

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 17 (p. 81): 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:

Antenna. No microwave dishes, radio, citizen band or otherwise, or television axial wires or antennas (collectively, "antenna") shall be maintained on any portion of any Lot, or in the Common Area, except direct broadcast satellite (DBS) antennae no more than 18" in diameter, multichannel multipoint distribution system (MMES) antennae no more than 18" in diameter, or television broadcast antennae, all of which Owner shall screen from view as much as possible without impairing the installation, maintenance or use.

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).

- a) 100% brick and or stone, or stucco coverage where structurally possible (exclusive of openings, insets, protrusions or areas under covered porches) is required on the front elevation; and
- b) The rear elevation of residences on all Perimeter Lots along FM 428 road shall be 100% brick and or stone, or stucco coverage where structurally possible (exclusive of openings, insets or protrusions); and
- c) The rear and/or side elevation of residences on any corner Lot or adjacent to streets, parks, playgrounds, or open space where the rear yard or side elevation is visible to public view shall be 100% brick and or stone, or stucco coverage, where structurally possible (exclusive of openings, insets or protrusions).

12. Garages. Each Residence shall have a garage capable of housing at least two (2) vehicles. No garage or accessory improvements shall exceed in height the Residence to which it is appurtenant. Garage doors shall be closed at all times except to allow the entry and exit of vehicles and persons and except when the garage is being cleaned or items are being stored in the garage. No carport is permitted on any Lot. All garages shall correspond in style, architecture, and exterior building materials with the Residence to which it is appurtenant.

13. Recreational Improvements. All children's play equipment, including, but not limited to, sand boxes and wading pools shall be kept in good repair and shall not be placed so as to be visible from a public right-of-way.

14. Storage of Building Materials. Subsequent to the initial construction of the Residence on the Lot, no building materials of any kind may be stored on any Lot for longer than one (1) week prior to the commencement of work for which the materials were purchased unless they are stored in an enclosed building or located such that they cannot be viewed from any other Lot.

15. Construction Clean-up. From time to time during construction as required to maintain a neat and orderly appearance, and upon completion of construction, the Owner of the Lot will be responsible for the removal of any trash or debris that may have been thrown, placed, or discarded on any part of the Lot or on any other Lot if the trash or debris originated at the Owner's Lot.

16. Lighting. In general, exterior lighting used in connection with the occupancy of a Residence shall be kept to the minimum required for safety and security. Landscape lighting is allowed. All exterior lights must have a bonnet or shield preventing the light from traveling in an upward direction and limiting its vertical travel. No mercury vapor or neon lights shall be used to illuminate the outside areas of a Lot. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to other Owners or Lots as determined by the ACC (or Board).

17. Antenna. No microwave dishes, radio, citizen band or otherwise, or television axial wires or antennas (collectively, "antenna") shall be maintained on any portion of any Lot, or in the Common Area, except direct broadcast satellite (DBS) antennae no more than 18" in diameter, multichannel multipoint distribution system (MMES) antennae no more than 18" in diameter, or television broadcast antennae, all of which Owner shall screen from view as much as possible without impairing the installation, maintenance or use. All matters set forth in this provision require the express approval, in advance, of the ACC, which shall be exercised in conformity with the rules of the Federal Communications Commission.

Except as expressly provided herein, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC.

ISSUE #1