



Association of Directory Publishers



R. Lawrence Angove
President & CEO

September 8, 2010

Hon. Richard Conlin, Council President
Hon. Sally Bagshaw
Hon. Tim Burgess
Hon. Sally J. Clark
Hon. Jean Godden
Hon. Bruce A. Harrell
Hon. Nick Licata
Hon. Mike O'Brien
Hon. Tom Rasmussen
Seattle City Council
PO Box 34025
Seattle, WA 98124-4025

Re: Proposed Ordinance to Regulate and Restrict the Availability of
Classified (Yellow Pages) Telephone Directories

Dear Council Members:

The Association of Directory Publishers (ADP) respectfully submits this letter to express its deeply held concerns regarding an ordinance proposed by Council Member O'Brien that would unwisely and impermissibly burden the availability of yellow pages directory services to consumers and businesses in Seattle to the detriment of Seattle's economic vitality.

ADP has seen and concurs in the views expressed in letters submitted by the Yellow Pages Association (YPA) and the major publishers currently distributing directories in Seattle. In the interest of brevity, I will not repeat the well-reasoned points made in those letters. However, the issues presented by the proposed ordinance are so consequential that ADP believes it must separately express its strong belief that the ordinance under consideration is unnecessary, harmful, and unconstitutional. Both ADP and YPA, and their respective memberships, are united in this belief.

ADP was founded in 1898 and is the international trade association whose 113-year mission has been to promote the establishment and maintenance of the highest standards of quality and service in directory publishing. ADP membership today includes more than 100 directory publishers — including several members that

publish directories in the State of Washington—and some 90 other associates who supply goods and services to those publishers. ADP members publish over 2,700 titles annually, throughout the United States and overseas, and support thousands of employees and millions of advertisers across the country and around the world.

The majority of ADP publisher members are small-to-medium sized businesses that are not now, and have never been, affiliated with any wire line telephone company. The majority of our publishers' advertisers are the local small-to-medium sized businesses that are the engine that drives the American economy.

As will be shown below, the proposed ordinance is unnecessary, contrary to the best interests of Seattle residents and businesses, and unconstitutionally restrictive, overly broad, and vague. We therefore respectfully urge each member of the City Council not to support the proposed ordinance.

The Proposed Ordinance is Unnecessary

We understand that, notwithstanding its troublingly broad language, the proposed ordinance is intended to address those circumstances in which a consumer receives delivery of a telephone directory that he or she did not want to receive. While persons claiming to be among such consumers have sought to draw disproportionate attention to themselves of late, there is no evidence to suggest that such consumers constitute even a significant minority of the consuming public. Indeed, the continuing willingness of sophisticated businesses to spend billions of dollars annually on yellow pages advertising powerfully suggests otherwise. Nonetheless, the publishers of—and advertisers in—yellow pages telephone directories have a strong interest in assuring that consumers are satisfied with the directories that they receive and that consumers that do not want a directory at the time it is initially delivered do not receive one.

It costs money to print directories and no publisher would sensibly incur the expense of printing directories that potential users do not want to receive. For that reason and also out of recognition of the need to be responsive to the environmental and waste-management concerns that appear to motivate the proposed ordinance, the yellow pages directory industry has in recent years provided a means for consumers to “opt out” of receiving any or all directories available in the consumer's local area. This capability is available already to residents of Seattle and throughout the United States at www.yellowpagesoptout.com. The industry is committed to enhancing its capability to offer accurate, measurable, and documentable opt-out options to consumers nationwide. Further, nearly all publishers have local toll-free and/or online opt-out protocols available to consumers in their areas. Given the existence of an industry-funded opt-out mechanism that imposes no costs on the City of Seattle and already accomplishes what the proposed ordinance is supposed to accomplish, there is no reason for the City to incur the costs and bureaucratic burdens of establishing its own redundant opt-out registry. The yellow pages publishers firmly support and encourage

consumer choice and have already put in place the means to accomplish that goal and to doing so effectively.

The Proposed Ordinance Would Be Contrary to the Public Interest

The proposed ordinance appears to be an overreactive response to the vocal minority of citizens that does not want to receive yellow pages directories. As noted below, it cannot reasonably be understood as a meaningful response to waste management concerns, as it addresses only a trivial component of the printed material that arrives—solicited and unsolicited—at the home of every Seattle resident every day. The proposed ordinance does not take account of the important public and private interests that would be adversely affected by erecting impediments to, and imposing burdens upon, the yellow pages directory business.

Yellow pages classified directories are a vital advertising medium for small, local businesses. They both compete with and complement other local advertising media, such as newspaper and magazine advertising and direct mail. Approximately \$13 billion dollars are spent on yellow pages advertising every year. It is reasonable to assume that the business people who spend that money are receiving value for their dollars. Those same small, local businesses are important sources of employment and tax revenue, and they provide essential goods and services to the community. Raising the cost or reducing the availability of yellow pages advertising will have a direct harmful effect on those local businesses. At this time of economic weakness and uncertainty, inflicting such harm on Seattle's local business community could not possibly be a wise idea.

Businesses spend money on yellow pages advertising because they know—as studies and surveys continue to show—that consumers use the directories to identify sources of local goods and services. The return-on-investment proposition for yellow pages advertisers is the most measurable of any major advertising medium. Making that informational resource more costly or less accessible to consumers would be contrary to the best interests of the citizens of Seattle.

The populist contention that “nobody uses directories any more” is not confirmed by current research. Forrester Research released findings last year based on data from 4,700 U.S. consumers gathered as part of its North American Technographics Media, Marketing, Consumer Technology, Healthcare, and Automotive Benchmark Study, two of which are highly pertinent to your consideration of the proposed ordinance. The first is that there is a clear distinction between the sources consumers rely on for news and information and those they rely for business information. Secondly, when asked the question: “Which resource(s) do you use to find listings for local businesses?”, online consumers (those who go online at least one a month) responded:

Yellow Pages Directory	68%
Internet Search Engines	34%
Internet Yellow Pages	31%
Newspapers	22%

It is imperative that your consideration of the proposed ordinance gives full weight to the fact that advertiser-supported media is beneficial to everyone. It provides useful information at no cost to consumers, a point that is essential to the discussion.

The concern about waste disposal costs associated with what is likely to be a small number of directories that recipients did not want from the start deserves attention, but any measure directed to that concern has to balance other, more serious concerns, including the economic health of local businesses that depend on yellow pages advertising and the jobs that such businesses and the vendors that support the yellow pages provide to local citizens, together with the interest of consumers in making informed choices about which local businesses to patronize. The opt-out mechanisms already in place achieve that balance.

The Proposed Ordinance Would Be Unconstitutional

The first stated purpose of the proposed ordinance is “to discourage the distribution of unwanted yellow pages phone books.” The term “unwanted phone books” is not defined. Given the references to recycling and disposal, the presumed focus is on phone books of which consumers wish to dispose. Since phone books are reissued yearly, all phone books are going to be “unwanted” at some point. Thus, in any relevant sense, phone books are not distinguishable from a day-old newspaper, a catalog, or last week’s edition of the Economist, and there is no constitutionally valid reason to treat them differentially for any purpose.

Apart from the redundant and therefore unnecessary opt-out registry component, the proposed ordinance also proposes to levy unique and targeted fees and taxes on yellow pages publishers. Although newspapers, pamphlets, third class mail, and catalogs—all of which compete with the yellow pages for advertisers’ expenditures—comprise a much larger share of municipal recycling and waste management burdens and costs,¹ no comparable levy or impediment is proposed on those alternative (and competing) forms of commercial speech. Such discriminatory regulation and taxation of one medium over another has long been recognized to be unconstitutional. See, e.g., *Minneapolis Star v. Minn. Comm’r*, 460 U.S. 575 (1983).

1 The City of Seattle’s 2005 Residential Recycling Study indicates that all telephone books (yellow pages and white pages) together constituted approximately three percent of all recycled paper, by weight, from residential collections. In comparison, newsprint constituted thirty-three percent of recycled paper. Yellow pages publishers have significantly reduced their tonnage-use of paper since 2005. Nationwide data released by the U.S. Environmental Protection Agency for 2008 indicated that all telephone directories (yellow and white) together may account for approximately one percent of the municipal waste stream.

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Conclusion

When balanced against the interests that would be directly and adversely affected by the proposed ordinance – those of local Seattle businesses and consumers – the “problem” to which the proposed ordinance is directed fades to insignificance.

For all of the reasons set forth above, ADP respectfully urges each member of the City Council not to support the proposed ordinance.

ADP appreciates the attention of each reader of this letter and would welcome the opportunity to address these issues further and in person with any member of the City Council that would like to do so.

Respectfully submitted,

A handwritten signature in black ink that reads "Larry Angove". The signature is written in a cursive, flowing style.

R. Lawrence Angove
President & Chief Executive Officer

cc: Mayor Michael P. McGinn