

ISSUE #1

MARKUP #1 ->

Section 1: [Supplemental Design Guidelines for The Promenade at Gaillardia (Nov. 29, 2021), Section 3.9] Strict Prohibition on Visible Solar Panels, Antennas, and Flagpoles Without DRC Approval

No solar panels, satellite dishes, antennas, or free-standing flagpoles shall be installed on any Lot or structure so as to be visible from any street, common area, or adjacent Lot without the prior written approval of the Design Review Committee (DRC), which may withhold approval in its sole discretion.



MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. Supplemental Design Guidelines for The Promenade at Gaillardia (Nov. 29, 2021), Section 3.9 (p. 1): 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 (OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000) preempts community association restrictions that prohibit, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of antennas and satellite dishes 1 meter or less in diameter situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

[Supplemental Design Guidelines for The Promenade at Gaillardia (Nov. 29, 2021), Section 3.9] Strict Prohibition on Visible Solar Panels, Antennas, and Flagpoles Without DRC Approval
- No solar panels, satellite dishes, antennas, or free-standing flagpoles shall be installed on any Lot or structure so as to be visible from any street, common area, or adjacent Lot without the prior written approval of the Design Review Committee (DRC), which may withhold approval in its sole discretion.

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 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).