

ISSUE #1

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12.18.1. Definitions. As used in this Section “Antenna/Dish Dwelling” means the Dwelling served by a satellite dish or antenna, or the Dwelling that is obviously intended to be served by a satellite dish or antenna, regardless of whether the service is operational. “Antenna/Dish Owner” means the Owner of a Dwelling served by a satellite dish or antenna, regardless of whether the Owner purchases, uses, or has actual knowledge of the satellite dish or antenna.

12.18.2. Location. Without the prior written approval of the Association, an Antenna/Dish may not be placed on any exterior surface of the Dwelling. An Antenna/Dish may be placed or installed on the surface of the roof or the deck or patio of the Improvement, if the Antenna/Dish is not visible from the front street of the Lot or Dwelling.

12.18.3. Owner Responsibility. The installation of an Antenna/Dish on the exterior of a building automatically subjects the Antenna/Dish Dwelling and its Owner to this Section, regardless of who installs the Antenna/Dish and regardless of whether the Antenna/Dish Owner has actual notice of the installation. The Antenna/Dish Owner is solely responsible for (a) the cost of maintaining, repairing, replacing, and removing, as necessary, the Antenna/Dish, and (b) the cost of repairing Common Elements or other Dwellings if such repairs are necessitated by the Antenna/Dish or its installation, maintenance, repair, or replacement, irrespective of whether the repairs are undertaken by the Antenna/Dish Owner or the Association. If required by the Association, the Antenna/Dish Owner will remove the Antenna/Dish, as necessary, to permit the Association to maintain, repair, or replace Common Elements as the Association, in its sole discretion, deems necessary or desirable.

12.18.4. Association Controls. To the extent permitted by public law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, camouflaging, screening, and use of Antenna/Dishes. The location and installation of an Antenna/Dish on the Common Elements must have the prior written approval of the Association, unless the location and installation comply with the most current standards that have been adopted and published by the Association.

12.18.5. Interference. An Antenna/Dish or the use of an Antenna/Dish may not interfere with satellite or Broadcast reception to other Residential Dwellings or the Common Elements, or otherwise be a nuisance to Residents of other Dwellings or to the Association. The Board of Directors may determine what constitutes a nuisance to the Association.

12.18.6. Risk. Any Antenna/Dish on the Property exists at the sole risk of the Owner and/or Occupant. The Association does not insure the Antenna/Dish and is not liable to the Antenna/Dish Owner or any other person for any loss or damage to the Antenna/Dish from any cause. The Antenna/Dish Owner will defend and indemnify the Association, its Directors, Officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Antenna/Dish.

12.19. VEHICLES. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and any rules regulating the types,

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 12.18.2 (p. 40): 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:

Location. Without the prior written approval of the Association, an Antenna/Dish may not be placed on any exterior surface of the Dwelling. An Antenna/Dish may be placed or installed on the surface of the roof or the deck or patio of the Improvement, if the Antenna/Dish is not visible from the front street of the Lot or Dwelling.

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).