

ARTICLE 8 SPECIAL REGULATIONS

SECTION 21-08 SPECIAL REGULATIONS

Section 21-08.01 Special Regulations for *Wireless Telecommunications Facilities*.

(a) Intent and Policy.

Intent – This Section creates the framework for the siting of *wireless telecommunications facilities* in a manner which: protects the public health, safety and general welfare of the community; provides comprehensive service to the community; protects the community from visual clutter; is compatible with existing and future land use; and, preserves significant view corridors.

Policy - The following policy statements are set forth to provide guidance to wireless communication facility providers in the placement of *wireless telecommunication facilities* within the City of South Bend. It is hereby declared that the City of South Bend Telecommunications Policies for the corporate limits of the City of South Bend shall be to:

- (1) Facilitate the comprehensive provision of wireless telecommunication services to the residents and businesses of the City of South Bend.
- (2) Maximize the use of existing and approved *telecommunication towers, buildings, and structures* to accommodate new *wireless telecommunication antennas* in order to minimize the number of *telecommunication towers* needed to comprehensively serve the community.
- (3) Minimize the number, height, obtrusiveness, and the visual impacts of *telecommunications towers*, associated equipment, and *buildings*.
- (4) Encourage *wireless telecommunication facilities* to be located in areas which are least disruptive to residential, park, *open space*, and *greenway uses* and to be as unobtrusive and invisible as reasonably possible.
- (5) Ensure that the height of *telecommunications towers* has the least visual impact and is no greater than required to achieve service area requirements and potential *co-location*.
- (6) Site *telecommunications towers* to minimize locations which are visually solitary or prominent when viewed from residential areas or any public way.

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- (7) Site *telecommunications towers* at locations which are obscured by vegetation, tree cover, topographic features, *buildings* or other *structures* to the maximum extent feasible.
- (8) Protect views of and vistas from architecturally or historically significant *structures* and historically significant landscapes so that these architectural or historical resources are not impaired or diminished by the placement of *telecommunications towers*.
- (9) Avoid potential damage to adjacent properties from *telecommunication towers* failure through structural design standards and *setback* requirements.

(b) *Wireless Telecommunications Facilities Requirements.*

- (1) Applicability – Notwithstanding any other provision of this Ordinance to the contrary, *wireless telecommunications facilities*, when such are permitted by and in compliance with federal law and the laws of the State of Indiana (including but not limited to non-interference with public safety telecommunications), shall be regulated and governed by the regulations and requirements of this Section.
- (2) Amateur Radio Exemption – This Section shall not apply to nor be construed to apply to Amateur Radio Operators who are licensed to operate a radio or transmitter by the Federal Communications Commission under Part 97 of the Federal Communications Commission's Rules.
- (3) Compliance with Other Laws – A *telecommunications tower* shall be erected and operated in compliance with the most current Federal Communication Commission and Federal Aviation Administration rules and regulations and other applicable federal and state standards. All *telecommunications towers* shall comply with all ordinances of the City of South Bend not in conflict with this Section.

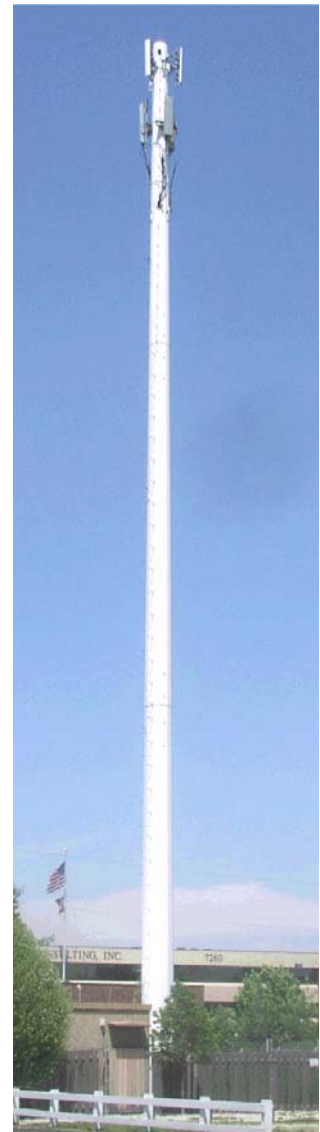
(c) **Siting Hierarchy of *Wireless Telecommunications Facilities*.**

Development of *wireless telecommunications facilities* shall be in accordance with the following siting alternatives hierarchy. The order of ranking, from highest to lowest, shall be from sub-Section (1), to sub-Section (2), to sub-Section (3), outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available.

(1) *Co-location* – The *co-location* of *antenna* on existing *telecommunication towers* and associated equipment or *buildings* shall comply with the following regulations:

(A) The *co-location* or placement of new *telecommunications antennas* upon existing *telecommunications towers* are hereby declared as *permitted uses* in all *districts* and may be issued an *improvement location permit* provided all *development standards* outlined in Section 21-08.01, (d), (2) – Telecommunications Antennas Mounted on Existing Buildings or Structures below, are met.

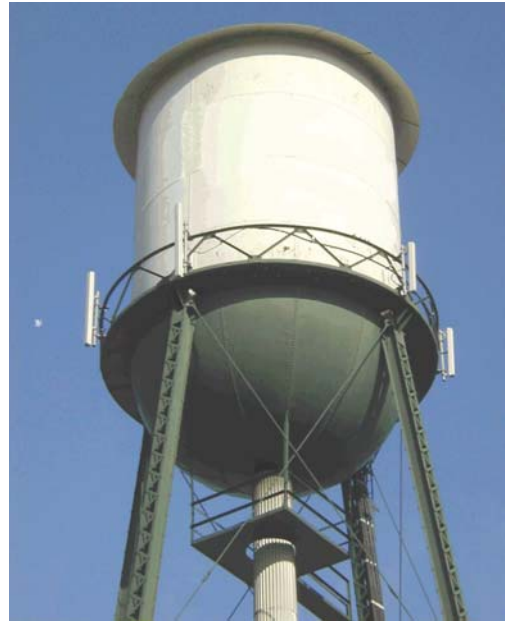
(B) Associated equipment or *buildings*, when located within an existing compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all *development standards* outlined in Section 21-08.01, (d), (3) – Associated Equipment or Buildings and Compound Area Requirements below, are met.



Tapering Monopole
with Co-Location
Using Slick Antenna

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- (2) Existing *Structure* or *Building* Utilization – The utilization of existing *structures* and *buildings* for placement of antenna and associated equipment or *buildings*, including *surface-mounted* and *roof-mounted* applications of *telecommunication antennas* on existing *buildings* and *structure-mounted* applications of *telecommunication antennas* on water towers, electric-line transmission towers, or other existing *structures*, shall comply with the following regulations:



Antenna on an Existing Structure

- (A) The placement of new *telecommunications antennas* upon existing *structures* and *buildings* are hereby declared as *permitted uses* in all *districts* and may be issued an *improvement location permit* provided all *development standards* outlined in Section 21-08.01, (d), (2) – *Telecommunications Antennas Mounted on Existing Buildings or Structures*, below, are met.
- (B) Associated equipment or *buildings*, when located within an existing *building* or compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all *development standards* outlined in Section 21-08.01, (d), (3) – *Associated Equipment or Buildings and Compound Area Requirements* below, are met.
- (3) New *Telecommunications Tower Locations* - New *telecommunications towers* and associated equipment or *buildings* shall comply with the following regulations:
- (A) Where Permitted – *Wireless telecommunications facilities* requiring the construction of a *telecommunications tower, building, or structure* are hereby declared as *special exception uses* in all *districts* and requiring the approval of a *special exception* prior to the issuance of an *improvement location permit*, provided, however, no new telecommunications tower shall be located within five-hundred (500) feet of a residential district or use unless the applicant can demonstrate through the materials required by Sec. 21-194 (3) (D) – Additional Special Exception Filing Requirements, below, that there are no other locations, buildings or structures beyond five-hundred (500) feet of a residential district or use which are available and which can provide the necessary wireless telecommunications services to the residents and businesses of the City of South Bend.

- (B) Alternatives Exhausted – The applicant for a *wireless telecommunications facility special exception* shall demonstrate that they have exhausted all efforts to locate the proposed *telecommunications antennas* upon existing *telecommunications towers, buildings or structures* in the geographical area of the proposed *telecommunications antennas*. In the event that a wireless communications provider claims that efforts to locate the proposed *telecommunications antennas* upon existing *telecommunications towers, buildings or structures* failed because of the demanded lease amount of the owner of an existing *telecommunications tower*, such dispute over fair market value shall be settled as set forth in sub-Section (C), below.

- (C) Fair Market Value – In the event of dispute between wireless telecommunications providers regarding the fair market value of rental for a *co-location* on an existing *telecommunications tower* which is subject to a requirement to provide *co-location* at a reasonable and non-discriminatory basis and at a cost not materially exceeding fair market value, the applicant, at the applicant's cost, shall select an independent appraiser to determine fair market value of such rental. In the event of a dispute over the appraisal results, the wireless telecommunication providers shall employ a new appraiser subject to the approval of the *Zoning Administrator*. The new appraisal shall be performed at the expense of the wireless telecommunication providers involved in the dispute. The expense of the new appraisal shall be equally shared between the wireless telecommunication providers and the results shall be conclusive.

- (D) Additional *Special Exception* Filing Requirements – In addition to the requirements specified in Section 21-09-03 (i) – Special Exceptions of this Ordinance and any applicable Rules of Procedure, all applications for a *special exception* for a new *telecommunications tower* location shall include the following:
 - i. A service plan for the City of South Bend. The service plan shall demonstrate efforts to minimize the size and number of *telecommunications tower* locations throughout the geographical area, taking into consideration existing technology. The service plan shall include, but not be limited to the following information:
 - a. A narrative detailing:
 - 1. the reason of need (coverage, capacity, new users, etc.) for a *telecommunications tower* or *wireless communication facility* at the requested site;

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2. the nature of any existing *wireless communication facility* sites indicated on the map required by Section 21-08.01, (c), (3), (D), i., b., below, shall be documented (i.e., freestanding *structure* with available heights noted, *roof-mounted* applications, existing *telecommunications towers* with information regarding *co-location* opportunities or limitations, service providers utilizing each such *wireless communication facility* site, etc.); and,
 3. the manner in which the proposed placement will promote the City of South Bend Telecommunications Policies.
- b. A map of the City of South Bend identifying the following:
1. all existing *telecommunications towers*; and,
 2. all *structures* or *buildings* within a one (1) mile radius of the proposed site that have a height equal to or greater than the height of the proposed *telecommunications tower* minus thirty (30) feet.

In the event that a *telecommunications tower* is proposed within one (1) mile of the boundary of the City of South Bend, such map shall include the information required above for all areas within one (1) mile of the proposed *telecommunications tower*.

- c. If the applicant is a licensed provider of wireless communication services, the applicant shall supply individual coverage maps of the City of South Bend jurisdiction which:
1. identify all existing locations utilized by the licensed provider's network and reflects the current coverage levels to the City of South Bend; and
 2. identify the proposed coverage levels of the licensed provider's network after the installation of the proposed *wireless telecommunication facility*.

In the event that the licensed provider proposes multiple sites, a separate coverage map for each additional *wireless telecommunication facility* and an overall coverage map

based upon all proposed *wireless telecommunication facilities* shall be provided.

- ii. A certification, in a manner acceptable to the City of South Bend, from the owner of the *telecommunications tower* or the property on which the *telecommunications tower* is located, that the *telecommunications tower* is available for use by another wireless *telecommunications* provider on a reasonable and non-discriminatory basis and at a cost not exceeding the Fair Market Value for the use of the facilities.
- iii. A designation by the owner of the *telecommunications tower* or the property on which such *telecommunications tower* is located of an area which is set aside for the equipment of future users of the *telecommunications tower* and is located:
 - a. within the proposed compound area; or,
 - b. within a separate compound area located on the same *lot* and located no further from the *telecommunications tower* than the distance from the *telecommunications tower* to the proposed compound area plus fifty (50) feet.
- iv. Color photo simulations showing the site of the proposed *telecommunications tower* with a photo-realistic representation of the proposed *telecommunications tower* as it would appear viewed from the closest residential *district* and from adjacent *public right-of-way*, and photographs of the same views as in the photo simulations showing the current appearance of the site without the proposed *telecommunications tower*.

(d) *Development Standards.*

In addition to complying with the requirements for a *special exception use* for the *district* in which the *lot* is located, all *wireless telecommunications facilities* shall comply with the following additional *development standards*:

(1) *Telecommunication Tower and Antenna Array:*

- (A) Height – The maximum height of a *telecommunications tower*, including *antenna array*, shall be less than two-hundred (200) feet above *grade*.
- (B) *Telecommunications Tower Type* – All new *telecommunications towers* shall be of a tapering monopole construction unless a determination is made in connection with a *special exception* request that an alternative design would better blend into the surrounding environment and is approved as a *waiver of development standards* as provided for and regulated in Section 21-09.03 (i) – Special Exceptions, of this Ordinance.
- (C) Guys and Guy Anchors – If a guyed *telecommunication tower* is approved, all guys and guy anchors shall be located within the buildable area of the *lot* and shall not be located within any required *yard* or required *residential bufferyard*
- (D) Security Fencing – The base of a *telecommunications tower* and all guy anchors shall be enclosed by security fencing. This fencing shall conform with the requirements detailed in Section 21-08.01 (d), (3), (A), below.
- (E) Structural Design – A *telecommunications tower* shall be designed and built so as to:
 - i. be capable of use by at least two wireless communications providers for a *telecommunications tower* less than eighty (80) feet in height;



Tapering Monopole with "Slick" Antenna

- ii. be capable of use by three or more wireless communications providers for a *telecommunications tower* of eighty (80) feet in height or greater;
 - iii. accommodate *antenna arrays* consisting of nine (9) to twelve (12) *antennas* for each *antenna array*, provided, however, this regulation shall not apply to *slick antenna* applications;
 - iv. locate such *antenna arrays* within fifteen (15) vertical feet of each other;
 - v. have no more than three (3) degrees of twist and sway at the top elevation; and,
 - vi. provide internal cable routing for all tapering monopole *telecommunication towers*.
- (F) *Antenna Arrays* and Types – To minimize adverse visual impacts, the *antenna* type used shall be in accordance with the following alternatives hierarchy. The order of ranking, from highest to lowest, shall be i., ii., iii., iv., and v. outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available.

- i. *Flagpole antenna* (with or without a flag, as appropriate to the setting). (See Section 21-07.03 (a) (2) for information regarding *flags*).
- ii. *Slick antennas* or *stealth antennas* other than *flagpole antennas*.
- iii. *Panel antennas*, also known as directional or sectored *antennas*.
- iv. *Whip antennas*.
- v. *Dish antennas*.



Panel Antenna



Stealth Flagpole
Antenna w/out flag



Stealth or "Slick"
Antenna

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- (G) *Signs* – No lettering, symbols, images, trademarks, *signs* (including *banners, pennants* or streamers), or advertising shall be placed on or affixed to any part of a *telecommunications tower, antenna array* or *antenna*, other than as required by Federal Communications Commission regulations regarding *telecommunications tower* registration or other applicable law.
- (H) *Safety* – *Telecommunications towers* shall be constructed to minimize potential safety hazards. *Telecommunications towers* shall be constructed so as to meet or exceed the most recent *EIA-222* standards, and prior to issuance of an *improvement location permit*, the *Zoning Administrator* shall be provided with an engineer's certification that the *telecommunications tower's* design meets or exceeds such *EIA-222* standards. *Guyed telecommunications towers* shall be located in such a manner that if the *telecommunications tower* should fall along its longest dimension, the *telecommunications tower* will remain within the *lot lines* and avoid *dwelling units, habitable structures, public street rights-of-way, utility lines* and other *telecommunications towers*.
- (I) *Lights* – No signals, lights or other illumination (including holiday lights or outdoor strings of lights) shall be permitted on *telecommunications towers* unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City of South Bend. When incorporated into the approved design of the *telecommunications tower, outdoor light fixtures* used to illuminate ball fields, *parking areas*, or similar areas, in compliance with the requirements of Section 21-07.02 – Lighting Standards of this Ordinance, may be attached to the *telecommunications tower*.
- (J) *Modifications* - If any additions, changes or modifications are to be made to a *telecommunications tower*, the *Zoning Administrator* shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change or modification conforms to structural wind load and all other requirements of the current Building Code adopted by the City of South Bend.

(2) *Telecommunications Antennas Mounted on Existing Buildings or Structures.*

(A) *Roof-Mount - Roof-mounted telecommunications antennas are permitted on buildings and structures in all districts, except for single family dwellings or two family dwellings, without a special exception, provided:*

i. *a non-whip antenna:*

a. *does not exceed the height of the building by more than ten (10) feet; and,*

b. *shall be no closer than ten (10) feet to the perimeter of the building.*

ii. *a whip antenna:*

a. *does not exceed the height of the building by more than fifteen (15) feet; and,*

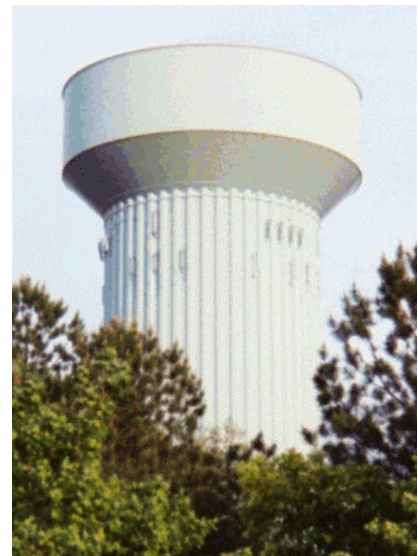
b. *shall be no closer than fifteen (15) feet to the perimeter of the building.*

iii. *Prior to installation of a roof-mounted telecommunications antenna or equipment, the Zoning Administrator shall be provided with an engineer's certification that the roof will support the proposed telecommunications antenna or associated roof-mounted equipment.*

(B) *Surface-Mount - Surface-mounted telecommunications antennas are permitted on buildings or structures in all districts without a special exception, provided:*

i. *the antenna is of the non-whip antenna type;*

ii. *the non-whip antenna is mounted flush with the exterior of the building or structure so that it projects no more than thirty (30) inches from the surface of the building or structure to which it is attached; and,*



Surface Mount Antenna

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- iii. the *non-whip antenna's* appearance is designed to blend with the color or texture of the surrounding surface of the *building* or *structure*.
- (C) Other Existing *Structures - Telecommunications antennas* are permitted on existing utility, lighting, *telecommunications towers* and other *structures* in all *districts* without a *special exception*, provided:
- i. the existing utility, lighting, *telecommunications towers* and other *structure* exceeds fifty (50) feet in height above *grade*;
 - ii. the *telecommunications antenna* does not exceed the height of the *structure* by more than ten (10) feet if a *non-whip antenna* or fifteen (15) feet if a *whip antenna*.
 - iii. Existing *structures* may be rebuilt if necessary to support the load of the new *telecommunications antenna* without further zoning proceedings provided:
 - a. if the *structure* to be rebuilt is not an existing *telecommunications tower*, the rebuilt *structure* shall comply with all applicable regulations of the *district* in which such *structure* is located; or,
 - b. if the *structure* to be rebuilt is an existing *telecommunications tower*, the new *telecommunications tower* shall:
 - 1. not exceed the height of the existing *telecommunications tower*; and,
 - 2. comply with all other regulations contained in this Section for the erection of a new *telecommunications tower*, except that a *special exception* shall not be required.
- (D) Application - When an application for an *improvement location permit* to locate a *telecommunications antenna* on an existing *building* or other *structure* is made, the *Zoning Administrator* shall be provided with color photo simulations showing the site of the existing *structure* with a photo-realistic representation of the proposed *telecommunications antenna* and the existing *structure* or any proposed reconstruction of the *structure* as it would appear viewed from the closest residential *district* and from adjacent *public right-of-way*. The applicant shall also submit photographs of the same views as in the photo simulations showing the current appearance of the site without the proposed *telecommunications antenna*.

- (3) Associated Equipment or *Buildings* and Compound Area Requirements:
- (A) Fencing and Landscaping of Ground Mounted Associated Equipment or *Buildings*:
- i. Fencing Required - The compound area and all guy anchors shall be secured with a board-on-board or chain link fence of not less than six (6) feet in height nor more than ten (10) feet in height. A security wire (barbed, razor, etc.) may be located on the *telecommunications tower*-side of the fence but shall not extend above the top of the fence. A chain link fence, if used, shall be black vinyl coated.
 - ii. Landscaping Required – Landscaping shall be installed around the perimeter of the fenced compound area running the full length of all sides of the compound area or *building*, except for entry gates or doors. The type of landscaping required shall be based upon the open space of the fence. If the fence has an open space of:
 - a. fifty (50) percent or greater, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with a four (4) evergreen trees for every thirty (30) feet shall be installed on the outside of the fenced area; or,
 - b. less than fifty (50) percent but greater than twenty (20) percent, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with a two evergreen trees for every twenty-five (25) feet shall be installed on the outside of the fenced area; or,
 - c. twenty (20) percent or less, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with one (1) ornamental tree (minimum 1 ½" caliper) planted for every twenty-five (25) feet shall be installed on the outside of the fenced area.
 - iii. *Interior access drives* or *walkways* that lead to the entry into the compound area or *building* shall be hard-surfaced with asphalt or concrete.

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(B) Exterior Materials and Roof Pitch of Associated Equipment or *Buildings*.

- i. Associated equipment *buildings*, whether ground or *roof-mounted* and not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), shall be similar in color, exterior material, and character to the main or adjoining *building* or *structure*. If ground mounted the roof pitch of the associated equipment *building* shall match the pitch of any existing *building* or *structure*.



- ii. When an equipment *building* is located on a *lot* that does not contain an existing *building* or *structure* and is not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), the exterior material shall be either brick or stone. The roof pitch shall not be less than a three (3) foot vertical rise for each twelve (12) foot horizontal run nor greater than a twelve (12) foot vertical rise for each twelve (12) foot horizontal run.

(e) **Abandonment and Removal of *Telecommunications Towers, Antenna Arrays, Associated Equipment and Buildings*.**

- (1) Abandonment - *Telecommunications towers, antenna arrays*, associated equipment and *buildings* which have not been used for a period of one (1) year shall be deemed abandoned and shall be removed from the site.
- (2) Notice Required – The owner of the *telecommunications tower* and the last service provider to use a *telecommunications tower* shall notify the *Zoning Administrator* within thirty (30) days that use of a *telecommunications tower* has been discontinued.
- (3) Security - Every *telecommunications tower* owner and all service providers shall establish a cash security fund, bond or irrevocable letter of credit to secure the payment of removing the *telecommunications towers, antenna arrays*, associated equipment and *buildings* that have been determined to be abandoned, or found to be in non-compliance with this Ordinance, and to provide the City of South Bend

a fund from which to deduct fines and penalties for non-compliance with this Ordinance or other applicable laws in the following amounts:

- (A) The amount to be provided for each *telecommunications tower* shall be one-hundred and twenty-five (125) percent of the cost of construction based upon a licensed engineers estimate of the cost of construction of the *telecommunications tower*.
- (B) The amount for each *antenna array* on the *telecommunications tower* shall be one-hundred and twenty-five (125) percent of the cost of construction based upon a licensed engineers estimate of the cost of installation of the *antenna array*;

Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the City of South Bend of the amount deducted and the deficiency created hereby.

- (4) Refund - Within a reasonable period of time, not to exceed three (3) months after the *telecommunications tower* and/or *antenna array* is removed, any remaining funds on deposit with the City of South Bend pursuant to this Section, after application and above all expenses provided for herein, shall be refunded to the appropriate owner or provider who created the security fund.

(f) Limitations on Special Exceptions

- (1) A *special exception* which does not fully comply with the Telecommunications Policies contained herein for *telecommunications towers* may be granted upon a determination that such a grant better accomplishes the Telecommunications Policies set out in this Section than would a strict application of these Telecommunication Policies. Such deviations from the City of South Bend Telecommunications Policy shall be no greater than necessary to accomplish those policies.
- (2) A *special exception* which does not comply with the *development standards* of this Section 21-08.01 may only be granted upon:
 - (A) approval of a *waiver of development standards* as provided for in Section 21-09.03 (i) - Special Exceptions, and regulated in Section 21-09.03 (h) – Variance of Development Standards of this Ordinance; or,
 - (B) separate application for and approval of a *variance of development standards* filed for and obtained in accordance with the requirements of Section 21-09.03 – Board of Zoning Appeals of this Ordinance and any applicable Rules of Procedure.