



**CITY COUNCIL STUDY SESSION DRAFT MINUTES
Monday, October 17, 2022**

HELD HYBRID - Council and some City Staff will be live in the Council Chambers, 1175 E. Main Street. Citizens and presenters will be joining via zoom

View on Channel 9 or Channels 180 and 181 (for Charter Communications customers) or live stream via rvtv.sou.edu select RVTV Prime.

Written and oral testimony will be accepted for public input. For written testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony. For oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder. The deadline for submitting written testimony or speaker request forms will be at 10 a.m. on the day of the Study Session meeting and must comply with Council Rules to be accepted.

Mayor Akins called the Study Session to order at 5:30 PM.

Councilors' Hyatt, Graham, Moran, Seffinger, DuQuenne and Jensen were present.

1. Public Input (15 minutes, maximum)

None.

2. Update on City Council/City Manager Authority Respecting Park Commission

City Manager Joe Lessard gave a brief Staff Report.

City Attorney Doug McGeary gave a brief Staff Report.

Councilor Hyatt spoke to the importance of transparency.

Council discussed the form of Government and authority and responsibilities.

Moran spoke that if he knew then what he knows now about the legalities in the MOUs he would not have voted to put this on the ballot. He spoke in agreement with Hyatt regarding the importance of transparency.

Moran questioned why this item is so important to put on the ballot. City Manager Joe Lessard spoke that the language in the Charter needs definition to clarify what the City Managers authority is.

Council discussed the importance of hearing from the citizens.

Public Input:

Parks Commissioner Rick Landt read a statement into the record regarding the proposed resolution (*see attached*).

3. Telecommunications Ordinance Updates for Small Wireless Facilities (5G) (*see attached*)

Kelly Marcotulli introduced Odette Wilkins.

Ms. Odette spoke via zoom regarding 5G.

She spoke regarding the dangers of cell towers.

A video was displayed regarding this issue.

Council and Staff discussed options.

Professor William P. Johnson joined the meeting via zoom. Professor Johnson spoke regarding hosting cellular communications and the capacity to do so. Professor Johnson discussed 5G.

It was decided to discuss this item at the Council Business Meeting tomorrow night October 18, 2022, to give Staff direction.

4. Look Ahead

Due to time constraints this was not discussed.

5. Adjournment

The Study Session was adjourned at 7:30 PM

Respectfully submitted by:

City Recorder Melissa Huhtala

Attest:

Mayor Akins

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

Good evening Mayor Akins & City Councilors

Please don't let my silence related to staff's opinions infer agreement. This is just not the forum for that discussion. I would like to talk about the resolution... (didn't write down the end of this sentence that was from my handwritten notes).

Discussing the 2014 Memorandum of Understanding between the City and Ashland Parks & Recreation Commission at tonight's study session agenda appears pretty **benign**. But the fact that there is a follow-up resolution on tomorrow's regular meeting agenda that could be voted on, and that if passed would eliminate all APRC related MOU's, make the City Manager the administrator of APRC staff and open the way for City Council and the City Manager to totally restructure APRC is not **benign**.

Does the City Council really believe that four-day notice to the public, buried in a 38-page staff report, is adequate public airing before making a decision that would undo over one hundred years of Ashland park management? And by the way, management that has resulted in a world class small city park and recreation system.

This resolution is coming before Council tomorrow, three weeks before voters are being asked to decide on ballot measure 15-210 that addresses the same issue. Why not hear from the voters first? The resolution was written with zero input from APRC Commissioners, the affected elected body. Do Councilors believe that obtaining input tonight from APRC Commissioners who only two days ago found out about the resolution, is really sufficient?

The fact that this resolution is even going to be on the agenda for a possible decision by CC tomorrow demonstrates a lack of respect for APRC Commissioners and doesn't wait to listen to the voice of the people.

Like measure 15-210 that has a confusing explanation in the Voters' Pamphlet and was hurriedly put in front of the voters, this resolution also appears to be rushed forward for reasons that escape me. Slow down. Involve elected APRC Commissioners in a meaningful way. Let's find solutions that are less divisive and more attuned to the unique and valuable culture of our small City.

Thank you

Odette J. Wilkens
President & General Counsel
Wired Broadband, Inc.
Presentation to Ashland City Council
October 19, 2022

Presentation to the City Council of Ashland, Oregon

October 19, 2022

I am Odette Wilkens, President & General Counsel of Wired Broadband, Inc., a non-profit, located in New York City. I am a technology attorney, practicing for over 20 years in drafting and negotiating technology agreements representing some of the largest multi-national corporations in entertainment, finance and technology.

I'm happy to share my thoughts on the subject of your wireless ordinance.

Disclaimer: The information that I'm providing tonight including videos should not be construed as legal advice. This is for informational purposes only.

I'm happy to discuss any questions with you or your attorney after the presentation.

We are considering the currently drafted ordinance for the placement of wireless facilities in Ashland. There has been misinformation that the hands of local govts, zoning boards and land use boards, are tied by the Telecommunications Act of 1996 (TCA) and the Federal Communications Commission (FCC). That is false. This ordinance is supposed to protect the City Council, zoning boards, land use boards; it does not. This is an industry-oriented document favorable to the industry but not to you or your residents.

The TCA has explicitly given local government the power to determine the number and placement of cell towers in subparagraph (a) of the TCA, but this ordinance strips you, the city council, your zoning board, your land use board of substantial authority. Why would you want to give that authority away to the telecom carriers and site developers? That would allow them to place cell towers and 5G antennas wherever they want, e.g., 8' away from your window or your child's bedroom.

In that context, I'd like to show you a video of Mr. Andrew Campanelli. He has been a litigator for 30 years and has represented local governments and others in cases, including zoning cases, dealing with the TCA against telecom carriers and site developers. He has won about 80% of his cases. Generally, Mr. Campanelli has handled over 7,000 cases, and he has litigated over 1,000 cases to conclusion. He is admitted to most of the federal circuits.

How to Control the Placement of Cell Towers

https://www.youtube.com/watch?v=D2z-ab5Ks_8

0:00 – 4:45

Local government needs to exercise jurisdiction by enacting protective ordinances that preserve their authority given to them under the TCA. There are several restrictions placed on local government, but they are simply procedural, e.g., not to discriminate b/w carriers and if denying a permit to install a cell tower that there be substantial evidence in the record. Simple. For example,

- Indicating that aesthetics and property values be preserved
- That cell towers and small cells can only be placed in certain commercial zones, not residential, medical or school zones
- Certain setback requirements
- Requirements that they comply with fire codes, electrical codes – these cell towers and 5G small cells are essentially electrical installations ; e.g., the Woolsey Fire in CA in 2018, the worst fire in CA history, was caused by a faulty lashing wire from telecom equipment, and caused \$6 bil worth of damage¹
- Requirements that there be a significant gap in service (not just one dropped call) and that they are using the least intrusive means possible to fill that gap. Most federal courts require the 2-pronged approach, but, nonetheless, it needs to be stated in your ordinance and the procedures that carriers and site developers have to follow, and some federal courts require that it be explicitly stated in the ordinance.

As long as the zoning boards, city council and other government bodies comply with that procedure, federal judges tend to support them. E.g. in July this year, Extenet was suing the Village of Flower Hill in New York because its cell tower application was denied.² In the TCA there is a provision that prohibits local governments from engaging in an effective prohibition in providing telecom services. Extenet claimed an effective prohibition because the Village denied their application. A senior federal district court judge in NY disagreed. First, the burden of proof to show an effective prohibition fell on Extenet and it failed to meet that burden. Second, the burden to prove effective prohibition is to show a significant gap in phone service (not just one dropped call) and they are using the least intrusive means to fill that gap. They

¹ Faulty telecom lashing wire was described to have caused the Woolsey Fire in CA, described as “the deadliest and most destructive fire in California history,” encompassing 96,949 acres or 151.5 square miles, with 1,643 structures destroyed and three deaths. Over \$6 billion in damages was inflicted before the fire was finally extinguished. “SCE [Southern California Edison] and the telecom [undisclosed] that owned the lashing wire have shared responsibility for the Woolsey inferno.” City of Los Angeles, After Action Review of the Woolsey Fire Incident, Citigate Associates, LLC, Nov. 17, 2019, at 4, <http://file.lacounty.gov/SDSInter/bos/supdocs/144968.pdf>.

² Extenet Systems, Inc. v. Village of Flower Hill, 2022 WL 3019650.

failed to meet their burden of proof. The court underscored that while new wireless technology may provide greater capacity and speed, their installation is not protected nor preempted by the TCA. The court ruled that under the TCA local governments have authority over the number and placement of wireless facilities.³

Mr. Campanelli refers to FCC compliance reports that are included with the applications; however, he found that about 90% of the time when he has received these reports, they were false.

Computer-generated propagation maps are used by industry that purport to show gaps in phone service. The FCC Enforcement Bureau found them to be inaccurate; the accuracy rate ranged at best 64.3% and at worst 16.2%. FCC field agents performed drive tests across 12 states, driving more than 10,000 miles, and conducting 24,649 tests. They performed an additional 5,916 stationary speed tests at 42 locations in 9 states. During the investigation, requests for information and subpoenas were sent to the carriers. The report summarizes the results in the "Introduction" section, paragraphs nos. 2 through 4. As a result, FCC staff has recommended that the FCC no longer accept computer-generated propagation maps, without actual drive-test data to back them up, and also recommended that penalties be associated with propagation map filings that violate federal law. "FCC Mobility Fund Phase II, Coverage Maps Investigation, Staff Report," GN Docket No. 19-367⁴

You need an expert attorney in federal regulatory law, since this area is highly procedural and a general practice or municipal attorney, even as expert as he/she is in their own areas, is ill-equipped to draft a wireless ordinance that will protect your authority or protect the residents in your city.

Even though the FCC emission limits have been referred to as safety limits, they are not. FCC does not purport to be a health agency.

³ See 47 U.S.C. §332(c)(7)(A) entitled "general authority" shows how Congress has preserved to state and local governments the general authority to regulate the siting, placement, construction and maintenance of wireless facilities (cell towers, small cells, etc.) within their respective jurisdictions.

⁴ "... the Commission launched an *investigation* into whether one or more major mobile providers violated the requirements of the one-time collection of coverage data ... Commission staff initially requested information directly from several providers in order to understand providers' mapping processes, and later *issued subpoenas to Verizon and U.S. Cellular.*" One of the recommendations was that "the Commission should release an Enforcement Advisory on broadband deployment data submissions, including *a detailing of the penalties associated with filings that violate federal law* ... Providers should be required to submit actual on-the-ground evidence of network performance (e.g., speed test measurement samplings, including targeted drive test and stationary test data) that validate the propagation model used to generate the coverage maps."
<https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>.

47 CFR § 1.1307 – This section which reflects FCC emission limits, refers to MPELs – maximum permissible emission limits – and is supposed to deal with actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

The DC Circuit Court of Appeals in 2021 discredited the FCC wireless emission limits, which date back to 1996, for failing to take into account 11,000 pages of scientific studies of biological harm well below the FCC limits, especially with respect to children, and the numerous personal accounts of personal injury.⁵ Would you fly a plane whose safety limits have not been updated since 1996?

5G deployment has been touted to bridge the digital divide. However, it has been reported by the US Government Accountability Office that 5G deployment is likely to exacerbate disparities in accessing telecommunications services⁶

What I’ve just mentioned are general considerations. Now I’d like to address specific deficiencies in the draft ordinance. This addresses certain provisions, but not all provisions, in the draft ordinance.

1. 13.02.010 Definitions:
 - a. “Encroachment.” “Area in a public right-of-way, public easement or public property that is being encroached upon by a private individual.”
 - i. Shouldn’t this instead refer to a person? A person is defined as: “Individual, corporation, association, firm, partnership, joint stock company, and similar entities.” Wouldn’t the applicant be a “person” rather than a “private individual?”
2. 13.02.110 Liability
 - a. Indemnity: I do not see an indemnity against personal injury from wireless radiation.
 - b. 13.02.110 Liability
 - i. “The permittee, and owner of the benefitted property if different than the permittee, shall be liable to any person who is injured or otherwise

⁵ Environmental Health Trust, et al v FCC, Aug 13, 2021; [https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFD7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFD7/$file/20-1025-1910111.pdf); see also, <https://ehtrust.org/in-historic-decision-federal-court-finds-fcc-failed-to-explain-why-it-ignored-scientific-evidence-showing-harm-from-wireless-radiation/>; Factsheet: FCC’s Lack of Review for Wireless Radiation Exposure Limits, <https://ehtrust.org/wp-content/uploads/EHT-et-al.-v.-FCC-Factsheet-EHTRUST.org-1-1.pdf>.

⁶ US Government Accountability Office 2020 Report “FCC Needs Comprehensive Strategic Planning to Guide Its Efforts,” <https://www.gao.gov/products/gao-20-468> (p.3). Full report <https://www.gao.gov/assets/gao-20-468.pdf> (p.14).

- suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the City of Ashland, its officers, agents and employees, for any judgment or expense incurred or paid by the City, its officers, agents and employees, by reason of the existence of an approved encroachment.”
- ii. Should indemnify and place the city or residents in the same place where they were prior to the injury.
 - iii. The liability obligation is only as good as the insurance that the developer or carrier has (see 13.02.060 below).
- c. 13.02.060 Standards and Conditions
- i. (B) Conditions: “When the Public Works Director determines that allowing the requested encroachment may subject the City to potential liability, a condition of permit issuance shall be the filing with the City Risk Manager of a policy of insurance ...”
 - 1. Insurance should be part of every application, not subject to the individual discretion of a Public Works Director.
 - ii. Standard insurance carries a pollution exclusion for personal injury from wireless radiation; you would need an explicit endorsement signed by the insurance company waiving that exclusion; the coverage should be subject to the full aggregate limits of liability.
 - iii. Limits of liability – determined by OR Torts Claims Act for bodily injury – could not find what the limits are for bodily injury (basically is protecting the state of OR from torts)
 - a. Should be very high – at least \$10mil in the aggregate for each yearly policy term.
 - iv. Major insurance companies will usually not insure for personal injury from wireless radiation.⁷
 - v. The telecom industry refers to wireless radiation as a pollutant. In their mobile device insurance protection manuals, there is a disclaimer for personal injury for electro-magnetic radiation (another name for wireless radiation).⁸
 - vi. The telecom industry also warns their investors in their SEC annual reports that there may be substantial litigation on claims of personal

⁷ “Electromagnetic Field Insurance Policy Exclusions are the Standard,” <https://ehtrust.org/key-issues/electromagnetic-field-insurance-policy-exclusions/>,

⁸ “Welcome to AT&T Multi-Device Protection Pack,” <https://ehtrust.org/wp-content/uploads/ATT-Multi-Device-Protection-Pack-Insurance.pdf>,

“Sprint Complete for Smart Devices, Tier1-2, Terms and Conditions,” <https://ehtrust.org/wp-content/uploads/Sprint-Insurance-Terms-and-Conditions-Downloaded-2019.pdf>.

- injury from wireless radiation which may have a substantial financial impact.⁹
- vii. A substantial scientific report commissioned by one of the top telecom carriers in 2000 confirmed significant biological hazards from wireless radiation, even before 3G, 4G or 5G, and even below the allowable limits: tumors of the central nervous system, higher risks for certain types of leukemia, testicular cancer, debilitation of the immune system, cognitive function impairment, and symptoms of sleep disturbances, headaches and hormone disruption.¹⁰
 - d. Under Chapter 138 of the Oregon Laws of 2019, it states the importance of protecting the state’s environment from pollution, especially from lax federal environmental protection laws.¹¹
 - e. Last year, the FCC’s emission limits were discredited by the DC Circuit Ct of Appeals. Those limits date back to 1996. The Court remanded those limits back to the FCC in light of 11,000 pages of scientific studies showing biological harm, including to children, and personal accounts of harm.
3. 13.02.300 Stds for Small Wireless Facilities in the ROW:
- a. “The city will adopt additional specific design guidelines periodically for Small Wireless Facilities by resolution to remain responsive to changing laws and technology.”
 - i. “Will” makes this the City’s affirmative obligation. This gives carte blanche to the telecom carriers and site developers to add whatever provisions they want to this contract and make it binding on you without your review or approval. They have complete control to change this ordinance at their whim.
 - ii. There should be no obligation for the City to adopt whatever is provided to it by telecom. Telecom may make proposals and their implementation should be subject to the City’s approval.
4. 13.02.301(D) Routine Maintenance and Replacement “Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW.”
- a. This is not required by the TCA, not feasible and is onerous to the City.

⁹ Verizon Communications, Inc., SEC Form 10-K Annual Report, Dec. 31, 2021, at 19, states: “In addition, our wireless business also faces personal injury and wrongful death lawsuits relating **to alleged health effects of wireless phones or radio frequency transmitters**. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements,” [emphasis added].

¹⁰ Mobile Telecommunications and Health/Review of the current scientific research, ECOLOG Institut, Hannover, April 2000, available at <https://docs.google.com/document/d/1Rd2c900GURf9YYQY-L2MHAFDYGIeT2R1tyMZYQhZTEA/edit>.

¹¹ https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2019orlaw0138.pdf

5. 13.02.301(E) Annual random inspections to determine if the wireless facilities comply with FCC limits is good. However, there should be added that in the case that the City deems it necessary, at their sole discretion, can do other unannounced tests w/n a year, also paid for by permittee.
6. 13.02.301(F) Non-material updates to application. All updates should be subject to approval by the City. The City should determine if it's non-material, not the carrier or site developer.
7. 13.02.303(A)- "must process all applications on a nondiscriminatory basis" and then lists the conditions under which the City can deny an application. The quoted phrase is not necessary because it is already stated in the TCA. The purpose of including it here may be to create a litigable point by the carriers, to the City's detriment. They should not have any more rights than given to them under federal law.
8. 13.02.303(A)(4): where an application fails to comply with "applicable" codes, add "including, without limitation, building and electrical codes, and any other codes, rules, or laws that the city determines is applicable." (Remember the Woolsey Fires in CA.) "Applicable" becomes a litigable point unless it is the City which determines it to be applicable.
9. 13.02.303(B): shot clock and providing reasons for denial of an application w/n 5 days after denial or before the end of the shot clock, whichever comes first. Why don't you want to give yourself more time? The last part should read: "whichever comes later."
10. 13.02.303(C): Historic district: limits rights to contest aesthetics by providing what constitutes aesthetics (what if there are different aesthetics considerations in the future; that should be at the complete discretion of the City within the parameters of the Portland decision in the footnote); this is one of the most important rights you have, especially in the 9th Circuit, to contest an application.¹² The City should preserve its rights and not have a provision that pre-determines what aesthetics means.

¹² City of Portland, et al v. FCC, <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>; "... provision dealing with the authority of local governments in the area of aesthetic regulations. The panel held that to the extent that provision required small cell facilities to be treated in the same manner as other types of communications services, the regulation was contrary to the congressional directive that allowed different regulatory treatment among types of providers, so long as such treatment did not "unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(c)(7)(B)(i)(I). The panel also held that the FCC's requirement that all aesthetic criteria must be "objective" lacked a reasoned explanation." (p.20) "Because there were differences among providers, those who crafted Section 332(c) sought to preserve state and local governments' "flexibility to treat facilities that create different . . . aesthetic. . . concerns differently, . . . even if those facilities provide functionally equivalent services." S. Rep. No. 104-230, at 209 (1996) (Conf. Rep.)." (p.46) "In sum, the requirement that aesthetic regulations be "no more burdensome" than those imposed on other technologies is not consistent with the more lenient statutory standard that regulations not "unreasonably discriminate." The requirement that local aesthetic regulations be "objective" is neither adequately defined nor its purpose adequately explained. On its face, it preempts too broadly. We therefore hold those provisions of Paragraph 86 of the Small Cell Order must be vacated." (p.52)

11. 13.02.309(C) Emergency Removal or Relocation – doesn't state when the site developer has to act by – no time limit. Can add: "if practicable" the City will promptly notify the carrier or site developer.
12. 13.02.070 – Ministerial authority: provides for rubber stamping w/o public discussion or due process and makes the land use code no longer applicable. Why is there a need for this provision?
13. Whereas clause at the beginning of the draft ordinance: "Whereas, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the rights of way." Why include? The City is not servicing the wireless industry; it's the wireless industry that must service the City.

The biggest failure is the failure of local governments to enact ordinances that preserve the powers given to them by the federal government. You should see this as an opportunity not to contract your powers but to expand your powers within the authority explicitly reserved to you by the United States Congress under the TCA. Mr. Andrew Campanelli has advised many in local government and has drafted protective ordinances on the placement of cell towers in local communities. Hire an attorney who is an expert in these matters and who will preserve your authority as intended by Congress under the TCA.

I am available to answer any questions. I have also included an epilogue to my presentation with further information.

Thank you.

Odette J. Wilkens
President & General Counsel
Wired Broadband, Inc.
P.O. Box 705401
Forest Hills, NY 11375
www.wiredbroadband.org
owilkens@wiredbroadband.org
646.939.6855

Epilogue and Disclosure:

I believe I heard Mr. McGeary mention that Prof. Johnson was being paid on an hourly basis to present to the Ashland City Council.

I gave my presentation to the Ashland City Council on a pro bono basis, without monetary compensation.

There are several points made by Prof. Johnson which I'd like to address:

1. Prof. Johnson mentioned that telecom has the "right to build out their network." That is not correct. There needs to be a significant gap in service. If people can make a call, then telecom has no right to build out their network and the City is not preempted under the TCA. See the Flower Hill decision above. Although the Flower Hill decision applies to New York and is not precedential in Oregon, it is federal persuasive authority.
2. Prof. Johnson referred to the need for greater capacity. Again, if you can make a call, there is no need for additional telecom services. The Flower Hill federal court underscored that while new wireless technology may provide greater capacity and speed, their installation is not protected nor preempted by the TCA.

Some additional information:

Please also see the white paper co-authored by Susan Foster and me which is being provided and goes into greater depth about the adverse health effects of wireless radiation (see pp. 7-13). The white paper was submitted to the FCC in May, 2022.

The International Commission on the Biological Effects of Electromagnetic Fields (ICBE-EMF) just published a report that the FCC limits are not protective of health.¹³

The FCC admitted in 2019 that some low-level RF radiation (below their emission limits) can cause instantaneous, non-thermal adverse effects with RF radiation frequencies ranging between 3 KHz and 10 MHz.¹⁴ The FCC noted that "[a]dverse neural stimulation

¹³ Scientific evidence invalidates health assumptions underlying the FCC and ICNIRP exposure limit determinations for radiofrequency radiation: implications for 5G

https://icbe-emf.org/wp-content/uploads/2022/10/ICBE-EMF-paper-12940_2022_900_OnlinePDF_Patched-1.pdf

¹⁴ Proposed Changes in the Commission's Rule Regarding Human Exposure to Radiofrequency Electromagnetic Fields, 34 FCC Rcd 11687, 11743-11745, ¶¶122- 124 & nn. 322-335 (2019); see also, Brief of Children's Health Defense, and Building Biology Institute, et al as Amici Curiae in Support of Appellees/Cross-Appellants

effects...include acute effects such as perception of tingling, shock, pain, or altered behavior due to excitation of tissue in the body's peripheral nervous system." 34 FCC Rcd at 11743-11744, ¶122 n.328.¹⁵

Ashland's Conditional Use Permit

Ashland's conditional use permit process already requires the protection of air quality, operation and aesthetic design which requirements appear to be more protective than your draft wireless ordinance. Here are some relevant excerpts:

18.5.4.050 Approval Criteria

A. Approval Criteria. A Conditional Use Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.

- d. Air quality, including the generation of dust, odors, or other environmental pollutants.
- e. Generation of noise, light, and glare.

B. Conditions of Approval. The approval authority may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, one or more of the following.

1. Limiting the hours, days, place, and/or manner of operation.
2. Specifying the period of time within which the proposed use shall be developed.
3. Limiting the duration of use.
4. Requiring site or architectural design features that minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust, in addition to the requirements of part 18.4 Site Development and Design Standards.
5. Requiring larger setback areas, and/or building separation.
6. Requiring architectural design features such as building materials, textures, colors, and architectural features that address architectural compatibility with the impact area.

"Customers," Sept 14, 2021, at 18-19, <https://childrenshealthdefense.org/wp-content/uploads/Brief-and-Addendum-Submitted-9-14.pdf>.

¹⁵ Id.

Fiber Optics:

As the Mayor mentioned, Ashland already has fiber to the premises. That is the most advanced telecom technology available, and it is locally-owned, with the city managing the telecom infrastructure and the ability to lease to local ISPs to provide your community with more choices.

You're in good company. Former FCC Chair Tom Wheeler called fiber "future proof," and said that wireless should be used only as a last resort, not a first resort, in his March, 2021 Congressional testimony.¹⁶ Wheeler's statements point to the fact that wireless and fiber are not equivalent broadband media –wireless is and should be a complement, not the primary access method.¹⁷ A policy paper of the National Institute for Science, Law and Public Policy, "Re-Inventing Wires: The Future of Landlines and Networks", authored by Timothy Schoechle, PhD, communications technology expert, similarly states that "[f]iber is unmatched in its speed, performance, reliability, etc. ... Wireless is not a substitute for fiber."¹⁸

Fiber optics to and through the premises (FTTP) is the preferred method of providing telecommunications connectivity. "Fiber has a minimal ecological impact, reduces waste, consumes very little energy and helps decrease greenhouse gas emissions."¹⁹ Fiber optics has "[l]ower energy consumption, reduced waste and sustainable architecture, characteristics that make fiber infrastructure an environmentally advantageous choice."²⁰

¹⁶ Tom Wheeler's Testimony to Congress, https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_Wheeler_FC_2021.03.22.pdf.

¹⁷ See, In re Inquiry Concerning Deployment of ATC to All Americans, FCC 20-50, ¶¶10-12, 35 FCC Rcd 8986, 8991 (Apr. 2020) ("Fourteenth Broadband Competition Report") ("...fixed broadband generally delivers faster speeds, permits higher consumption at a lower price, and has far higher data caps,... While users may substitute between mobile and fixed broadband when accessing certain services and applications, the record indicates that they are not yet functional substitutes for all uses and customer groups. Based on the record before us, we again find that fixed broadband and mobile wireless broadband services are not functional substitutes in all cases.") (notes omitted).

¹⁸ "Reinventing Wires: The Future of Landlines and Networks," National Institute for Science, Law and Public Policy, authored by Timothy Schoechle, PhD; <https://electromagnetichealth.org/wp-content/uploads/2018/02/ReInventing-Wires-1-25-18.pdf>.

¹⁹ Fiber Optic Broadband, A Greener Internet Solution, <https://www.otelco.com/a-greener-internet-solution/>.

²⁰ <https://www.cablinginstall.com/cable/fiber/article/16465844/how-fiber-can-help-make-your-network-greener>

FTTP provides the best capacity for remote learning for children and students and more reliable access to medical and other services for the elderly and disabled during emergencies or severe weather when wireless service is more likely to be interrupted.

The Fiber Broadband Association (FBA), the largest fiber optics trade association in the U.S., has as its tagline, ***“If it isn’t fiber, it isn’t broadband.”***²¹ The FBA has shown that consumers prefer the higher symmetrical speeds that fiber provides.²² The FBA also shows the superior technology of fiber in its white paper, “The Market Has Spoken.”²³ The National Telecommunications and Information Administration (“NTIA”) in implementing the Infrastructure and Jobs Act is prioritizing fiber optics over wireless in creating a future-proof technology grid.²⁴

Incidentally, fiber can also be an economic boon.²⁵ For example, Chattanooga, TN used fiber optics to spring into a clean energy economy and create a vibrant workforce, earning it the accolade of “Gig City,” with the fastest broadband network in the U.S. The economic value of its fiber infrastructure over a 10 year period from 2011 to 2020 exceeded \$2.69 billion and 9,516 jobs.²⁶

²¹<https://s3.amazonaws.com/files.fiberbroadband.org/download/3555.4237?AWSAccessKeyId=AKIAIZGD7FMLIYLBZNI&Expires=1650065068&Signature=CfFGHmOkZaAovAfuGmXXs2hDpKo%3D>.

²²https://www.broadbandworldnews.com/document.asp?doc_id=773546.

²³<https://www.fiberbroadband.org/p/cm/ld/fid=978>.

²⁴ *NTIA Official Acknowledges Clear Preference for Fiber in Infrastructure Deployment Program*, June 13, 2022, <https://broadbandbreakfast.com/2022/06/ntia-official-acknowledges-clear-preference-for-fiber-in-infrastructure-deployment-program/>.

²⁵ *How Blazing Internet Speeds Helped Chattanooga Shed its Smokestack Past*, Cnet.com, August 20, 2015, <https://www.cnet.com/tech/services-and-software/how-blazing-internet-speeds-helped-chattanooga-shed-its-smokestack-past/>.

²⁶ “Ten Years of Fiber Optic and Smart Grid Infrastructure in Hamilton County, Tennessee,” Bento J. Lobo, Ph.D., CFA First Tennessee Bank Distinguished Professor of Finance, The University of Tennessee at Chattanooga, August 31, 2020, https://www.researchgate.net/publication/352221978_Ten_Years_of_Fiber_Optic_and_Smart_Grid_Infrastructure_in_Hamilton_County_Tennessee;

See also, *How Blazing Internet Speeds Helped Chattanooga Shed its Smokestack Past*, Cnet.com, August 20, 2015, <https://www.cnet.com/tech/services-and-software/how-blazing-internet-speeds-helped-chattanooga-shed-its-smokestack-past/>; *Chattanooga Mayor Pushes Back on 5G as Smart Cities Cure All*, MeriTalk, February 13, 2019, <https://www.meritalkslg.com/articles/chattanooga-mayor-pushes-back-on-5g-as-smart-cities-cure-all/>

See also, for economic benefits of fiber deployment, *In Kansas, Rural Chanute Built Its Own Gigabit Fiber and Wireless Network*,” Christopher Mitchell 10-2-21, <https://ilsr.org/chanute-rural-gigabit/>; and <https://www.soar-ky.org/prtc/>.