



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 19247

Proposed No. 2021-0093.3

Sponsors Dembowski and Upthegrove

1 AN ORDINANCE relating to employment; establishing a
2 hazard pay requirement for additional compensation for
3 grocery employees working in the unincorporated area of
4 King County from the effective date of this ordinance
5 through the duration of the King County executive's
6 proclamation of emergency for the coronavirus disease
7 2019.

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. Findings:

10 A. The King County Charter grants the King County council the authority to act
11 to preserve the public peace, health or safety.

12 B. This ordinance protects and promotes public peace, health and safety during
13 the coronavirus disease 2019 emergency, proclaimed by the King County executive on
14 March 1, 2020, by requiring grocery businesses located in unincorporated areas of King
15 County to provide hazard pay for grocery employees, thereby compensating those
16 employees for the hazards of working with significant exposure to an infectious disease
17 and increasing retention of employees who provide essential services to local
18 communities.

19 C. On January 30, 2020, the World Health Organization declared that

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20 coronavirus disease 2019 constituted a public health emergency of international concern,
21 the highest level of alarm.

22 D. On February 29, 2020, Washington Governor Jay Inslee issued proclamation
23 20-05, proclaiming a state of emergency for all counties throughout the state of
24 Washington in response to new cases of coronavirus disease 2019, and directing state
25 agencies to use all resources necessary to prepare for and respond to the outbreak.

26 E. On March 1, 2020, King County executive Dow Constantine issued a
27 proclamation of emergency enabling extraordinary measures to respond to the
28 coronavirus disease 2019 pandemic. On March 3, 2020, the council passed Motion
29 15610, affirming the proclamation of emergency.

30 F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-
31 25, a "Stay Home - Stay Healthy" order that closed all nonessential workplaces, required
32 people to stay home except to participate in essential activities or to provide essential
33 business services and banned all gatherings for social, spiritual and recreational purposes.
34 This order was extended through May 31, 2020. The "Stay Home - Stay Healthy"
35 proclamation identified grocery employees as "Essential Critical Infrastructure Workers"
36 performing work to protect communities and ensure continuity of functions critical to
37 public health and safety, as well as economic and national security.

38 G. On May 4, 2020, Washington Governor Jay Inslee announced a "Safe Start"
39 plan to start on June 1, 2020, to reopen Washington's economy in phases with adequate
40 social distancing measures and health standards in place. On June 19, 2020, King County
41 moved to Phase 2 of the "Safe Start" plan.

42 H. In October 2020, The British Medical Journal, Occupational & Environmental

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43 Medicine, reported that grocery employees face a serious risk of coronavirus disease
44 2019 infection and associated psychological distress. A study of one hundred four
45 grocery employees at a grocery store in Boston, Massachusetts, found that twenty percent
46 tested positive for coronavirus disease 2019 despite ninety-one percent of employees
47 reporting wearing a face mask at work and seventy-seven percent of employees reporting
48 wearing masks outside of work. The positive rate of infection among grocery employees
49 was five times as likely for those who interacted with customers than for those who did
50 not. The study also found that seventy-six percent of employees had no symptoms,
51 suggesting that those employees could be a source of asymptomatic infection. Further,
52 twenty-four of the ninety-nine employees who filled out a related medical health
53 questionnaire also reported experiencing anxiety, and eight employees were deemed
54 depressed from their questionnaire answers.

55 I. On January 3, 2021, the Centers for Disease Control reported that multiple
56 variants of the coronavirus disease 2019 that are circulating globally appear to spread
57 more easily and quickly than other variations.

58 J. The Washington state Department of Health reports that two coronavirus
59 disease 2019 vaccines are authorized for emergency use by United States Food and Drug
60 Administration. In December 2020, the Department of Health published an estimated
61 timeline for vaccine implementation. The initial vaccine timeline indicated that all
62 grocery employees would be eligible for vaccination in February 2021. A modified
63 timeline, published in January 2021, clarified that only grocery employees fifty years old
64 or older would be eligible in February 2021 and grocery employees under year years old
65 would be eligible in April 2021.

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66 K. On January 5, 2021, Governor Jay Inslee announced the "Healthy
67 Washington-Roadmap to Recovery," a phased recovery plan beginning on January 11,
68 2021, that began with every region of the state in Phase 1, which prohibited indoor
69 gatherings with people outside the household and limited business activity, with retail
70 stores limited to twenty-five percent capacity. On February 1, 2021, King County moved
71 to Phase 2 of the plan, which retains retail activity to twenty-five percent capacity.

72 L. Throughout the coronavirus disease 2019 emergency, grocery businesses have
73 been operating in King County and relying upon the work of grocery employees who are
74 highly vulnerable to health and safety risks.

75 M. Grocery employees are essential workers performing services that are
76 fundamental to the economy and health of the community during the coronavirus disease
77 2019 emergency. They cannot choose to work from home and must come to work to
78 perform their jobs, which can involve substantial interaction with customers.

79 N. The United States Centers for Disease Control and Prevention reports that
80 Black and Indigenous people, followed by Pacific Islanders and Latinx people, are
81 disproportionately affected by coronavirus disease 2019 due to long-standing inequities
82 in social determinants of health, including overrepresentation in jobs that require
83 customer contact, such as grocery stores. Those determinants may increase the risk of
84 coronavirus disease 2019 exposure, illness, hospitalization, long-term health and social
85 consequences and death.

86 O. Hazard pay is defined by the United States Department of Labor as additional
87 pay for performing hazardous duty or work involving physical hardship. Work duty that
88 causes extreme physical discomfort and distress, which is not adequately alleviated by

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89 protective devices, is deemed to impose a physical hardship.

90 P. Ensuring that grocery employees are compensated for the risks of working
91 during the coronavirus disease 2019 emergency promotes retention of those essential
92 workers. Retention of grocery employees is fundamental to protecting the health of the
93 community, as those employees directly support public purchase of groceries and
94 facilitate community access to food.

95 Q. The council intends to review the ordinance approximately ninety days from
96 the effective date of the ordinance. The council may repeal all or part the ordinance as
97 and when the council finds that such a repeal is appropriate.

98 R. The United States Department of Agriculture ("the USDA"), in its November
99 2017 report, Independent Grocery Stores in the Changing Landscape of the U.S. Food
100 Retail Industry, defines independent grocery stores as those that are independently owned
101 and operated and whose owners operate fewer than four outlets simultaneously.

102 S. According to the USDA report, independent grocery stores play an important
103 role for local communities, including improving food access, as areas with a high share of
104 low-income households, as well as rural areas, tend to have more independent grocery
105 stores. Also according to the report, stores with a higher share of total sales from
106 USDA's Supplemental Nutrition Assistance Program redemptions are more likely to be
107 independently owned.

108 T. The USDA report further notes that small-format grocery stores, known as
109 supermarkets, which account for a large share of independent grocery stores, also
110 mitigate food insecurity by improving physical access to grocery stores, particularly for
111 individuals with limited options for transportation.

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112 U. In its August 2012 report, Characteristics and Influential Factors of Food
113 Deserts, the USDA defines communities with limited food access as being low-income
114 census tracts in which a substantial number or proportion of the population has limited
115 access to grocery stores. Low-income census tracts are characterized in the report as
116 having a median family income that is eighty percent or less of the metropolitan area's
117 median family income; and limited access is characterized by at least five hundred people
118 or thirty-three percent of the population of the census tract living more than one mile
119 from a supermarket or large grocery store in urban areas and more than ten miles in rural
120 areas. The USDA's food access research atlas uses the definitions from this report to
121 identify low-income and limited food access census tracts on a map.

122 V. In its June 2009 report, Access to Affordable and Nutritious Food: Measuring
123 and Understanding Food Deserts and Their Consequences, the USDA found that areas
124 with limited food access are characterized by higher levels of racial segregation, higher
125 levels of poverty and greater income inequality, and that limited food access can
126 contribute to increases in obesity and diet-related diseases. In response, the USDA report
127 noted that addressing market conditions that contribute to differences in access to food
128 may be critical in reducing access limitations.

129 SECTION 2. The definitions in this section apply throughout this ordinance
130 unless the context clearly requires otherwise.

131 A. "Adverse action" means reducing compensation, garnishing gratuities,
132 denying a job or promotion, demoting, terminating, failing to rehire after a seasonal
133 interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-
134 related practices, filing a false report with a government agency or otherwise

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135 discriminating against any person for any reason.

136 B. "Aggrieved party" means an employee or other person who suffers tangible or
137 intangible harm due to an employer or other person's violation of this ordinance.

138 C. "Compensation" means the payment owed to an employee by reason of
139 employment, including but not limited to, salaries, wages, tips, service charge
140 distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or
141 legislatively required pay or paid leave and reimbursement for employer expenses.

142 D. "Employ" means to hire or engage the services of a person or persons for
143 compensation.

144 E. "Employee" means a person who is employed for wages or salary, including,
145 but not limited to, a full-time employee, a part-time employee and a temporary worker.
146 An employer bears the burden of proof that the individual is, as a matter of economic
147 reality, in business for the individual's self as an independent contractor, rather than
148 employed by the alleged employer.

149 F. "Employer" means any individual, partnership, association, corporation,
150 business trust or any entity, person or group of persons or a successor thereof, that
151 employs another person and includes any such entity or person acting directly or
152 indirectly in the interest of the employer in relation to the employee.

153 G.1. "Grocery business" means a retail store operation that is either:

154 a. over ten thousand square feet in size and that is primarily engaged in the
155 retail sale of groceries for offsite consumption, including but not limited to the sale of
156 fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen
157 foods, dry foods, beverages, baked foods or prepared foods. Other household supplies or

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158 other products shall be secondary to the primary purpose of groceries sales; or

159 b. over eighty-five thousand square feet and with thirty percent or more of its
160 sales floor area dedicated to the retail sale of groceries, including but not limited to the
161 sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and
162 frozen foods, dry foods, beverages, baked foods or prepared foods.

163 2. "Grocery business" does not include convenience stores or food marts
164 primarily engaged in retail sales of a limited line of goods that generally includes milk,
165 bread, soda and snacks. "Grocery business" also does not include farmers' markets or
166 farm stands.

167 H. "Grocery employee" means a person employed by a grocery employer, and
168 works at a grocery business.

169 I. "Grocery employer" means an employer that matches the requirements in
170 section 3 of this ordinance.

171 J. "Hazard pay" means additional compensation owed to an employee on top of
172 the employee's other compensation, including but not limited to salaries, wages, tips,
173 service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks,
174 promised or legislatively required pay or paid leave and reimbursement for employer
175 expenses.

176 K. "Independently owned and operated" means a grocery business enterprise of
177 four or less locations operating simultaneously and the owner independently manages and
178 controls the day-to-day operations of the grocery business enterprise, including but not
179 limited to hiring its employees.

180 L. "Limited food access community" means a low-income, historically

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181 underserved community that has one or no grocery businesses within its census tract as
182 determined by the USDA food access research atlas.

183 M. "Unincorporated area" means those areas outside any city or town and under
184 King County's jurisdiction.

185 SECTION 3.

186 A. For the purposes of this ordinance, "grocery employers" are those businesses
187 that:

188 1. Employ at least one grocery employee who works at a grocery business
189 located in unincorporated King County; and

190 2. Employ five hundred or more employees worldwide regardless of where
191 those employees are employed, including but not limited to chains, integrated enterprises
192 or franchises associated with a franchisor or network of franchises that employ five
193 hundred or more employees in aggregate.

194 B. To determine the number of employees for the current calendar year for the
195 purposes of this section:

196 1. The calculation is based upon the average number of employees who worked
197 per calendar week during the preceding calendar year for any and all weeks during which
198 at least one employee worked for the grocery employer. For employers that did not have
199 any employees during the preceding calendar year, the number of employees for the
200 current calendar year is calculated based upon the average number of employees who
201 worked during the first ninety calendar days of the current year in which the grocery
202 employer has engaged in the grocery business; or

203 2. All employees shall be counted, including, but not limited to:

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- 204 a. grocery employees;
- 205 b. employees who are not grocery employees;
- 206 c. employees who worked outside King County;
- 207 d. employees who worked in incorporated and unincorporated areas of King
- 208 County; and
- 209 e. employees who worked in full-time employment, part-time employment,
- 210 joint employment, temporary employment or through the services of a temporary services
- 211 or staffing agency or similar entity.

212 C.1. Business entities otherwise treated separately shall be, for the purposes of
213 this ordinance, considered as:

- 214 a. an integrated enterprise; and
- 215 b. a single employer when one entity controls the operation of the other entity.

216 2. The factors to consider in determining the existence of a single enterprise
217 may include, but are not limited to:

- 218 a. degree of interrelation between the operations of multiple entities;
- 219 b. degree to which the entities share common management;
- 220 c. centralized control of labor relations;
- 221 d. degree of common ownership or financial control over the entities; and
- 222 e. use of a common brand, trade, business or operating name.

223 D. For the purposes of this ordinance a grocery business located in
224 unincorporated King County located in a limited food access community is exempt from
225 this ordinance if:

- 226 1. The exempt grocery business is independently owned and operated and the

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227 owner-operator has four or less grocery business operating simultaneously;

228 2. The nearest grocery business satisfying the requirements of subsection A.

229 through C. of this section is over two miles from the exempt grocery business; and

230 3. Fewer than twenty-five employees regularly work at the exempt grocery

231 business location.

232 SECTION 4. This ordinance applies to the time a grocery employee performs

233 work for a grocery employer at a grocery business location. It does not apply to time

234 spent by a grocery employee in unincorporated King County solely for the purpose of

235 travelling through the unincorporated area, with no employment-related or commercial

236 stops in the unincorporated area except for refueling or the grocery employee's personal

237 meals or errands.

238 SECTION 5.

239 A. Grocery employers shall provide each grocery employee with hazard pay at a

240 rate of four dollars per hour for each hour worked at the grocery employers' grocery

241 businesses.

242 B. Grocery employers shall provide written notice of employment information

243 that includes notice of hazard pay by thirty days after the effective date of this ordinance.

244 C. Grocery employers shall provide payment for hazard pay on the established,

245 regular pay day on which wages are paid.

246 D. Grocery employers shall provide written itemization of the hazard pay

247 separately from payment for wages and other compensation.

248 E. Grocery employers shall comply with the hazard pay requirements in this

249 ordinance until the executive's March 1, 2020, proclamation of emergency is terminated

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250 in accordance with the provisions in the proclamation or such hazard pay requirements
251 are repealed by ordinance, whichever happens sooner.

252 SECTION 6.

253 A. Within thirty days of the effective date of this ordinance, grocery employers
254 shall display a written notice of rights established by this ordinance in a conspicuous and
255 accessible place at all its grocery businesses. Grocery employers shall display the notice
256 of rights in English and in the primary language or languages of the employee or
257 employees at its grocery businesses.

258 B. The notice of rights shall provide information on:

- 259 1. The right to hazard pay guaranteed by this ordinance;
- 260 2. The right to be protected from retaliation for exercising in good faith the
261 rights protected by this ordinance; and
- 262 3 The right to bring a civil action for a violation of this ordinance, including a
263 grocery employer's denial of hazard pay as required by this ordinance and a grocery
264 employer or other person's retaliation against a grocery employee or other person for
265 asserting the right to hazard pay or otherwise engaging in an activity protected by this
266 ordinance.

267 SECTION 7.

268 A. Grocery employers shall retain records that document compliance with this
269 ordinance for each grocery employee.

270 B. Grocery employers shall retain the records required by this section for three
271 years.

272 C. If a grocery employer fails to retain adequate records required under this

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273 section, there shall be a presumption, rebuttable by clear and convincing evidence, that
274 the grocery employer violated this ordinance for the periods and for each grocery
275 employee for whom records were not retained.

276 SECTION 8.

277 A. A grocery employer or any other person shall not interfere with, restrain or
278 deny the exercise of, or the attempt to exercise, any right protected under this ordinance.

279 B. A grocery employer or any other person shall not take any adverse action
280 against any person because the person has exercised in good faith the rights protected
281 under this ordinance. The rights include, but are not limited to:

- 282 1. The right to make inquiries about the rights protected under this ordinance;
- 283 2. The right to inform others about their rights under this ordinance;
- 284 3. The right to inform the person's employer, the person's legal counsel, a union
285 or similar organization or any other person about an alleged violation of this ordinance;
- 286 4. The right to bring a civil action for an alleged violation of this ordinance;
- 287 5. the right to testify in a proceeding under or related to this ordinance;
- 288 6. The right to refuse to participate in an activity that would result in a violation
289 of city, state or federal law; and
- 290 7. The right to oppose any policy, practice, or act that is unlawful under this
291 ordinance.

292 C. A grocery employer or any other person shall not communicate to a person
293 exercising rights protected in this section, directly or indirectly, the willingness to inform
294 a government worker that the person is not lawfully in the United States, or to report, or
295 to make an implied or express assertion of a willingness to report, suspected citizenship

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296 or immigration status of an employee or family member of an employee to a federal, state
297 or local agency because the employee has exercised a right under this ordinance.

298 D. It shall be a rebuttable presumption of retaliation if a grocery employer or any
299 other person takes an adverse action against a person within ninety days of the person's
300 exercise of rights protected in this section. However, in the case of seasonal work that
301 ended before the close of the ninety-day period, the presumption also applies if the
302 grocery employer fails to rehire a former grocery employee at the next opportunity for
303 work in the same position. The grocery employer may rebut the presumption with clear
304 and convincing evidence that the adverse action was taken for a permissible purpose.

305 E. Proof of retaliation under this section shall be sufficient upon a showing that a
306 grocery employer or any other person has taken an adverse action against a person and
307 the person's exercise of rights protected in this section was a motivating factor in the
308 adverse action, unless the grocery employer can prove that the action would have been
309 taken in the absence of the protected activity.

310 F. The protections afforded under this section shall apply to any person who
311 mistakenly but in good faith alleges violations of this ordinance.

312 G. A complaint or other communication by any person triggers the protections of
313 this section regardless of whether the complaint or communication is in writing or makes
314 explicit reference to this ordinance.

315 SECTION 9. Any aggrieved party or any entity acting on behalf of an aggrieved
316 party may bring a civil action in a court of competent jurisdiction against the grocery
317 employer or other person violating this ordinance and, upon prevailing, may be awarded
318 reasonable attorney fees and costs and such legal or equitable relief as may be appropriate

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319 to remedy the violation including, without limitation: the payment of any unpaid
320 compensation plus interest due to the aggrieved party and liquidated damages in an
321 additional amount of up to twice the unpaid compensation; and a penalty payable to any
322 aggrieved party if the aggrieved party was subject to prohibited retaliation. Interest shall
323 accrue from the date the unpaid compensation was first due at twelve percent per annum,
324 or the maximum rate permitted under RCW 19.52.020.

325 SECTION 10. Any waiver by an individual of any provision of this ordinance
326 shall be deemed contrary to public policy and shall be void and unenforceable.

327 SECTION 11.

328 A. Nothing in this ordinance shall be construed to discourage or prohibit an
329 employer from the adoption or retention of hazard pay policies more generous than the
330 one required.

331 B. Nothing in this ordinance shall be construed as diminishing the obligation of
332 the employer to comply with any contract, collective bargaining agreement, employment
333 benefit plan or other agreement providing more generous hazard pay policies to an
334 employee than required in this ordinance.

335 SECTION 12.

336 A. This ordinance provides minimum requirements for hazard pay for grocery
337 employees during the coronavirus disease 2019 emergency and shall not be construed to
338 preempt, limit or otherwise affect the applicability of any other law, regulation,
339 requirement, policy or standard that provides for hazard pay or that extends other
340 protections to employees; and nothing in this ordinance shall be interpreted or applied so
341 as to create any power or duty in conflict with federal or state law.

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342 B. Nothing in this section shall be construed as restricting an employee's right to
343 pursue any other remedies at law or equity for violation of the employee's rights.

344 SECTION 13. This ordinance takes effect March 22, 2021.

345 SECTION 14. This ordinance expires on the termination of the executive's March
346 1, 2020, proclamation of emergency in accordance with the provisions in the
347 proclamation.

348 SECTION 15. If any provision of this ordinance of its application to any person

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349 or circumstance is held invalid, the remainder of the ordinance or the application of the
350 provision to other persons or circumstances is not affected.
351

Ordinance 19247 was introduced on 2/16/2021 and passed as amended by the Metropolitan King County Council on 3/9/2021, by the following vote:

Yes: 8 - Ms. Balducci, Mr. Dembowski, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer and Mr. Zahilay
No: 1 - Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:

7E1C273CE9994B6...
Claudia Balducci, Chair

ATTEST:

DocuSigned by:

8DE1BB375AD3422...
Melani Pedroza, Clerk of the Council

APPROVED this _____ day of 3/11/2021, _____.

DocuSigned by:

4FBCAB8196AE4C6...
Dow Constantine, County Executive

Attachments: None

Certificate Of Completion

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claudia.balducci@kingcounty.gov
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Clerk of the Council
King County Council
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Status

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Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	3/11/2021 5:59:12 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO King County ITD:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bob.johnson@kingcounty.gov

To advise Carahsoft OBO King County ITD of your new e-mail address

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Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
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