

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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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.