

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

3.02 Architectural Control Committee (“ACC”).

- A. The Villages of El Vaquero, Las Colinas & Quintana (Esperanza Phase 4B) are part of a larger master planned community, Esperanza.
- B. Esperanza has one master association, the Association, and may, after the Declarant Control Period, elect at the Board’s discretion to have separate architectural control committees for each phase or any other portion(s) of the Property. The Declarant, or after the Declarant Control Period the Board, may in its discretion also create a separate ACC for Commercial Lots.
- C. After the Declarant Control Period has ended, the Board will appoint the ACC including any Commercial ACC. In the absence of such appointment by the Board, the Voting Representative(s) will serve as the ACC.
- D. However, during the Declarant Control period, the Declarant has the sole right to act as or to appoint all members of the ACC.
- E. The ACC shall be free from liability for actions within the scope of the ACC’s function.
- F. **No building or any structure or Improvement of any kind shall be constructed, erected, or placed on any Lot or any portion of the Property nor shall any exterior additions or changes or alterations be made prior to written approval by the ACC as to quality and workmanship and materials, harmony of external design and location in relation to surrounding structures and topography, and compliance with the Restrictions.** This provision shall not be applicable to Common Areas. The Board, pursuant to its right and duty to manage the Common Areas, shall in its sole discretion determine alterations, additions or repair needs or other appropriate action regarding the Common Areas. No Owner may alter the Common Areas (including, but not limited to greenbelts and open space) or store or place anything thereon unless expressly allowed herein or unless approval in writing is granted by the Board. Removal or altering existing shrubs, trees, grass, and plantings that are not located on an Owner’s Lot is strictly prohibited.
- G. For purposes of this Declaration, “Improvement” is defined as every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, awnings, gazebos, large umbrellas, patios, tennis or sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, mailboxes, yard art, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, reclaimed water, sewer, gas, electric, telephone, regular or cable television, internet, or other utilities (any exterior change visible from the roadway or adjoining property).
- H. ~~Landscaping is not considered an Improvement by the ACC and prior review and approval of landscape plans by the ACC is not necessary; provided, however, all landscaping must comply with these Restrictions and all other deed restrictions including community rules and the landscaping guidelines (“Landscape Design Standards and Guidelines”) for Esperanza adopted by the Association, a copy of which is available from the Association and also from the Association’s website. However, landscape plans may be required to be submitted to and approved by the City of Boerne.~~
- I. Final plans and specifications, including site plan, must be submitted to, and approved in writing by the ACC prior to any construction.
- J. Plans and specifications for initial construction of residences and the accompanying improvements, along with any applicable application and project fee (see §3.02 L.) shall be filed with the ACC by delivery to the Esperanza Community Association office or such other location as Declarant or Association may designate from time to time. It is the Owner’s responsibility to obtain the then-current submittal location and instructions for submittal from the Association’s managing agent as well as the then-current application fee. **Plans must be submitted for approval to the ACC Reviewer at ACCReview@thelookoutgroup.com.**

Sec. D (p. 12): 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, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, reclaimed water, sewer, gas, electric, telephone, regular or cable television, internet, or other utilities (any exterior change visible from the roadway or adjoining property).

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