



**King County**

**Metropolitan King County Council  
Committee of the Whole**

**Staff Report**

---

Agenda item No:	<b>8</b>	Date:	<b>July 21, 2008</b>
Ordinance No:	<b>2008-0385</b>	Prepared by:	<b>Mike Alvine</b>

---

**SUBJECT**

An ordinance authorizing the executive to enter into an interlocal agreement with the city of Seattle for the placement of ballot drop boxes.

**SUMMARY**

The proposed ordinance, if approved, would allow the Executive to enter into an interlocal agreement with the City of Seattle for the placement of ballot drop boxes.

**Background**

On June 19, 2006 the Council enacted Ordinance 15523 that will have King County join 37 other counties in Washington State to conduct elections entirely by mail. Only Pierce County will continue to operate both poll sites and a mail ballot operation. The Elections Division anticipates that the County will begin all-mail elections in February of 2009. There are several conditions that must still be met before the County can transition to all-mail elections. In addition to approving a plan for Regional Voting Centers (RVCs) and ballot drop boxes, the Council must confirm a superintendent of elections and approve an elections security plan. Proposed Motion 2008-0381 would establish the number and location of RVCs as well as ballot drop boxes.

**Analysis**

The City of Seattle requires that the City and the County enter into an interlocal agreement in order to place ballot drop boxes at neighborhood service centers. Other jurisdictions and the King County Library system have asked for less formal agreements instead of interlocal agreements.

**ATTACHMENTS**

1. Proposed Motion 2008-0385

**INVITED**

- Sherril Huff, Director, Elections Division, DES
- Bill Huennekens, Manager, Vote-by-mail Project, Elections Division, DES
- Alex Herzog, Analyst, Vote-by-mail Project, Elections Division, DES





**KING COUNTY**

**Signature Report**

**July 18, 2008**

**Ordinance**

**ATTACHMENT 1**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Proposed No.** 2008-0385.1

**Sponsors** Constantine

1 AN ORDINANCE authorizing the executive to enter into  
2 an interlocal agreement with the city of Seattle for the  
3 placement of ballot drop boxes.  
4

5 STATEMENT OF FACTS:

6 1. Ordinance 15523 requires the approval by motion of a plan for locating  
7 regional voting centers and ballot drop boxes.

8 2. The plan for regional voting centers and ballot drop boxes includes the  
9 placement of ballot drop boxes at certain city of Seattle neighborhood  
10 service centers.

11 3. In order to place ballot drop boxes at neighborhood service centers, the  
12 city of Seattle requires an interlocal agreement with King County.

13 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

14 SECTION 1. The executive is hereby authorized to enter into an interlocal

**Ordinance**

---

15 agreement with the city of Seattle for the placement of ballot drop boxes in substantially  
16 the form of Attachment A to this ordinance.  
17

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

---

ATTEST:

---

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

**Attachments**      A. Interlocal Agreement between King County and the City of Seattle for Services  
                              Related to Mail Ballot Drop Boxes

## ATTACHMENT A

### INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF SEATTLE FOR SERVICES RELATED TO MAIL BALLOT DROP BOXES

THIS INTERLOCAL AGREEMENT ("Agreement") FOR PROVISION OF SERVICES RELATED TO MAIL BALLOT DROP BOXES BETWEEN KING COUNTY ("County") AND THE CITY OF SEATTLE ("City") is entered on this \_\_\_\_\_ day of \_\_\_\_\_, 2008. Collectively, the County and the City are referred to as the "Parties."

Whereas, the County wishes to enter into an agreement with the City to utilize certain City of Seattle Neighborhood Service Centers ("NSCs") as locations where citizens may deposit mail ballots for collection by the County; and,

Whereas, the City is willing and able to allow the County to utilize certain NSCs as mail ballot drop box locations and to make the ballots dropped off at those locations available for pick up by the County; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **1.0 Term**

**1.1** This Agreement shall be effective as of \_\_\_\_\_ and shall remain in effect for an initial term of one year. The Agreement may be extended for a second term of two years if agreed to in writing by the Parties prior to the end of the first term. The Agreement may be extended for a third term of two years if agreed to in writing by the Parties prior to the expiration of the second term. The length of all terms is subject to the termination provisions provided in Section 1.2.

#### **1.2 Termination and Notice of Termination.**

**1.2.1 By the County.** This Agreement is terminable by the County without cause and in its sole discretion if the County provides written notice to the City no later than three months prior to the termination date.

**1.2.2 By the City.** This Agreement is terminable by the City without cause and in its sole discretion if the City provides written notice to the County no later than three months prior to the termination date, provided that if the City terminates this Agreement during the initial term, the City shall pay to the County a prorated share of the capital costs that were paid by the County pursuant to this Agreement. The schedule listed at Attachment "A" to this Agreement sets forth the prorated amounts to be paid by the City. Such payment shall be due to the County within sixty (60) days after the date of termination.

## **2.0 Services**

**2.1** The City will allow the County to utilize the drop slots and locked collection boxes at the NSCs listed at Attachment "B" to this Agreement. The use of these slots and boxes will be shared on a non-exclusive basis by the City which receives correspondence including payments from City utility customers, and the County for mail ballot drop-off.

**2.2** Ballots deposited by citizens at NSC drop boxes will be removed daily, Monday through Saturday, by appointed NSC staff beginning nineteen days before the election and ending on Election Day. Appointed NSC staff will separate the mail ballots from other items deposited in the drop box. The City shall not allow any person to handle the ballots except those City employees who have been appointed in writing by a King County Elections Division official to sort, separate and log mail ballots pursuant to this Agreement.

**2.2.1** Appointed NSC staff will, in a team comprised of no less than two, sort the contents of the payment box, separating all mail ballot envelopes from other pieces.

**2.2.2** Appointed NSC staff in a team comprised of no less than two, will then place all mail ballots into a predetermined receptacle, seal the receptacle and record the seal number on a log sheet given to NSC staff by King County Elections ("KCE") officials. Each NSC staff member who participated in the sort and placement of the mail ballots in the receptacles will initial the log sheet in the place indicated. The receptacles containing mail ballots will be stored in a secure location until they are retrieved by KCE.

**2.2.3** KCE ballot retrieval staff will take custody of the receptacle containing mail ballots and take proper note of the seal number and/or log sheet as provided by NSC staff.

**2.2.4** KCE ballot retrieval staff will, in return, provide NSC staff with an empty receptacle in which materials received prior to the next pick up will be placed.

**2.3** KCE will employ staff for the purposes of ballot retrieval from each NSC. These staff members will retrieve ballots from each ballot location in use on a daily basis as provided in section 2.2 above during the hours that the NCS is open and at such additional times as are agreed to in writing between the Parties to this Agreement.

**2.4** In no circumstance shall any City employee open, alter, mark, or otherwise tamper with any King County mail ballots or other elections materials deposited in the drop box.

**2.5** All NSCs determined to be used as mail ballot drop-off locations will maintain access to the drop box to allow voters 24 hours a day, 7 days a week access to the box for ballot drop off with the exception of election day. On election day, two NSC staff

members will empty the box's contents promptly at 8:00 p.m. NSC staff members will, in a team comprised of no less than two appointed staff members, sort the contents of the payment box, separating all mail ballots from other pieces. NSC staff will then place all mail ballots into a predetermined receptacle, seal the receptacle and record the seal number on a log sheet given to NSC staff by KCE staff. The receptacle will be stored in a secure location until it is retrieved by KCE. At a time to be agreed upon by the Parties, KCE ballot retrieval staff will take custody of the receptacle containing the mail ballots and take proper note of the seal number and/or log sheet as provided by NSC staff. NSC staff will display, promptly at 8:00 p.m., appropriate signage indicating that all ballots submitted after 8:00 p.m. will be marked as late.

**2.6** Any mail ballots dropped off at a NSC after election day retrieval by KCE staff and more than nineteen days prior to the next election day will be sorted, sealed and stored as provided in section 2.2.2 above. The Parties will agree on the date(s) and time(s) for KCE to retrieve these mail ballots.

**2.7** The City shall complete the improvements to the NSCs as set forth at Attachment "C" to this Agreement. In completing the improvements, the City shall ensure that it complies with all applicable federal, state and local requirements regarding public works.

### **3.0 Compensation for Services.**

**3.1** The Parties agree that the City is entitled to compensation for costs incurred as a result of the uses and services provided to the County pursuant to this Agreement.

**3.2** The Parties further agree that for purposes of this Agreement, the amounts for capital costs set forth at Attachment "C" and the amounts sets forth for payroll costs at Attachment "D" to this Agreement fully compensate the City for all costs incurred as a result of the uses and services provided to the County.

**3.2.1** The capital costs set forth at Attachment "C" will be paid by the County to the City within 60 days of the County's receipt of an invoice from the City for the costs.

**3.2.2** Payroll costs calculated as set forth at Attachment "D" will be paid by the County to the City within 60 days of the County's receipt of an invoice from the City for the costs. The City will invoice the County for payroll costs on an election by election basis and shall have each invoice delivered to the County no more than 60 days from the date of the election for which the costs were incurred.

**4.0 Re-opener.** The County and the City may agree to enter into re-negotiation of the terms of this Agreement at any time and for any purpose by mutual agreement in writing. The Agreement shall remain in full force and effect during such negotiations.

**6.0 Indemnification.** Each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and

agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, the Party's negligent acts or omissions. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from concurrent negligence of two or more Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to each of the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the Parties or combination of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible Party or combination of the Parties to the extent of that Party's/those Parties' culpability. This indemnification shall survive the expiration or termination of this Agreement.

**7.0 Actions Contesting Agreement.** Each Party shall appear and defend any action or legal proceeding brought to determine or contest: (i) the validity of this Agreement; or (ii) the legal authority of the City and/or the County to undertake the activities contemplated by this Agreement. If both Parties to this Agreement are not named as parties to the action, the Party named shall give the other Party prompt notice of the action and provide the other an opportunity to intervene. Each Party shall bear any costs and expenses taxed by the court against it; any costs and expenses assessed by a court against both Parties jointly shall be shared equally.

**7.0 Independent Contractor.**

Each party to this Agreement is an independent contractor with respect to the subject matter herein. Nothing in this Agreement shall make any employee of the City a County employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded City employees by virtue of their employment. At all times pertinent hereto, employees of the County are acting as County employees and employees of the City are acting as City employees.

**8.0 Notice.**

Unless otherwise provided herein, any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other Party:

To the County:



To the City:

**9.0 Partial Invalidity.**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provision of this Agreement which shall prove to be invalid, unenforceable, void, or illegal shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect. Notwithstanding the foregoing, this Agreement shall be subject to re-negotiation as provided in Section 4.0.

**10.0 Assignability.**

The rights, duties and obligations of a party to this Agreement may not be assigned to any third party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

**11.0 Mediation/Arbitration.**

If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be resolved through direct discussions, the Parties agree and will endeavor first to attempt to settle the dispute in an amicable manner by mediation. The mediator will be selected by agreement of the Parties. All fees and expenses for mediation will be borne by the Parties equally. Each party shall, however, bear the expense of its own, counsel, experts, witnesses, and preparation and presentation of evidence.

**12.0 Captions.**

The section and paragraph captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

**13.0 Force Majeure.**

The term "force majeure" shall include, without limitation by the following enumeration, acts of Nature, acts of civil or military authorities, fire, terrorism, accidents, shutdowns for purpose of emergency repairs, lockouts, strikes, and any other labor, civil or public disturbance, inability to procure required construction supplies and materials, delays in environmental review, permitting, or other environmental requirement or work, delays as a result of legal or administrative challenges brought by parties other than signatories to this agreement, delays in acquisition of necessary property or interests in property, including the exercise of eminent domain, or any other delay resulting from any cause beyond a party's reasonable control, causing the inability to perform its obligations under this Agreement. If the City or the County is rendered unable, wholly or in part, by a force majeure, to perform or comply with any obligation or condition of this Agreement then,

upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

**14.0 Entire Agreement.**

This Agreement, inclusive of the Attachments hereto, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the Parties.

**15.0 Governing Law.**

This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction situated in King County, Washington.

**16.0 No Third Party Rights.**

Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

**17.0 Counterparts.**

This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Agreement.

**18.0 Amendment or Waiver.**

This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the County; provided that changes herein which are technical in nature and consistent with the intent of the Agreement may be approved on behalf of the City by its chief executive officer and on behalf of the County by the County Executive. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any Party.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates indicated.

King County

City of Seattle

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
Title:

Date:

Date:

Approved as to Form:

\_\_\_\_\_  
King County Deputy Prosecuting  
Attorney