Section 1 - Sample Provision Excerpt (Public Preview)

within a ground utility easement or encroaching into an aerial easement; or beyond the side or rear setback lines (for example, on a lot with a 10' side setback line, a flagpole may not be installed closer than 10' from the side property line); or 4823-8979-9840, v.

ISSUE #1

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW — BOARD & COUNSEL REVIEW

Sec. 1 (p. 13): 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:
within a ground utility easement or encroaching into an aerial easement; or beyond the side or rear setback lines (for example, on a lot with a 10' side setback line, a flagpole may not be installed closer than 10' from the side property line); or 4823-8979-9840, v.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):
within a ground utility easement or encroaching into an aerial easement; or beyond the side or rear setback lines (for example, on a lot with a 10' side setback line, a flagpole may not be installed closer than 10' from the side property line); or 4823-8979-9840, v. [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 control, in accordance with...