

#38

Dick Lilly
SPU Phone Book Repeal ORD
April 9, 2013
Version #2

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117952

AN ORDINANCE repealing Chapter 6.255, relating to the distribution of yellow pages phone books, and amending Section 6.202.280 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Chapter 6.255 of the Seattle Municipal Code, last amended by Ordinance 124056, is repealed as follows:

~~((6.255.010 Purpose.~~

~~The purpose of this chapter is to establish a yellow pages phone book distributor license for persons engaged in the business of distributing yellow pages phone books in the City, to require such licensees to provide the City with timely and accurate data on the quantities of yellow pages phone books they distribute in the City, to impose a recovery fee on the distribution of yellow pages phone books in the City, to establish a registry for residents and businesses to opt out of receiving yellow pages phone books, and to require licensees to refrain from distributing yellow pages phone books to residents and businesses who have notified the registry that they do not want to receive yellow pages phone books.~~

~~6.255.025 Definitions.~~



1 For purposes of this chapter:

2 A. ~~"Display advertising" means business advertising that includes text and/or various~~
3 ~~graphic elements exceeding the use of bold face type and color highlighting of the~~
4 ~~business name and telephone number.~~

5 B. ~~"Distribution" means the unsolicited delivery of more than four tons annually of~~
6 ~~yellow pages phone books to the addresses of residents and businesses within the~~
7 ~~City, but does not include the delivery of yellow pages phone books by~~
8 ~~membership organizations to their members or to other residents or businesses~~
9 ~~requesting or expressly accepting delivery.~~

10 C. ~~"Membership organization" means an organization that is organized and operated~~
11 ~~primarily or exclusively for the purpose of providing services or benefits to a~~
12 ~~designated group of members (identified, for example, by having to pay~~
13 ~~membership dues or participating in membership events).~~

14 D. ~~"Distributor" means a person or organization engaged in the business of arranging~~
15 ~~for the distribution of yellow pages phone books in the City; the term is intended~~
16 ~~to cover those persons or organizations who are primarily responsible for~~
17 ~~arranging for the publication and distribution of the yellow pages phone books~~
18 ~~and whose income is derived, at least in part, from the advertising contained in the~~
19 ~~yellow pages phone books. The term "distributor" is not intended to include those~~
20 ~~individuals whose role in the distribution of yellow pages phone books in the City~~
21 ~~is limited to driving the streets and making physical delivery of the yellow pages~~
22 ~~phone books.~~



1 ~~E. "Yellow pages phone book" means a publication that consists primarily of a~~
2 ~~listing of business names and telephone numbers and contains display advertising~~
3 ~~for at least some of those businesses (commonly, but not necessarily, printed on~~
4 ~~yellow paper).~~

5
6 ~~6.255.030 License Required.~~

7
8 ~~A. Commencing April 1, 2011, it shall be unlawful for any person to engage in~~
9 ~~business as a distributor of yellow pages phone books in the City without first~~
10 ~~obtaining an annual yellow pages phone book distributor license issued in~~
11 ~~accordance with the provisions of the new license code. The annual license is~~
12 ~~required regardless of where publication takes place or the location of the~~
13 ~~business's offices, storage or transshipment facilities.~~

14
15 ~~B. The license required pursuant to this chapter is separate from and in addition to~~
16 ~~any license required by any other chapter of the Seattle Municipal Code,~~
17 ~~including but not limited to the business license required pursuant to chapter 5.55~~

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19 ~~6.255.035 License Required, Exceptions.~~

20
21 ~~Local exchange companies whose distribution of phone books in the City is limited to~~
22 ~~only those phone books required by WAC 480-120-251 are not subject to the~~
23 ~~requirements of this chapter.~~



1 ~~6.255.040 License - Expiration Date.~~

2 ~~Yellow pages phone book distributor licenses expire annually on March 31st.~~

3
4 ~~6.255.050 License - Application.~~

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6 ~~Application for the yellow pages phone book distributor license shall be on forms~~
7 ~~specified by the Director, and shall be accompanied by the license fee established by~~
8 ~~section 6.255.060, the annual report form required by section 6.255.080, and any~~
9 ~~recovery fees required by section 6.255.100. Within 20 days of receipt by the Director of~~
10 ~~a complete application for a yellow pages phone book distributor license, the Director~~
11 ~~shall issue or deny the license. If the Director fails to issue or deny the license within the~~
12 ~~20 day period, the license is deemed issued on the last day of the 20 day period.~~

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15 ~~6.255.060 License - Fee.~~

16 ~~The annual license fee for the yellow pages phone book distributor license is One~~
17 ~~Hundred Dollars (\$100.00).~~

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21 ~~6.255.070 License - Not Transferable.~~

22 ~~No license issued pursuant to this chapter shall be transferable unless in accordance with~~
23 ~~the provisions of chapter 6.202.~~



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~~6.255.080 Annual Reports.~~

A. ~~Every person submitting an application for a yellow pages phone book distributor license shall include with the application an accurately completed report form describing the quantities of yellow pages phone books the license applicant distributed within the City during the previous calendar year.~~

B. ~~Every person submitting an application for renewal of an existing license under this chapter shall submit to the City before March 31st an accurately completed report form describing the quantities of yellow pages phone books the license applicant distributed within the City during the previous calendar year. The Director of Seattle Public Utilities shall specify the information to be included in the report form, which must include at a minimum the number and weight of yellow pages phone books distributed.~~

C. ~~Annual report forms shall be provided by the City and distributed to all existing licensees in conjunction with applications for license renewals.~~

D. ~~Failure to submit a complete and accurate annual report form shall be grounds for the denial of a license application.~~

E. ~~Failure to submit a complete and accurate annual report form and the submission of a materially inaccurate annual report form are each violations of this chapter.~~



1 ~~6.255.090 Opt-Out Registry.~~

2 A. ~~The Director of Seattle Public Utilities is authorized and directed to establish the~~
3 ~~City's Opt-Out Registry to serve as a clearinghouse for residents and businesses to~~
4 ~~register and indicate their desire not to receive delivery of some or all yellow~~
5 ~~pages phone books. The registry shall maintain a list of the addresses of all~~
6 ~~residents and businesses who have indicated their desire not to receive delivery of~~
7 ~~yellow pages phone books. The registry shall be conveniently accessible to all~~
8 ~~residents and businesses and provide for notification by mail, telephone, email,~~
9 ~~and online registration. The addresses of those residents and businesses who have~~
10 ~~registered with the City's Opt-Out Registry indicating their desire not to receive~~
11 ~~delivery of yellow pages phone books shall remain on the registry until such time~~
12 ~~as the resident or business moves or notifies the registry of their desire to be~~
13 ~~removed.~~

14 B. ~~The Director of Seattle Public Utilities or designee shall make available to all~~
15 ~~licensed distributors the addresses of all residents and businesses who have~~
16 ~~registered with the City's Opt-Out Registry indicating their desire not to receive~~
17 ~~delivery of yellow pages phone books. Licensed distributors shall provide the~~
18 ~~City's Opt-Out Registry with accurate and current contact information, including~~
19 ~~address and phone number, and shall provide the City's Opt-Out Registry on a~~
20 ~~routine basis with the addresses of all residents and businesses who have notified~~



1 ~~the distributor directly of their desire not to receive delivery of yellow pages~~
2 ~~phone books.~~

3 ~~C. — No more than 30 days prior to distributing any yellow pages phone books within~~
4 ~~the City, distributors shall download the addresses of those residents and~~
5 ~~businesses who have registered with the City's Opt Out Registry indicating their~~
6 ~~desire not to receive delivery of yellow pages phone books.~~

7 ~~D. — Distributors shall not make delivery of yellow pages phone books to the address~~
8 ~~of any resident or business who registered with the City's Opt Out Registry, prior~~
9 ~~to 30 days before the date of delivery, indicating their desire not to receive~~
10 ~~delivery of yellow pages phone books.~~

11 ~~E. — The Director of Seattle Public Utilities is directed to issue an annual report to the~~
12 ~~City Council in 2011, 2012, and 2013, evaluating the operation and impact of the~~
13 ~~City's Opt Out Registry. The Director will identify needed improvements,~~
14 ~~concerns expressed by residents or businesses, and make recommendations for~~
15 ~~changing or enhancing the program.~~

16 ~~6.255.100 Recovery Fee.~~

17 ~~A. — A recovery fee is hereby imposed on the distribution of yellow pages phone books~~
18 ~~within the City to be calculated as follows: \$0.27 for each yellow pages phone~~
19 ~~book distributed within the City. The recovery fee is intended to reflect the cost to~~
20 ~~the City of administering the Opt Out Registry. The Director of Seattle Public~~
21 ~~Utilities is directed to issue an annual report to the City Council in 2011, 2012, and 2013,~~
22 ~~evaluating the operation and impact of the City's Opt Out Registry. The Director will~~
23 ~~identify needed improvements, concerns expressed by residents or businesses, and make~~
24 ~~recommendations for changing or enhancing the program.~~



1 Utilities may recommend adjustments to the recovery fee as part of the
2 development of adjustments to the solid waste rates.

3 ~~B. Annually and as otherwise may be required by the Director, based on the~~
4 ~~quantities reported under section 6.255.080, distributors shall report and remit~~
5 ~~payment of the recovery fees imposed under this section to the Director.~~

6 ~~Payments shall be reported on forms prescribed by the Director. The form shall be~~
7 ~~signed by a responsible officer or agent of the distributor. The individual signing~~
8 ~~the form shall swear or affirm that the information in the form is true and correct.~~

9
10 ~~C. City revenue generated from the recovery fee imposed under this section shall be~~
11 ~~deposited in the Solid Waste Fund.~~

12
13 ~~6.255.110 Distribution Requirements.~~

14
15 ~~A. Distributors shall prominently and conspicuously display on a portion of the front~~
16 ~~cover of each yellow pages phone book distributed within the City the telephone~~
17 ~~number, website and mailing address, in a format specified by the Director of~~
18 ~~Seattle Public Utilities, that residents and businesses may use to notify the City's~~
19 ~~Opt-Out Registry of their desire not to receive delivery of yellow pages phone~~
20 ~~books.~~

21
22 ~~B. Distributors shall also prominently and conspicuously display on their websites a~~
23 ~~link to the City's Opt-Out Registry together with information regarding the~~
24 ~~process for residents and businesses to opt-out of receiving delivery of yellow~~
25 ~~pages phone books.~~



1 C. ~~Distributors shall retain the list of opt-out addresses from the City opt-out registry~~
2 ~~that was used at the time of delivery. This list shall be made available to the~~
3 ~~Director upon request for purposes of investigation or appeal.~~

4 D. ~~The content of all yellow pages phone books, and any materials included~~
5 ~~therewith, distributed within the City shall be recyclable.~~

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7 ~~6.255.120 Duty of licensee.~~

8
9 ~~It shall be the duty of all persons licensed under this chapter to comply with all applicable~~
10 ~~provisions of the new license code. Failure of any licensee to do so shall be a violation of~~
11 ~~this chapter.~~

12
13 ~~6.255.130 Denial, Suspension or Revocation.~~

14
15 ~~The Director may deny, suspend or revoke any license issued under this chapter, in~~
16 ~~accordance with the provisions of chapter 6.202. Failure of a licensee to comply with any~~
17 ~~provision of this chapter is sufficient grounds for the denial, suspension or revocation of~~
18 ~~the license. A license suspended or revoked may not be reinstated without prior payment~~
19 ~~of all outstanding fees and penalties.~~

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21 ~~6.255.140 Civil Penalty.~~

22
23 A. ~~Any person who fails to comply with any provision of this chapter shall be subject~~
24 ~~to a maximum civil penalty in the amount of One Hundred Twenty Five Dollars~~
25 ~~(\$125.00) per violation.~~



1 ~~B. The City Attorney is authorized to initiate legal action to enforce this chapter as~~
2 ~~deemed necessary and appropriate.~~

3
4 ~~6.255.150 Severability.~~

5 ~~Should any section, subsection, paragraph, sentence, clause or phrase of this chapter be~~
6 ~~declared unconstitutional or invalid for any reason, such decision shall not affect the~~
7 ~~validity of the remaining portions of this chapter.))~~

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10 Section 2. Section 6.202.280 of the Seattle Municipal Code is amended to read as
11 follows:

12 6.202.280 Continuation of business while complaint hearing decision pending.

13 A. Except in the case of summary suspension or revocation, whenever a timely
14 request for hearing on a complaint is filed, a licensee or an applicant for license
15 renewal may engage in the activity for which the license is required, pending
16 decision by the Hearing Examiner. An applicant not licensed in the preceding
17 license year may not engage in the activity for which the license is required
18 pending decision by the Hearing Examiner.

19
20 B. If the Department denies an adult entertainment license governed by SMC
21 Chapter 6.270 ((~~or a yellow pages phone book distributor license governed by~~
22 ~~SMC Chapter 6.255~~)), and if the license applicant files a notice of appeal with the
23 Hearing Examiner, the Director shall immediately issue the license applicant a
24 temporary license. The temporary license shall authorize the license applicant to
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1 operate an adult entertainment establishment or perform as a manager or
2 entertainer (~~or engage in the business of arranging for the distribution of yellow~~
3 ~~pages phone books~~)), in the same manner as if the license had been granted,
4 pending the Hearing Examiner's decision.

- 5 1. If the Hearing Examiner affirms the Director's license denial, the
6 temporary license shall remain in effect pending a motion for
7 reconsideration before the Hearing Examiner and, in addition (a) if the
8 license applicant does not timely file for judicial review, then only until
9 the expiration of the time allowed to file an application for a writ of
10 review under Chapter 7.16 RCW; or (b) if the license applicant does
11 timely file an application for a writ of review, then only until the court
12 either issues a writ or denies the writ application.
13
14 2. If the Hearing Examiner dismisses the adult entertainment (~~or the yellow~~
15 ~~pages phone book distributor~~) license denial with prejudice, the
16 Department shall immediately issue (~~the appropriate~~) an adult
17 entertainment license.
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19 3. If the Hearing Examiner dismisses the adult entertainment (~~or the yellow~~
20 ~~pages phone book distributor license~~) denial without prejudice, the
21 temporary license shall remain in effect for five (5) additional business
22 days, at the end of which time the Department must either reissue a denial
23 or issue (~~the appropriate~~) an adult entertainment license. If the Director
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1 reissues the denial, then the temporary license will continue in effect
2 according to the procedures set forth in subsection B of this section.

- 3 4. Notwithstanding SMC Section 6.202.210, if a license applicant is issued a
4 temporary license, the license applicant shall pay the fee charged for an
5 adult entertainment license under SMC Section 6.270.060 (~~or the fee~~
6 ~~charged for a yellow pages phone book distributor license under SMC~~
7 ~~Section 6.255.060~~) at the time the applicant receives the temporary
8 license. If the temporary license issued under this subsection is still in
9 effect at the end of a calendar year, then the license applicant must pay the
10 fee charged for an adult entertainment license under SMC Section
11 6.270.060 (~~or the fee charged for a yellow pages phone book distributor~~
12 ~~license under SMC Section 6.255.060~~) for the next calendar year.
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1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4
5 Passed by the City Council the ____ day of _____, 2013, and
6 signed by me in open session in authentication of its passage this
7 ____ day of _____, 2013.

8
9 _____
10 President _____ of the City Council

11
12 Approved by me this ____ day of _____, 2013.

13
14 _____
15 Michael McGinn, Mayor

16
17 Filed by me this ____ day of _____, 2013.

18
19 _____
20 Monica Martinez Simmons, City Clerk

21 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Dick Lilly/615-0706	Craig Stampher/684-0535

Legislation Title:

AN ORDINANCE repealing Chapter 6.255 and amending Section 6.202.280 of the Seattle Municipal Code.

Summary of the Legislation:

This legislation would repeal sections of the Seattle Municipal Code which established the City's phone book opt out program for residents and businesses in 2010.

Background:

The Ninth U.S. Circuit Court of Appeals in *Dex Media West, et. al. vs. City of Seattle* ruled the City's ordinance establishing its yellow pages opt-out program violates the First Amendment rights of yellow pages publishers. The City approved the phone book opt out program via Ordinance 123427 in October 2010.

The ordinance created a \$100 yellow pages publisher regulatory license and allowed the City to collect 14 cents from yellow pages publishers for every yellow pages directory delivered in Seattle. In 2011 and 2012, the three yellow pages publishers delivering in the City paid \$132,703 as a result of their deliveries. After that, with the lawsuit working its way through the federal courts, the publishers stopped paying the delivery fee, though they maintained their licenses. Ordinance 123427 also authorized the City to fine yellow pages publishers \$125 for each delivery to residents and businesses that had opted out. Director's Rule 2011-006 set the threshold for the beginning of fines at 0.5% (one-half of one percent) of on-time properly recorded opt-outs. The companies stayed within this limit and none were fined.

SPU operated the Stop Phone Books opt-out service by contracting with Catalog Choice, a non-profit company offering junk mail and phone book opt-out services on the Internet. Special web pages were set up on SPU's website and Catalog Choice web pages were customized to operate the Seattle program. In 2011, SPU paid Catalog Choice \$140,833 to develop the system and paid \$274,285 for operations in 2011, 2012 and 2013 to April 1.

This contract has been terminated, reducing 2013 expenditures by \$173,994. SPU plans to use these funds to help pay the City's costs for outside counsel and the plaintiff's expenses for the lawsuit.

During the program's two years, yellow pages deliveries fell dramatically as a result of use of the



opt out system by nearly 25% of the city's residents and businesses and one publisher's substantial withdrawal from the market for business reasons as shown on this chart.

Publisher	Copies Delivered		
	2010	2011	2012
Dex	656,908	400,499	262,356
Supermedia	746,306	94,442	96,863
Yellowbook*	299,804	190,581	See note
Total for year	1,703,018	685,522	359,219

Note: Yellowbook rescheduled to 2013; figures also reflect Supermedia withdrawal from most of the Seattle-area market (except parts of North Seattle).

The decrease in directories delivered led SPU to propose an increase in the per book fee to recover the relatively fixed cost of the utility's contract with Catalog Choice. Accordingly, a yellow pages delivery fee of 27 cents per phone book was included in the current rate ordinance. Based on average deliveries of 600,000 yellow pages directories per year, \$162,000 annually was expected in the solid waste fund through the rate period ending March 31, 2017.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.
 See "Other Implications."

Appropriations:
Appropriations Notes:

There are no requested changes to appropriations as a result of this legislation.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Revenue/Reimbursement Notes:

The repeal of yellow pages fees will reduce Solid Waste Fund (45010) revenue by \$162,000 per year through 2016 and by \$40,500 in 2017. This revenue loss is offset by repealing the waste reduction program it would have funded. The net impact is negligible. The repealed program is Activity: N390403 and Program: 70924 – Yellow Pages opt-out Expense.

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
 No.



- b) **What is the financial cost of not implementing the legislation?**
Financial risk would exist from violating the federal court order.
- c) **Does this legislation affect any departments besides the originating department?**
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives**
None. The court has ruled the ordinance establishing the yellow pages opt-out program must be repealed.
- e) **Is a public hearing required for this legislation?**
No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.
- g) **Does this legislation affect a piece of property?**
No.
- h) **Other Issues:**
None.

List attachments to the fiscal note below:

None.



City of Seattle
Office of the Mayor

July 2, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am transmitting the attached proposed Council Bill to repeal sections of the Seattle Municipal Code authorizing the City's on-line yellow pages opt-out service. Ending this service is required in the wake of a recent decision of the Ninth Circuit Court of Appeals invalidating the program on constitutional grounds.

The City approved the program in 2010 and within 18 months, more than 75,000 Seattle households used it to opt out of almost 430,000 phone book deliveries, saving 400 tons of paper annually. Since one yellow pages publisher dropped out of the Seattle market during that period, the total phone book deliveries have decreased and more than 1,000 tons less paper are entering our waste and recycling streams (most are recycled) each year. Those paper savings will continue and may well grow even without our opt-out service. The City has signed a Statement of Principles in an agreement with the Local Search Association (LSA), the yellow pages industry trade group. The agreement commits the LSA to operating a strong, effective on-line opt-out system, and its member companies to honoring all the existing opt-outs that have come through the City's program.

Though Seattle must bring its yellow pages opt-out service to an end, I am pleased that in less than two years, we've set a course in cooperation with industry that will yield a significant and permanent reduction in paper use and a more sustainable future. Thank you for your consideration of this legislation. Should you have questions, please contact Dick Lilly at 20-615-0706.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



