellite dishes or other electronic signal receivers. During the Development Period, Declarant shall provide television cable hook-up capability for each Dwelling Unit. No external antennae, satellite dishes or other electronic signal receivers shall be permitted on a Lot or any improvement thereon for any purpose without prior written authorization by the Committee; provided, however, the Committee shall allow exterior antennae, satellite dishes or other electronic signal receivers if they are unobtrusive and would not detract from the appearance, character, safety or value of the Lot, surrounding Lots or Common Area.

- r. No clothesline, clothes rack, or other apparatus on which clothes, rugs or similar items are exposed for the purpose of drying or airing shall be located on any Lot except in an area adequately concealed from view of other Owner and the public.
- s. Lease, rent or otherwise permit the Owner's Lot to be used for anything other than a residence; lease less than the entire Lot; lease any part of a Lot for less than 60 days; lease a Lot without obtaining the written acknowledgment from the lessee that the lessee's rights under the lease are subject to the Governing Instruments and that a breach of the Governing Instruments is a breach of the lease (but a failure to obtain such acknowledgment shall not alter the fact that the lease and the lessee's rights are subject to the terms, covenants, conditions and provisions of this Declaration and the Governing Instruments); fail to enforce breaches of the lease or of the Governing Instruments applicable to the lessee. In no event may a Lot be used as a hotel, motel, boarding house or the like.

7.3 Construction or Alteration. No building, storage shed, fence, wall, obstruction, deck, awning, sidewalk entrance, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon the Development, nor shall any alteration or improvement of any kind be made thereto unless the same conforms to the ordinances and building codes of the City of Eugene at the time the work commences, all necessary permits have been received by or on behalf of the Owner, there is no interference with the drainage system (including, but not limited to, the original surface flow, Lot area drains, underground piping, and the roof gutter system and downspouts which are directly connected to the Development's storm drainage system) and the Association's access to any component of the drainage system, and it does not result in the construction of the any structure above the height of the Party Fences. Any contemplated construction or alteration which fails to comply with the restrictions set forth in this Section 7.3 shall require the prior written approval of the Architecture Control Committee, a the failure to do so shall make any Owner subject to disciplinary actions pursuant to the provisions contained in the Governing Instruments. In the event the Board finds that an Owner has violated this Section 7.3, it may order any construction or alteration to be removed, and if the Owner fails to do so, the Board may perform the work and specially assess the Owner for the costs therefor pursuant to Section 8.4. Further, notwithstanding anything to the contrary stated in this Declaration, if work performed by the Association to the Perimeter Wall, Party Fence, or on any Lot pursuant to this Declaration requires the removal of any structure or improvement installed by an Owner, the Owner shall immediately remove it at Owner's sole expense.

7.4 Modification of Landscaping on a Lot. No modification of the landscaping originally installed by Declarant on those areas in Lots required to be maintained by the Association