

Section 611 Telecommunications Towers, Antennae and Facilities Overlay District

611.1 In recognition of the Telecommunications Act of 1996, it is the intent of The Village of Misenheimer to allow communication providers the opportunity to locate telecommunications towers, and related facilities, within the village, or its ETJ, in order to provide an adequate level of service to its customers, while protecting the health, safety, welfare, and the aesthetics of the community. Wireless towers may be considered undesirable with other types of uses, most notably residential; therefore special regulations are necessary to ensure that any adverse affects to existing and future development are mitigated.

Accordingly, the Village of Misenheimer Village of Council finds that regulations related to telecommunications towers are warranted and necessary:

- (A) To direct the location of communication towers in The Village of Misenheimer and its ETJ;
- (B) To protect residential areas and land uses from potential adverse impacts of telecommunications towers;
- (C) To minimize adverse visual impacts of telecommunications towers through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (D) To accommodate the growing need for telecommunication towers to residents and businesses in the region;
- (E) To promote and encourage shared use/co-location of existing and new communication towers as a primary option rather than construction of additional single-use towers;
- (F) To consider the public health and safety of telecommunication towers; and to avoid potential damage to adjacent properties from tower failure through structural standards and setbacks.
- (G) To avoid potential damage to adjacent properties from tower failure through engineering and careful siting of telecommunication towers.

611.2 Telecommunications towers and facilities are allowed only in the telecommunications tower overlay district. A telecommunications tower overlay district rezoning must be requested by the applicant or property owner for any property with an underlying zoning of H-B and M-1 and all the supplemental regulations of Section 611 shall be met. Once the Council approves a site for a telecommunications tower overlay designation, the applicant shall obtain a Zoning Compliance Authorization as per Section 611.3 and its subsection.

611.3 No telecommunications tower, antennae, or facilities shall be erected, moved, extended in height, or enlarged or structurally altered, nor shall any excavation or filling of any lot for the construction of any tower or facility be commenced until the Zoning Enforcement Officer or his designated agent has issued a zoning clearance for such work, in the form of a Zoning Compliance Authorization. Such authorization will only be provided once a property is rezoned to the telecommunications tower overlay district. When a rezoning to the overlay district designation is approved, the proposed tower type, tower height, setbacks, easements, as well as other specifics presented to the Village Council shall be included in the Zoning Compliance Authorization. The telecommunications provider must abide by the specifics they presented to the Board when they obtained their rezoning. If, at a later date, the provider wishes to modify those specific conditions, an amendment to telecommunications tower overlay district must be obtained through a new review and public hearing by The Misenheimer Village Council.

611.3.1 Each application to the Zoning Enforcement Officer for Zoning Compliance Authorization shall be accompanied by plot plans showing:

- (A) The actual dimensions of the lot to be built upon or leased. If leased, then also the dimensions of the lot on which leased portion is located
- (B) The size and height of the tower to be erected.
- (C) Tower type (i.e. monopole or lattice).
- (D) The location of any existing structures on the lot, if any.
- (E) The distance to the nearest residential structure.
- (F) Setbacks or the collapse zone. If collapse zone is used, documentation verifying the collapse zone dimensions.
- (G) Other information as may be essential for determining whether the provisions of this ordinance are met.

611.3.2 Any Certificate of Zoning Compliance issued shall expire and be canceled unless the work authorized by it shall have begun within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period of one (1) year. Written notice thereof shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until another zoning compliance clearance has been obtained.

611.4 Telecommunication tower overlay rezoning requests can be denied on the basis of negative influence on property values or on aesthetic concerns provided that there is evidence to prove the impact on adjacent property owners will be significant. As per the Telecommunications Act of 1996, Misenheimer Village Council must clearly state the

reasoning and available evidence of the impact on adjacent property values if the request is denied on this basis, which in essence denies the tower.

The following factors may be used to evaluate a tower for aesthetic reasons:

- (A) To protect the view in scenic areas, unique natural features, scenic roadways, etc.
- (B) To prevent the concentration of towers in one specific area.
- (C) The height, design, placement, and other characteristics of the tower can be modified to have a less intrusive visual impact on the region or community.

611.5 Supplementary Regulations for new Telecommunications Towers, Antennae, and Facilities

If it is determined, to the satisfaction of the Village of Misenheimer Village Council, that telecommunications providers cannot:

- (A) provide an adequate service level by co-locating on an existing telecommunications tower,
- (B) locate on an existing Duke Power transmission tower or similar structure, or
- (C) locate camouflaged antennae within an existing structure,

then telecommunications towers and facilities will be allowed if and when property is rezoned by the Village Council to a tower overlay district, subject to the following regulations in addition to applicable requirements set forth in each underlying zoning district and elsewhere in this Ordinance:

- (1) In all underlying zoning districts, H-B and M-1, all telecommunication towers shall be of a monopole design and construction. All monopoles must be designed to telescope or collapse inward unless documentation can be provided to prove that such design is not feasible. In M-1 underlying zoning district, a monopole or lattice construction steel structure tower is acceptable. Monopoles must be designed to telescope or collapse inward; lattice towers must be designed to collapse inward upon themselves.
- (2) It is the intent of The Village of Misenheimer to encourage providers to co-locate facilities in an effort to reduce the number of telecommunication towers in the Village or its ETJ. Unless it is determined to be unfeasible, new communications towers should be capable of supporting additional communications antennas. This will assist the village in reducing the total number of towers in the

jurisdiction. The Village of Misenheimer requires providers to negotiate in good faith with other providers to lease space at a reasonable cost and for reasonable terms, and to publicize the fact that space is available on a lease basis as part of the overlay district rezoning process.

- (3) The maximum allowable height of a tower is 199.9 feet in the H-B district. The maximum height of a tower located in the M-1 underlying zoning district is 250 feet. No variance to the height may be. The height of the tower or structure shall be the vertical distance measured from the mean elevation of the finished grade at the front of the structure to the highest point of the structure.
- (4) Where a telecommunication tower is to be located on a lot with an existing principal use, the tower shall be located in the rear yard only. In addition, a recorded easement for an access road at least twelve (12) feet wide shall be maintained by the property owner and/or the applicant from a public street to the tower for use by service and emergency vehicles.
- (5) The Village of Misenheimer encourages stealth tower locations. Telecommunications towers which can locate in or on an existing structures or which can be camouflaged to resemble a tree (not a flagpole) are encouraged, or towers which are located in a stand of trees, rather than in an open field, are preferred.
- (6) Towers are prohibited on the top of buildings, or structures, the H-B district. In the M-1 underlying zoning district, towers may be, but need not necessarily be, permitted on roofs or walls, after submittal of a report by a qualified and licensed professional engineer indicating the existing structure's suitability to accept the antenna, and the proposed method of affixing the antennae to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated, for review by The Misenheimer Village Council.
- (7) Towers on roofs may be allowed when the tower height does not exceed more than 30% of the height of the building, or is no more than 50 feet above the building/structure, whichever is less. Towers on roofs or walls shall be screened, constructed, and/or colored to match the structure to which they are attached.
- (8) The Village of Misenheimer recognizes that telecommunications facilities (both towers and co-locators) cannot be prohibited, nor can a rezoning for a telecommunications tower overlay district be denied on the basis of environmental or health concerns relating to radio emissions, if the telecommunications equipment and facility complies with the Federal Radio Frequency Emission Standards. The Village of Misenheimer requires that each applicant for a permit must provide documentation

proving that their telecommunications equipment complies with the Federal Radio Frequency Emission Standards.

- (9) All accessory structures on the ground which contain switching equipment or other related equipment should be architecturally compatible with surrounding buildings and land uses in the underlying zoning district, or otherwise integrated, through location and design, to blend in with the existing characteristics of the site to the extent practical. This means structures with pitched roofs, made of local construction materials, such as brick, wood, stone, or vinyl lapped siding.
- (10) A minimum eight-foot high chain link fence, visually obscured by vegetation, is required immediately around the telecommunications tower and any equipment building(s) since the tower can be considered an attractive nuisance. Barbed wire shall be used along the top of the fence and access to the tower area and equipment buildings shall be through a locked gate. The Village Council may waive fencing requirements for stealth towers and other types of structures if the fencing serves no useful purpose.

Note: Applicants building new towers shall plan the fence and screening (see below) to accommodate all future providers on the site such that the fence and screening materials surround the land designated for all future equipment buildings and the tower.

(A) Landscape screening shall be required along the outside area of the perimeter-fenced area(s) to mitigate the visual impacts of the tower and equipment buildings from nearby viewers. Landscape materials shall consist of evergreen shrubs planted with a twenty (20) foot screen/buffer with twelve (12) trees [1/3 shall be evergreen] and twenty (20) shrubs required per one-hundred (100) feet of buffer strip. Evergreen shrubs should be of a size expected to reach a minimum of 6' in height at maturity. Trees may be evergreen or deciduous. All landscaping shall be xeriscape (drought) tolerant or irrigated to ensure good health and vitality.

Screening requirements shall not apply to telecommunications providers who have camouflaged (stealth towers) towers or who have located antennas within another structure (such as a steeple), or who have co-located on an existing tower. Nor shall screening apply when an antennae will be mounted on an electrical transmission tower or on structures such as a water tower/tank, grain silos, etc. or similar structures.

The Board of Commissioners may waive any or all of the screening requirements upon determining that the existing topography or existing natural materials on site will screen the property as effectively as the required screening, provided that the spirit and intent of this subsection are met. The Board of Commissioners may also waive screening on those sides of the proposed tower that are located adjacent to undevelopable property. Such a waiver may not be sought to relieve the screening requirement for towers to be located adjacent to vacant properties or along any public right-of-way. Undevelopable property

shall constitute any such property or land that is unable to be used as a building site, i.e. a floodplain, etc.

(B) Plant Standards and Plant Installation Standards.

- (1) Minimum tree caliper measured 6" above ground on all trees shall be 2 1/2" and the minimum height shall be 8 feet.
- (1) Shrubs must be at least 2 feet tall when planted and shall be of a variety and adequately maintained so that an average height of 5 to 6 feet could be expected as normal growth within 3 years of planting.
- (2) All plant material installed shall be free from disease.
- (3) Plant materials shall be planted in accordance with generally accepted and recommended planting and growing practices.
- (4) All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth.

(C) Landscaping Maintenance.

- (1) The plantings that constitute a required landscaping shall be properly maintained in order for the landscaping to fulfill the purpose for which it is established. The owner of the property and any tenant on the property where a screen is required shall be jointly and severally responsible for the maintenance of all screen materials. Such maintenance shall include all actions necessary to keep the screened area free of litter and debris and to keep plantings healthy. Any vegetation that constitutes part of a screen shall be replaced in the event that it dies.
- (2) Minimum setback requirements for free-standing shall be one (1) foot for every one (1) foot of actual tower height plus twenty-five (25) feet. (i.e. A 199.9 foot tower would require a 224.9 foot setback on all sides.) These setback requirements are applicable on all sides of the property including any side along the road right-of-way, and for all leased areas of a parcel. The purpose of these setback requirements is to prevent icfall materials and/or debris from tower failure or collapse from damaging off-site property. For the purpose of establishing setbacks, the measurements shall be from the edge of the concrete base on which the tower is

The Village of Misenheimer Village Council may reduce minimum setback requirements, if warranted, or to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standards, power line support device, or similar structure.

- (A) All towers shall be a minimum of 300' from the nearest residential dwelling unit.

- (B) Telecommunications providers who are leasing a portion of a lot for the proposed telecommunication tower shall obtain written a signed certification from the property owner that no future development or subdivisions or leased portions will be made within the established setbacks of the telecommunication tower until such tower is removed from the site (i.e. is abandoned and removed by the provider). This does not apply to telecommunication providers seeking to co-locate on an existing tower.
- (C) Towers and related facilities must be removed by the applicant and/or property owner upon abandonment of the tower (no longer used for its original intent) for a period greater than ninety (90) consecutive days. Such removal (clearing from the site) shall take place within six (6) months of the first day the tower was abandoned, and be completed within this same six (6) month period. It shall be the responsibility of the applicant to notify the Village of Misenheimer in writing, when the tower has been abandoned for greater than ninety (90) days.
- (D) When towers are removed, the overlay designation becomes null and void, and the zoning on the property then becomes the underlying zoning district designation only.
- (E) Towers having a height of 199.9 feet or less shall not contain lights or light fixtures at a height exceeding fifteen (15) feet. Furthermore, lighting of all towers in any district shall be directed toward the tower and/or accessory uses to reduce glare onto adjacent properties. It is recognized that towers over 200 feet in height require night time strobe lights as per the Federal Aviation Administration.
- (F) Freestanding telecommunications towers should be located to avoid a dominant silhouette on ridges or in open fields.
- (G) Any planned increase in tower height to an existing approved telecommunication tower located within an overlay district requires the provider to apply for a zoning amendment to the telecommunication tower overlay district. Once such an amendment has been approved by the Village Council, a Zoning Compliance Authorization can be issued to permit the increase in tower height. Normal maintenance and repair of the structure can be completed without the issuance of Zoning Compliance at the discretion of the Zoning Enforcement Officer. Planned height increases for towers which were constructed prior to the adoption of these regulations shall require the provider or owner to apply for a rezoning to the telecommunications tower overlay district, which includes a review and approval by the Village. Once such rezoning is approved, the Zoning Enforcement Officer will review a Zoning Compliance Authorization application. Required information for this application is described in Section 611.3.1.
- (H) Applications by providers to use co-location space on an existing tower, within

an approved telecommunications tower overlay district shall be permitted by right, provided that the tower height is not increased. The issuance of a Zoning Compliance Authorization form shall be required. If the co-locator or owner proposes to increase the tower height in an established telecommunications tower overlay district, this would require a zoning amendment of the telecommunications tower overlay district which includes review and approval by the Village Council, prior to the issuance of a Zoning Compliance Authorization.

- (I) Freestanding signs are prohibited. Wall signs shall be limited to 1) identification signage allowed on equipment structures or fences surrounding the telecommunication tower/structure provided it does not exceed nine square feet in size and 2) "No trespassing" signs, "Danger - High Voltage" signs, and other similar warning signs shall be installed to discourage trespassing by unauthorized persons. Signs shall be installed and/or mounted on the perimeter fence, and/or on the tower at its base.
- (J) The provider must show proof of adequate insurance coverage for any potential damage caused by or to the telecommunications tower prior to the issuance of a Zoning Compliance Authorization. Once such authorization is approved, documentation of adequate insurance must be provided to the Misenheimer Village Council, every twelve (12) months.
- (K) Outdoor storage of equipment or other related items is prohibited.
- (L) Associated telecommunications equipment buildings located in any zoning district shall not be used as an employment center. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- (M) All applications for a telecommunications tower overlay district, or any amendment to the overlay district must include the following information in addition to any other applicable information contained in the Zoning Ordinance:
 - (1) Identification of intended provider(s);
 - (2) Documentation by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user, if applicable. A statement about the general capacity of the tower in terms of the number of additional providers, or co-locators, it is designed to accommodate.
 - (3) A statement from the provider indicating intent to allow shared use of the tower and how others will be accommodated;
 - (4) Documentation that all property owners of residentially zoned property

within 300 feet of the edge of all sides of the property (for leased sites this means the edge of the larger parcel in which the leased portion is located), as well as adjacent property owners, have been notified by the applicant of the proposed tower height and design. Notification of property owners is also required for amendments to the overlay district.

- (5) Documentation that the telecommunication equipment complies Federal Radio Frequency Emission Standards;
- (6) Documentation that towers over 199.9 feet are necessary for a minimal level of service;
- (7) A site plan(s) drawn to scale, identifying the site boundary, tower(s), existing and proposed structures, including equipment buildings, access, fencing area, fall radius and landscape screening, detailing the type of landscaping, amount of plantings, and location. A site plan is not needed for providers who are seeking co-location on an existing tower within an approved telecommunication tower overlay district, when the equipment building is to be located within the existing fenced area.
- (8) Documentation of monopole tower or lattice tower collapse area, if applicable.
- (9) Expert testimony that demonstrates to the satisfaction of The Village of Misenheimer Village Council that the provider has explored all means for stealth tower locations and co-location opportunities, if applicable. Evidence may consist of the following:
 - (10) Existing or approved telecommunications towers with available co-location space are not located within the search area.
 - (11) Existing or approved towers or structures are not of sufficient height to meet the provider's specifications.
 - (12) Existing or approved towers or structures do not have sufficient structural strength to support the applicant's proposed antennae.
 - (13) The provider's proposed antenna would cause objectionable radio frequency interference with existing or planned antennae on an existing or planned tower, (i.e. the spacing requirement between antennae cannot be met).
 - (14) Existing or approved towers lack co-location space.
 - (15) If it is determined that an existing tower does not have the

structural strength or integrity to support additional antennae and associated equipment, then the proposed provider shall provide documentation that the existing tower can not be structurally strengthened to accommodate an additional user.

Towers shall not restrict or interfere with air traffic or air travel to and from any existing or proposed public or private airport. All proposed towers shall comply with the Federal Aviation Administration (FAA) standards.

The following requirements apply for Telecommunications Tower Overlay District rezoning:

- (A) Decisions by The Village of Misenheimer Village Council to approve or deny a telecommunications tower overlay district for a telecommunications tower must be in writing to the applicant, along with detailed reasoning for the approval/denial, as per federal law.
- (B) The applicant and the public are requested to submit their comments and arguments in writing prior to addressing the Village of Misenheimer Village Council at the public hearing, as suggested by federal law.
- (C) The decision of the Village of Misenheimer Village Commissioners must be based upon substantial evidence, which must be recorded in the Minutes, as per federal law.
- (D) In determining if a telecommunications tower should be approved/denied, through the rezoning to a telecommunication tower overlay district, the Planning Board and The Village of Misenheimer Village Council may take into account the tower's harmony with the surrounding area and its compatibility with adjacent properties. The aesthetic effects of the tower, as well as any mitigating factors concerning the aesthetics may be used to evaluate the telecommunications tower overlay district rezoning. In reaching a decision, the Village Council may request the height, design, screening, placement, or other characteristics of the tower be modified to produce a more harmonious situation.

611.6 Supplementary Regulations for Telecommunications Antennae and Associated Equipment Locating on Existing Towers and Structures.

- (A) Applications by providers to use co-location space on an approved existing telecommunications tower in an approved telecommunications tower overlay district shall be allowed with an approved Zoning Compliance provided that the tower height is not increased. Any co-location which will result in an increase to the tower height, shall require the co-locator or applicant to apply for an amendment to the telecommunications tower overlay district, allowing an increase in tower height if the tower existed prior to the adoption of these

regulations, a rezoning to the telecommunication tower overlay district status is required.

- (B) Provided the structural integrity of the structure/tower is not compromised or diminished as determined or documented by a licensed professional structural engineer, telecommunications antennae and its associated equipment buildings may locate on any Duke power transmission tower, water tank/tower, or similar structures by right in all underlying zoning districts so long as the addition does not increase the original height of the existing structure or tower, when Zoning Compliance authorization has been approved. Such antennae shall be painted to match the color of the building/structure or the background against which it is most commonly seen. Note: No antennae used for the purpose of telecommunications shall be mounted on any structure used solely for residential purposes.
- (C) The Village requires that each applicant shall provide documentation proving that their telecommunications equipment complies with the Federal Radio Frequency Emission Standards.
- (D) Screening requirements shall not apply to telecommunications providers, when the provider camouflages antennas within another structure (stealth locations), such as a church steeple, or co-locate on an existing tower. Nor shall any screening apply when an antennae will be mounted on an electrical transmission tower or on structures such as a water tower/tank, grain silos, etc. or similar structures.
- (E) Outdoor storage of equipment or other related or non-related items are prohibited.
- (F) The associated telecommunication antennae equipment buildings located in all underlying zoning districts shall not be used as an employment center. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- (G) Telecommunications antennae and associated equipment shall not restrict or interfere with air traffic or air travel to or from any existing or proposed public or private airport. All proposed towers shall comply with Federal Aviation Administration (FAA) standards.