

**Note: you may have to log onto [www.arrl.org](http://www.arrl.org) to be able to access all of the links below. Just search for PRB-1.**

## ARRL PRB-1 Package

Regulatory Information page

### Introduction:

Amateurs are often faced with two different types of antenna restrictions:

- 1) **Local Government Zoning Ordinances**
- 2) **Covenants, Conditions and Restrictions (CC&R's).**

These two types of restrictions must be dealt with separately. PRB-1 was **not** intended to cover CC&R's, but it **was** intended to give local zoning authorities guidance in enacting and enforcing their ordinances. [Check this link](#) if you are faced with covenants (CC&R's).

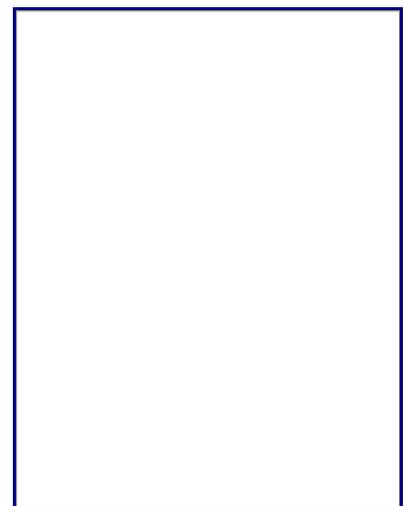
Local governments are *required* to reasonably accommodate Amateur Radio installations and what is in the electronic PRB-1 package can be very helpful as a part of a presentation before local planners. It is still up to *you*, the amateur, to be well versed in what PRB-1 says and which documents you want to present to local planners as they consider or reconsider the ordinance and/or your application. As stated in September 2000 *QST*, pp. 87-88, PRB-1 is "a good thing, but still not a panacea." It is still your responsibility and the responsibility of other amateurs to help educate local zoning authorities as to what PRB-1 is and how it applies. This means that you will need to read and understand PRB-1 and other documents on this page.

### The PRB-1 Document

The FCC's PRB-1 document, an 11 page Amateur Radio Memorandum Opinion and Order, was released September 19, 1985. Even though it is from 1985, it is still valid today. The legal cite is 101 FCC 2d 952 (1985) and it can be found on the [FCC Web page](#). It can also be found on this page in [HTML](#), [PDF](#) or [ASCII](#) formats. The FCC also [clarified the FCC's PRB-1 Order](#) on November 19, 1999. This Rulemaking has not been finalized and may be subject to appeal.

The 11 page document has been codified at Section 97.15(b). This is a short summary of the 11 page PRB-1. *PRB-1 states that local governments must reasonably accommodate amateur operations, but they may still zone for height, safety and aesthetics concerns.*

As stated earlier, it is important to note that PRB-1 does not cover covenants although there is a brief mention of covenants in the 1999 PRB-1 clarification. Unfortunately, the FCC has not yet provided an



[Click here for the full text of PRB-1](#)

outright preemption of covenants for amateurs.

## State Statutes Incorporating PRB-1

PRB-1 does not specify a minimum height below which local governments can not regulate, but they must be "reasonable" in their accommodations. [Some states](#) have adopted state statutes which codify PRB-1. Five of those states--Alaska, Wyoming, Virginia, North Carolina and Oregon-- specify heights below which local governments in those states may not regulate. This actually goes further than PRB-1. Amateurs in other states are trying to convince their legislators to sponsor similar legislation.

### PRB-1 States

Alaska, California, Florida, Idaho, Indiana, Kansas, [Louisiana](#), Maine, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, [Pennsylvania](#), Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming .

## Precedent Setting Cases Affecting Amateur Radio

There have been few published precedent setting Amateur Radio cases in recent years. Here are the cases which have been cited most frequently:

- [Schroeder v. Municipal Court of Cerritos](#), 73 Cal. App. 3d 841, 141 Cal. Rptr. 85 (1977) Appeal dismissed 435 US 990 (1978)
- [Gushcke v. Oklahoma City](#), Oklahoma, 763 F. 2d 379 (10th Cir 1985)
- [John Thernes vs. City of Lakeside Park, Kentucky et al](#), 779 F. 2d 1187 (6<sup>th</sup> Cir. 1986)  
*See also* [Final Judgement: 62 Pike and Fischer Radio Regulation 2d](#), 284 E.D. KY 1987
- [Andrew B. Bodony v. Incorporated Village of Sands Point, New York et al](#) (681 F. Supp. 1009 E. D. NY 1987)
- [William F. Bulchis v. City of Edmonds](#), Washington, 671 F. Supp. 1270 (W.D. Wash. 1987)
- [Izzo v. Borough of River Edge](#), New Jersey, et al 843 F. 2d 765 (3rd Cir., 1988)
- [MacMillan v. Rocky River](#), Ohio, 748 F. Supp 1241 (N.D. Ohio 1990)
- [Howard v. City of Burlingame](#), California, 726 F. Supp. 770 (USDC, N.D. Calif., 1989), affirmed 937 F. 2d 1376 (9th Cir., 1991).
- [D. R. Evans v. Board of County Commissioners of the County of Boulder Colorado et.al](#). 994 F. 2d 755 (10<sup>th</sup> Cir. 1993)
- [Sylvia Pentel v. City of Mendota Heights, Minnesota](#), 13 F. 3d 1261 (8<sup>th</sup> Cir. 1994)
- [Palmer v. City of Saratoga Springs](#), 180 F. Supp. 2d 379 (N.D.N.Y. 2001).
- [Marchand v. Town of Hudson](#), 147N.H.380 788 A.2d 250 (N.H. 2001).
  - [Marchand Remand ZBA Decision](#)
- [Gerald Smith v. Board of County Commissioners, Bernalillo County, New Mexico](#), Smith v. Bd. of Comm'rs 110 P.3d 496 (N.M. 2005)  
[View/Download as a PDF file](#) (154,409 bytes) [Additional information](#) as reported by ARRL.

- Snook v. City of Missouri City, Texas No. 03-cv-243, 2003 U.S. Dist.
  - Snook - Decision & Order
  - Snook - Final judgement
- [Chedester v. Town of Whately, MA](#) (KB1IPR) Superior Court, Franklin ss., Civil Action No. 03-00002, Hillman, J., November 22, 2004, (2004).  
Superior Court Judge said town misinterprets both state and federal preemption by arguing that the by-law does not restrict antenna height, "only towers as they are 'structures.'" Height limit of 35' found to be "an absolute and unvarying height restriction" and preempted. "A 35' height restriction would effectively mean that no radio communications would be able to be transmitted." Building permit reinstated.
- Skinner v. Zoning Bd. of Adjustment  
193 A.2d 861 (N.J. Super Ct. App. Div 1963). Ordinance permitted towers up to 100', but only in B-2, B-3 and IR zones. Upholds a 100-foot radio antenna tower used in "his hobby" as an accessory use customarily incidental to the enjoyment of a residential property.
- Dettmar v. County Bd. of Zoning Appeals  
273 N.E. 2d 921, 922 (Ohio Ct. Com Pl. 1971). Even an unusual customarily incidental use is permissible unless specifically excluded by a zoning restriction. [Note: After PRB-1, an amateur radio use could not be excluded entirely.]
- Town of Paradise Valley v. Lindberg  
551 P.2d 60, 61-62 (Ariz. Ct. App. 1976). The erection of a ninety-foot amateur radio tower in conjunction with a homeowner's hobby as a ham radio operator is a permissible accessory or incidental use.
- Borowski v. Burbank, IL (K9RB)  
101 FRD 59 (ND IL, 1984). Pre-PRB-1, but granted class action status against a town in Federal Court, in an antenna case. May have an unusually useful positive effect when a ham's lawyer attaches it to the letter pointing out that the village ordinance fails to comply with 47 CFR §97.15(b).
- Parma Heights, OH v. Haase (K8VI)
- (Parma, OH Municipal Court, 1992), Unpublished (see [www.antennazoning.com](http://www.antennazoning.com), Amateur Radio, Legal Library). Ham held a building permit for an antenna which could be raised from 20' to 50'. Charged with criminal misdemeanor violations ordinance by violating a Zoning Use ordinance and a Public Nuisance ordinance. Court found ham not guilty of both. [Despite RFI, ham's] "operation of an amateur radio station does not constitute a public nuisance. It does not wrongfully invade the use and enjoyment of property and personal rights and privileges of the general community. . . . The nuisance herein results from methods authorized by legislative grant. The Defendant's exercise of that grant does not constitute criminal conduct."
- Brower v. Indian River County Code Enforcement Board, FL (W4DKB)  
No. 91-0456 CA-25 (June 23, 1993), 1993 WL 228785 (Fla.Cir.Ct.).  
Structure: 68.88 feet, plus antenna, to total of 95.6 feet; 72.4 feet from neighbor's property line. Absolute prohibition on towers over 70'. Ham erected without first attempting to obtain a permit. Held: Any application for a permit would have been futile ("a circular dead-end"). Ordinance facially void as an unvarying maximum height: "We agree with the Evans court's adoption of prior rulings in that case which concluded that flat prohibitions of this nature are not permitted, Evans, at 976" [Refers to Evans I].
- Bay v. ZBA of New Canaan, CT  
1993 Conn. Super. LEXIS 2345 (Super. Court of Stamford-Norwalk, Sept. 9, 1993). Ham had lawful existing retractable 72-foot structure and proposed to add one antenna to it, as well as to install a new 57-foot vertical. Held: An amateur radio antenna is a customary accessory use;

disregards Presnell v. Leslie. Good discussion of why Court adopts the majority view. Court finds that additional antenna may be placed 10 feet above present antenna (total 82') due to interaction. Multiple antennas are customary and accessory. The height is necessary. Ham's appeal sustained.

- Kleinhaus v. ZBA, Cortlandt, NY (W2XX)  
Index No. 19396/95 (Supreme Court, County of Westchester, NY 1996, Lefkowitz, J.S.C.).  
3/26/96 NYLJ 37, (col. 3), [www.qth.com/antennazoning/ham/kleinhaus-sup-ct-decision.pdf](http://www.qth.com/antennazoning/ham/kleinhaus-sup-ct-decision.pdf) or [www.ezoom.net/w2xx/zoningdecision.htm](http://www.ezoom.net/w2xx/zoningdecision.htm)  
Zoning code contained a 35' height limit. Applicant lived on 1.4 acre heavily wooded Westchester County property; applied for 120' structure and denied. FCC regulations found to have the force of statutes. Town required to accommodate amateur communications in a reasonable fashion; merely balancing town interests against Federal government's interests in promoting amateur communications is not enough. Denial of variance set aside as irrational, arbitrary and capricious. On remand to ZBA, 100' tower approved.  
[www.qth.com/antennazoning/ham/kleinhaus-zba-final-dec-and-order.pdf](http://www.qth.com/antennazoning/ham/kleinhaus-zba-final-dec-and-order.pdf)

## Sample Antenna Ordinances:

**Note:** The following articles are in Adobe Portable Document Format (PDF) files. To view and print these files, you'll need a copy of Adobe's Acrobat Reader program. (Version 3.0 or later required). More information [here](#).

- [Beaverton, Oregon](#)
- [Garland, Texas](#) (235,538 bytes, PDF file)
- [Scotia, New York](#)
- [Medford, New Jersey](#) (18,801 bytes, PDF file)
- [Burbank, Illinois](#) (87,362 bytes, PDF file)
- [Virginia Beach, Virginia](#) (187,292 bytes, PDF file)
- [Hinesville, Georgia](#) (87,362 bytes, PDF file)
- [Moorestown, New Jersey](#) (118,975 bytes, PDF file)
- [Newport Beach, California](#) (232,941 bytes, PDF file)
- [Dade County, Florida](#) (157,490 bytes, PDF file)

## FCC Letters Affirming PRB-1

Here is a [letter from the FCC](#) (160,235 bytes, PDF file) to a New York assemblyman affirming PRB-1 and how it applies to amateurs. Other FCC letters can be found [here](#).

## Additional Information

Here is a list of material which may be useful in your presentation:

- [One page summary of PRB-1](#)
- [Public Law 103-408](#)  
*Recognizing the achievements of amateurs and to establish support for such amateurs as national policy*
- [FCC letters concerning potential of interference](#)

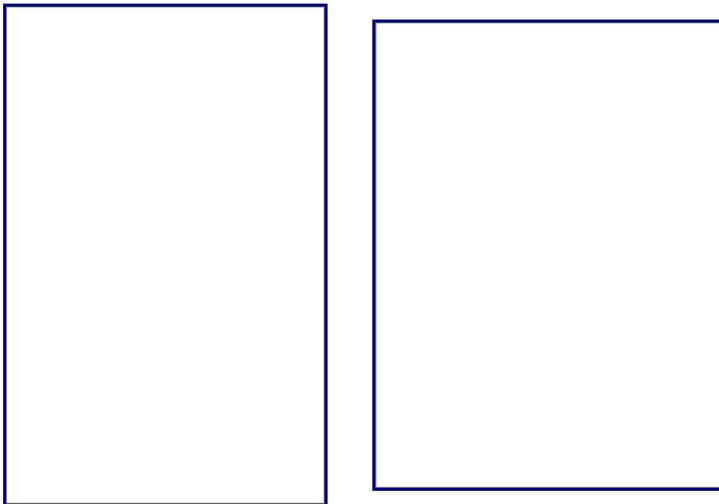
*These letters are very useful educating local authorities that regulation of interference is entirely an FCC matter and local governments have no jurisdiction.*

- [Antenna Height and Communications Effectiveness](#) (PDF file)  
*Second Edition, by R. Dean Straw, N6BV, and Jerry Hall, K1TD.*
- [Chronological list of landmark Amateur Radio cases](#)
- [What is Amateur Radio and Why is it a Community Resource?](#)  
*A Presentation for Non-Amateurs*
- "[Ghost in the Computer: Radio Frequency Interference and the Doctrine of Federal Preemption](#)"  
by Ralph Brock, W5MV
- Note: [Reasonable Accommodation of Amateur Radio Communications by Zoning Authorities: The FCC's PRB-1 Preemption](#), 37 Conn. L. Rev. 321 (2004) by Brennan T. Price
- PRB-1 and CC&Rs  
*What Should I Do Now? - May 2007 QST*

**Note:**

Additional material which is useful in explaining what Amateur Radio is to non-amateurs can be found on the [ARRL web site](#).

### **The ARRL's *FCC Rule Book*; Antenna Zoning for the Radio Amateur**



The [ARRL's \*FCC Rule Book\*](#) and [Antenna Zoning for the Radio Amateur](#) are excellent reference publications for amateurs faced with zoning difficulties. Both can be ordered [on-line from ARRL HQ](#) or from Amateur Radio dealers around the country.

### **ARRL Volunteer Counsel and Volunteer Consulting Engineer Programs**

Amateurs often find it necessary to consult with professionals in their field. This can mean contacting a lawyer or an engineer. ARRL offers amateurs the Volunteer Counsel (VC) and Volunteer Consulting Engineer (VCE) Programs. VC's are amateurs who are also lawyers.

ARRL is also actively seeking amateurs who are lawyers and professional engineers to enter into these programs. If you are a lawyer, you can [apply on-line](#). If you are a registered professional engineer, you can [apply on-line](#).

#### **ARRL VC/VCE**

*VC:*

- [General Program Information](#)
- [Referral List](#)

*VCE:*

- [General Program Information](#)
- [Referral List](#)

## Further information

Amateurs will find the [FCC's Amateur Radio Service Web page](#) to be very useful. Part 97 is just a small part of the Code of Federal Regulations and other regulations affect the Amateur Service even though they do not appear in Part 97, but are referenced. Part 17 covers antenna marking and lighting. Amateurs can find the complete Title 47 of the Code of Federal Regulations [on the web](#). Amateurs with further questions can contact the Regulatory Information Branch in the Field and Educational Services Department at ARRL HQ at [reginfo@arrl.org](mailto:reginfo@arrl.org). [Check here](#) for FCC links to other sites.

---

*Page last modified: 12:37 PM, 08 Jan 2009 ET*

*Page author: [reginfo@arrl.org](mailto:reginfo@arrl.org)*

*Copyright © 2009, American Radio Relay League, Inc. All Rights Reserved.*

---