

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 4.4 (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) Large television or radio antennas, large satellite dishes are prohibited in the Development. Small satellite dishes are permissible if not visible from the street. Under special circumstances, the Architectural Committee can approve, in writing, a specific location for a small satellite dish according to the following restrictions: a.

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).

ISSUE #1

(11)

herefrom are the entrance signs provided for in Paragraph 4.4.

Large television or radio antennas, large satellite dishes are prohibited in the Development. Small satellite dishes are permissible if not visible from the street. Under special circumstances, the Architectural Committee can approve, in writing, a specific location for a small satellite dish according to the following restrictions:

- a. ~~Small dish mounted on the side of house to access~~ satellite must be located on the back 1/3 of house. None allowed on front porch and none to extend above roofline to present noticeable silhouette.
- b. Small dish mounted on metal post of like color next to house must also be located along the back 1/3 of house or to the rear of the house, as close to the house as possible, be less than 6 ft. high, and should be concealed as much and attractively as possible from the street by shrubbery of sufficient size to hide. (Amended by vote of members present at annual meeting on May 13, 2004.)

- (i) All residences and accessory buildings must be completed within one (1) year from the date of commencement of construction, unless completion is impossible or will cause excessive hardship on the owner, due to fire, severe material shortages, unanticipated strikes, or the like. Accessory buildings may not be constructed prior to the main improvement.
- (j) Above ground swimming pools are prohibited in the Development with the exception of the temporary pool type used by small children or for a special occasion. Temporary pool type refers to an inflatable pool or one that will be set up and taken down within a few days. Such temporary pools should be located behind the residence with minimum visibility from the street, and must be stored during non-pool use months.
- (k) Solar panels are not permitted on the front of any home in the neighborhood. They may be permitted on the back of a home if placed in a way not visible from the street and receive advance approval from the Architectural Committee. Solar panels may be permitted on one or more