

Section 2.13 - Sample Provision Excerpt (Public Preview)

property; or (2) within a ground utility easement or encroaching into an aerial easement; or (3) beyond the side or rear set back line (for example, on a lot with a 10-foot side set back line, a flagpole may not be installed closer than 10 feet from the side property line); or (4) beyond half

ISSUE #1



MARKUP #1 ->



MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 2.13 (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:

property; or (2) within a ground utility easement or encroaching into an aerial easement; or (3) beyond the side or rear set back line (for example, on a lot with a 10-foot side set back line, a flagpole may not be installed closer than 10 feet from the side property line); or (4) beyond half

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

property; or (2) within a ground utility easement or encroaching into an aerial easement; or (3) beyond the side or rear set back line (for example, on a lot with a 10-foot side set back line, a flagpole may not be installed closer than 10 feet from the side property line); or (4) beyond half [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 under the owner's or occupant's exclusive use or...