

ENROLLED ORDINANCE 172-089

AMEND THE TEXT OF THE TOWN OF BROOKFIELD ZONING CODE BY  
REPEALING SECTION 17.02(14)(b)13 AND REPEALING AND RECREATING  
SECTION 17.15 RELATING TO MOBILE TOWER SITING AND  
ANTENNA REGULATIONS (ZT-1861)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Brookfield Town Board on August 15, 2017; and


WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

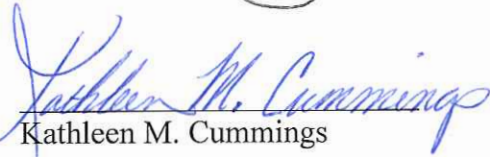
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Brookfield Zoning Code, adopted by the Town of Brookfield on December 27, 1988, is hereby amended to repeal Section 17.02(14)(b)13 and repeal and recreate Section 17.15 relating to mobile tower siting and antenna regulations, more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference ZT-1861, is hereby approved.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Brookfield.

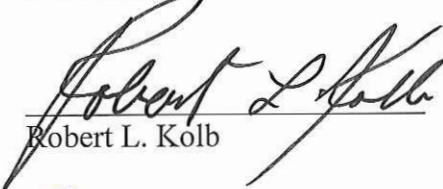
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REPEALING SECTION 17.02(14)(b)13 AND REPEALING AND RECREATING  
SECTION 17.15 RELATING TO MOBILE TOWER SITING AND  
ANTENNA REGULATIONS (ZT-1861)

Presented by:  
Land Use, Parks, and Environment Committee

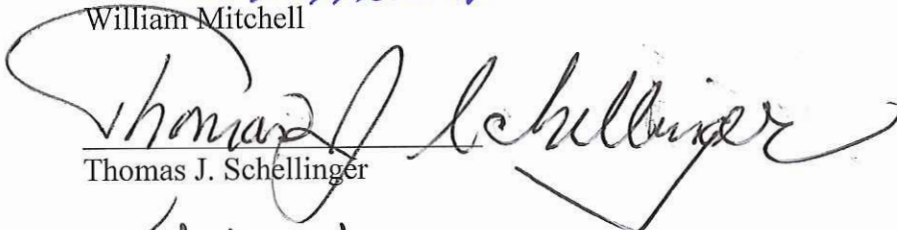
  
David D. Zimmermann, Chair

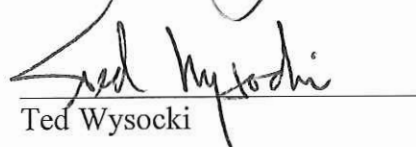
  
Kathleen M. Cummings

(Absent)  
Keith Hammitt

  
Robert L. Kolb

  
William Mitchell

  
Thomas J. Schellinger

  
Ted Wysocki

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 3/27/18,   
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed: \_\_\_\_\_

Date: 3/30/18,   
Paul Farrow, County Executive

<b>D1 - Kolb</b>	<b>AYE</b>	<b>D14 - Wood</b>	<b>AYE</b>
<b>D2 - Zimmermann</b>	<b>(M) AYE</b>	<b>D15 - Mitchell</b>	<b>AYE</b>
<b>D3 - Morris</b>	<b>AYE</b>	<b>D16 - Crowley</b>	<b>AYE</b>
<b>D4 - Batzko</b>	<b>AYE</b>	<b>D17 - Paulson</b>	<b>AYE</b>
<b>D5 - Dondlinger</b>	<b>AYE</b>	<b>D18 - Nelson</b>	<b>AYE</b>
<b>D6 - Walz</b>	<b>AYE</b>	<b>D19 - Cummings</b>	<b>AYE</b>
<b>D7 - Grant</b>	<b>AYE</b>	<b>D20 - Schellinger</b>	<b>AYE</b>
<b>D8 - Michalski</b>	<b>AYE</b>	<b>D21 - Zaborowski</b>	<b>AYE</b>
<b>D9 - Heinrich</b>	<b>(2) AYE</b>	<b>D22 - Wysocki</b>	<b>AYE</b>
<b>D10 - Swan</b>	<b>AYE</b>	<b>D23 - Hammitt</b>	<b>AYE</b>
<b>D11 - Howard</b>	<b>AYE</b>	<b>D24 - Whittow</b>	<b>AYE</b>
<b>D12 - Wolff</b>	<b>AYE</b>	<b>D25 - Johnson</b>	<b>Absent</b>
<b>D13 - Decker</b>	<b>AYE</b>		

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Passed (24 Y - 0 N - 1 Absent)

Majority Vote

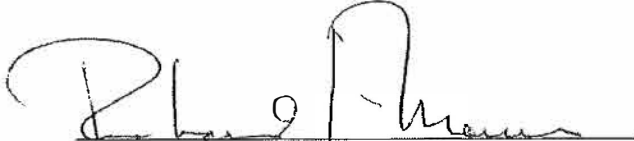


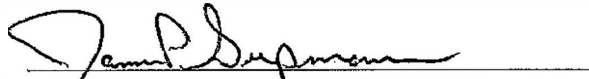
**COMMISSION ACTION**

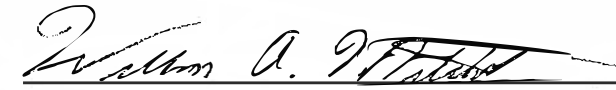
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Brookfield Zoning Code hereby recommends **approval** of **ZT-1861 (Text Amendment)** in accordance with the attached "Staff Report and Recommendation".

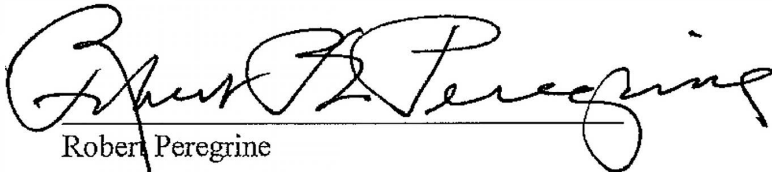
**PARK AND PLANNING COMMISSION**

**March 1, 2018**

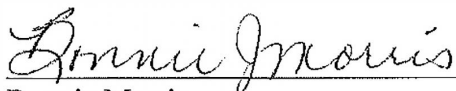
  
Richard Morris, Chairperson

  
James Siepmann, Vice Chairperson

  
William Mitchell, Secretary

  
Robert Peregrine

Absent  
William Maslowski

  
Bonnie Morris

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**TEXT AMENDMENT**

**DATE:** March 1, 2018

**FILE NO.:** ZT-1861

**PETITIONER:** Town of Brookfield Board  
W250 S3567 Center Road  
Waukesha, WI 53189

**NATURE OF REQUEST:**

Repeal Section 17.02(14)(b)13. and repeal and recreate Section 17.15 of the Town of Brookfield Zoning Code, relating to mobile tower siting and antenna regulations.

**PUBLIC HEARING DATE:**

July 25, 2017.

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION:**

At their July 25, 2017 meeting, the Town of Brookfield Plan Commission unanimously recommended approval of the proposed amendments to the Town Board.

**TOWN BOARD ACTION:**

At their August 15, 2017 meeting, the Town of Brookfield Board unanimously approved the proposed amendment.

**OTHER CONSIDERATIONS:**

The Town of Brookfield is proposing text amendments to comply with relatively recent changes to State law regarding permitting requirements for cellular communication towers. The Town is also proposing to remove dated satellite dish provisions from the Town Code as part of this same set of amendments.

The Town's proposed language generally mirrors State Statute and provides for a Conditional Use process for consideration of new cell towers and "substantial modifications" to cell towers. The Conditional Use parameters that can be considered for such uses are quite limited and the Town is largely ordaining State statutory language in this regard. State law defines substantial modifications and requires that smaller projects, such as replacement of antennae on existing towers must be provided for as a permitted use. Law provides fairly broad protections for the siting of new cell towers and limits units of government in establishing fall zones or setbacks. The proposed ordinance language also replicates statutory language that requires project sponsors to engage in an assessment of collocation opportunities within a nearby search ring.

In reviewing the transmitted ordinance, Planning and Zoning Staff observed that the Town's proposed Class 2 co-location section had conflicting statements regarding the required permitting mechanism and one reference indicates that a Conditional Use process would be required for review of the more minor telecommunication improvements (those deemed to be less than a "substantial modification.") Planning and Zoning Staff reached out to the Town Planner and he has indicated that the Town Attorney will be correcting the error and the Town will forward a corrected copy. The change may be as simple as changing the word "conditional" to "permitted."

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved, provided that a corrected copy of the ordinance, as described above, is transmitted to Waukesha County prior to Park and Planning Commission consideration of this matter.** The proposed amendments will make the Town ordinance consistent with State law relative to mobile communication facilities.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning & Zoning Manager

Attachment: Town Ordinance

N:\PRKANDLU\Planning And Zoning\Rezoning\Staff Reports\1861 Text Amendment Bkt.Docx

STATE OF WISCONSIN: TOWN OF BROOKFIELD: WAUKESHA COUNTY

**ORDINANCE REPEALING SECTION 17.02(14)(b)13. AND REPEALING AND RECREATING SECTION 17.15 OF THE ZONING CODE OF THE TOWN OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN**

THE TOWN BOARD OF THE TOWN OF BROOKFIELD, WAUKESHA COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 17.02(14)(b)13. of the Zoning Code of the Town of Brookfield is hereby repealed.

SECTION 2: Section 17.15 of the Zoning Code of the Town of Brookfield is hereby repealed and recreated to read as follows:

**17.15 MOBILE TOWER SITING REGULATIONS**

(1) **PURPOSE.** The purpose of this ordinance is to regulate by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

(2) **AUTHORITY.** The town board has the specific authority under §§ 62.23 and 66.0404, Wis. Stats., to adopt and enforce this ordinance.

(3) **DEFINITIONS.** All definitions contained in § 66.0404(1), Wis. Stats., as the same currently exist or as the same may be amended hereafter, are hereby incorporated by reference.

(4) **SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES.**

(a) APPLICATION PROCESS.

1. A town zoning permit is required for the siting and construction of any new mobile service support structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the town planner. The application must contain the following information:

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A. The name and business address of, and the contact individual for, the applicant.

B. The location of the proposed or affected support structure.

C. The location of the proposed mobile service facility.

D. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

E. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

F. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

3. A permit application will be provided by the town upon request to any applicant.

4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

5. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:

A. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.

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- B. Make a final decision whether to approve or disapprove the application.
- C. Notify the applicant, in writing, of its final decision.
- D. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.F.

7. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.

8. The fee for the permit is \$3,000.

**(5) CLASS 1 COLLOCATION.**

**(a) APPLICATION PROCESS**

1. A town zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the town planner. The application must contain the following information:

A. The name and business address of, and the contact individual for, the applicant.

B. The location of the proposed or affected support structure.

C. The location of the proposed mobile service facility.

D. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

E. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters,

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receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

F. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

3. A permit application will be provided by the town upon request to any applicant.
4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
5. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:
  - A. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
  - B. Make a final decision whether to approve or disapprove the application.
  - C. Notify the applicant, in writing, of its final decision.
  - D. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.F.
7. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.

(6) CLASS 2 COLLOCATION.

(a) APPLICATION PROCESS.

1. A town zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the town obtainable with this permit.
2. A written permit application must be completed by any applicant and submitted to the town planner. The application must contain the following information:
  - A. The name and business address of, and the contact individual for, the applicant.
  - B. The location of the proposed or affected support structure.
  - C. The location of the proposed mobile service facility.
3. A permit application will be provided by the town upon request to any applicant.
4. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.
5. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If any of the required information is not in the application, the town shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
6. Within 45 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 45 day period:
  - A. Make a final decision whether to approve or disapprove the application.
  - B. Notify the applicant, in writing, of its final decision.
  - C. If the application is approved, issue the applicant the relevant permit.
  - D. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
7. The fee for the permit is \$500.

(7) **PENALTY PROVISIONS.** Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$100 nor more than \$500, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.

(8) **SEVERABILITY.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3: All ordinances or parts of this ordinance conflicting or contravening the provisions of this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect upon passage and posting as provided by law.

Dated this 5<sup>th</sup> day of August, 2017.

**TOWN BOARD, TOWN OF BROOKFIELD,  
WAUKESHA COUNTY, WISCONSIN**

BY: [Signature]  
KEITH HENDERSON, Chairman

BY: [Signature]  
PATRICK STROEBEL, Supervisor

BY: [Signature]  
TERRY HEIDMANN, Supervisor

BY: [Signature]  
JOHN R. SCHATZMAN, SR.  
Supervisor

BY: [Signature]  
RYAN STANELLE, Supervisor

ATTEST: [Signature]  
ELISA M. CARPOZZO, Clerk

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