

# **KING COUNTY CANVASSING BOARD ADMINISTRATIVE RULES**



**King County**  
**Department of Elections**

**King County Canvassing Board for Elections**

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MS: ELE-ES-0100

# TABLE OF CONTENTS

<b>1.</b>	<b>GENERAL INFORMATION .....</b>	<b>1-1</b>
1.1	The Canvassing Board - Authorization and Purpose.....	1-1
1.2	Purpose of the Rules .....	1-1
1.3	Definitions .....	1-1
<b>2.</b>	<b>THE CANVASSING BOARD .....</b>	<b>2-1</b>
2.1	Designation of Board Members .....	2-1
2.2	Exclusions and Limitations on Membership Participation.....	2-1
2.3	Delegation of Authority.....	2-2
<b>3.</b>	<b>MEETINGS .....</b>	<b>3-1</b>
3.1	Times for Meetings.....	3-1
3.2	Place for Meetings.....	3-1
3.3	Public Meetings.....	3-2
3.4	Quorum .....	3-2
3.5	Decisions of the Board.....	3-2
<b>4.</b>	<b>CANVASSING PROCEDURES .....</b>	<b>4-1</b>
4.1	Application .....	4-1
4.2	Programming Tests .....	4-1
4.3	Post-Election Audits.....	4-1
4.4	General Security of the Ballots.....	4-2
4.5	Preparing Ballots for Tallying .....	4-2
4.6	Manual Inspection of Ballots .....	4-2
4.7	Ballot Adjudication.....	4-4
4.8	Board Assessment and Determination .....	4-5
4.9	Processing Irregular Ballots for Board Review.....	4-6
4.10	Initial Reports.....	4-6
4.11	Canvassing the Returns .....	4-7
4.12	Preliminary Abstract.....	4-7
4.13	Reports and Abstracts.....	4-7
4.14	Official County Canvass Report and Certification.....	4-8
<b>5.</b>	<b>VOTER REGISTRATION CHALLENGES .....</b>	<b>5-1</b>
5.1	Duty of Canvassing Board Generally .....	5-1
5.2	Procedures for Challengers .....	5-1
5.3	Procedures for Challenged Voters .....	5-2
5.4	Director's Procedures.....	5-2
5.5	Time of Hearing .....	5-4
5.6	Procedure at the Board Hearing .....	5-4

5.7	Decision .....	5-4
5.8	Remedies.....	5-5
<b>6.</b>	<b>PROVISIONAL BALLOTS .....</b>	<b>6-1</b>
6.1	Processing Provisional Ballots.....	6-1
<b>7.</b>	<b>MAIL BALLOTS .....</b>	<b>7-1</b>
7.1	General Provisions .....	7-1
7.2	Review of Returned Ballot Envelopes .....	7-1
7.3	Time of Voting.....	7-2
7.4	Voters Unable to Sign Ballot.....	7-3
7.5	Special Ballots .....	7-3
7.6	Ballots Returned by Email or Facsimile .....	7-3
7.7	Multiple Ballots Enclosed Within One Return Envelope.....	7-3
<b>8.</b>	<b>TIES.....</b>	<b>8-1</b>
8.1	Elections .....	8-1
8.2	The Method for Resolving Ties by Lot.....	8-1
8.3	Recount .....	8-1
<b>9.</b>	<b>RECOUNTS.....</b>	<b>9-1</b>
9.1	Definition.....	9-1
9.2	Criteria for Mandatory Recount .....	9-1
9.3	Requested Recount .....	9-1
9.4	General Procedures for All Recounts.....	9-2
9.5	Special Procedures for Requested Recounts .....	9-3
9.6	Posting Results of the Recount.....	9-3
9.7	Repeated Recounts .....	9-3
9.8	Final Cost of Recount.....	9-4
9.9	Manual Counting of Ballots .....	9-4
	<b>ADMINISTRATIVE RULES ADOPTION .....</b>	<b>i</b>
	<b>APPENDIX A</b>	
	Voter intent - Statewide Standards on What is a Vote .....	A-1

## **1. GENERAL INFORMATION**

### **1.1 The Canvassing Board - Authorization and Purpose**

- a. The King County Canvassing Board (hereafter the Board) is established under the authority of Chapter 29A.60 RCW.
- b. The purpose of the Board is to process ballots; determine the validity of provisional ballots; determine tie votes by lot; resolve discrepancies in results; schedule and conduct recount elections; resolve all questions related to the legality of a ballot or any part thereof; canvass the votes in order to certify special, primary and general election results; and perform any other duty required by law or regulation.

### **1.2 Purpose of the Rules**

- a. These rules serve as King County's administrative rules implementing the various statutes and state administrative rules contained in Title 29A RCW and Title 434 WAC governing the conduct of the Board and the canvassing of elections as required by law (RCW 29A.60.140).
- b. Provisions of these policies and procedures that are not specifically set forth in statutory or administrative authority are based on past practices and decisions of the Board. They serve as guidelines to promote consistency; however, each factual question before the Board will be reviewed on a case-by-case basis according to state law and rule. In the event of any inconsistency between these rules and either state law and/or state administrative rule, state law and/or state administrative rules shall control.

### **1.3 Definitions**

- a. Canvassing means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary, special, or general election and includes the tabulation of any votes that were not previously tabulated. (RCW 29A.04.013, WAC 434-262-010(1))
- b. County Auditor means, for purposes of these rules, the Director of Elections (the Director) who is the county officer having the overall responsibility to maintain voter registration and conduct state and local elections. (RCW 29A.04.025, K.C. Charter 350.20.50)

- c. Chair, Metropolitan King County Council means the chair of the county legislative authority as provided in the King County Charter, Sections 210 and 220.
- d. Unofficial Cumulative Election Report Summaries means those periodic reports prepared for the Board after Election Day, with copies for public dissemination, which will reflect the cumulative totals of votes tabulated up to the time the report is prepared for all races (offices and measures) on the ballot without regard to precincts or legislative districts.  
  
Consistent with state law and rule and as determined by the Director, the initial report will be prepared after 8:00 pm on election night. Additional unofficial cumulative reports will be prepared throughout the canvassing period to reflect any changes or additions as a result of mail ballots received, upload of votes cast at Accessible Voting Centers, resolution of provisional ballots, or determinations of the Board.
- e. Director's Abstract of Votes is the report prepared by the Director which lists the number of registered voters, votes cast, all vote totals by precinct, or by combination of precincts if applicable, ballot totals, legislative and congressional district subtotals, if any, and county-wide totals. The director's abstract of votes also includes the reconciliation report required by RCW 29A.60.235. (See Chapter Four for additional details regarding the preparation of the Abstract of Votes.) (WAC 434-262-030)
- f. Count means the enumeration of ballots cast in a given primary or election or crediting a voter with having voted. (Example: The total count for the election was 200 votes. Although the voter did not indicate a choice on their ballot for the particular measure, the ballot was counted.)
- g. Tabulation means the enumeration of votes cast for a candidate or for a position on a measure in a given election that provides a determination of the elector's choice. (Example: Of the 200 ballots counted, 125 were tabulated for Candidate "A" who, having accrued a majority vote was declared the winner.)
- h. Tally means the process of both counting and tabulating the vote. (Example: After the ballots are received, they will be tallied, or processed, through the vote tallying system.)
- i. Ballot is a collective term referring to any mail ballot returned by mail or through a drop location and to any provisional, AVC ballot, email, or fax ballot.

## **2. THE CANVASSING BOARD**

### **2.1 Designation of Board Members**

- a. The Board shall consist of three members, the Director, the county prosecuting attorney, and the chair of the county council. If a member is not available to carry out the duties of the Board, they may designate a person to carry out the Board's duties as follows: the Director may designate a deputy director; the prosecuting attorney may designate a deputy prosecuting attorney; and the chair of the county council may designate another member of the council, or an employee of the legislative body as provided in RCW 29A.60.150(1). For purposes of these rules, all references to Board members shall include a person designated in accordance with this Section 2.1 and RCW 29A.60.150.
- b. Any designation to the Board may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the Director not later than the day before the first day duties are to be undertaken by the Board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the Director's office no later than the day before the first day the designee is to undertake the duties of the Board.

### **2.2 Exclusions and Limitations on Membership Participation**

- a. The members designated to the Board may not include individuals who are candidates for an office to be voted upon at the primary or election to be canvassed unless no other individual who qualifies under Section 2.1 above is available to serve. (RCW 29A.60.150)
- b. If the primary or election is one at which a member of the Board or the officer designating a member of the Board is a candidate for an office, decisions regarding the determination of a voter's intent with respect to a vote cast for that specific office shall be made by the other two members of the Board. If the two disagree, the vote shall not be counted unless the number of those votes could affect the result of the primary or election, in which case the Secretary of State or a designee shall make the decision on those votes.

This does not restrict participation in decisions as to the acceptance or rejection of entire ballots, unless the office in question is the only one for which the voter cast a vote. (RCW 29A.60.150)

### **2.3 Delegation of Authority**

The Board may delegate in writing, at a public meeting, the performance of any task assigned by law to the Board, except that the delegation shall not include the responsibility of certifying the returns of a primary or election, determining the validity of challenged ballots, or determining the validity of provisional ballots referred to the Board. The delegation of such authority must occur in writing or at an open public meeting in accordance with rules adopted by the Secretary of State. The written delegation of authority shall be filed with the Director annually. (RCW 29A.60.140(2) and WAC 434-262-015)

### 3. MEETINGS

#### 3.1 Times for Meetings

- a. The Canvassing Board shall meet to canvass ballots and certify the election no later than the statutory deadline for election certification. (RCW 29A.60.190). Any Canvassing Board meeting may be adjourned and reconvened at a later time, date, or location at the discretion of the Canvassing Board.
  - 1) Election Meetings: Scheduled as needed following the election. Activities include review the status of the canvass and the Preliminary Abstract of Votes, and to resolve ballots forwarded to the Board for issues including voter intent and any provisional ballots involving questionable eligibility of the voter. Schedule any required special hearings for voter registration challenges per RCW 29A.08.820 and RCW 29A.08.840.
  - 2) Certification Meeting: The tenth day following a special election, fourteenth day following a primary, or the twenty-first day following a general election, the Board shall complete the canvass and certify the results; review and document the corrective action taken regarding any errors or discrepancies noted at the previous meeting, if any, and if satisfied, sign the certificate. (RCW 29A.60.190 and WAC 434-262-070)
- b. The Director will notify the Board members of the meeting schedules in writing at the beginning of the year for all elections that will be held that year.
- c. Should an emergency situation arise concerning the disposition of an election or the canvassing of the votes, the Director may call an emergency meeting of the Board to address that situation. The notification shall be as provided in RCW 42.30.080.

#### 3.2 Place for Meetings

The Board shall meet at King County Elections unless otherwise specified.



### **3.3 Public Meetings**

Board meetings are open to the public and subject to the requirements of the Open Public Meeting Act, Chapter 42.30 RCW. (RCW 29A.60.140(5) and WAC 434-262-025)

The Director will publish a public notice at least forty-eight hours prior to each meeting or prior to the first meeting if all meetings are included in the single notice. (RCW 42.30.080) This requirement will not apply to special meetings, for which notice will be given at least twenty-four hours in advance.

### **3.4 Quorum**

All members of the Board are expected to be present for Board meetings. However, two-thirds of the members shall constitute a quorum.

### **3.5 Decisions of the Board**

A majority vote of the Board members shall be required to carry out the business of the Board. If only two members are present and are unable to agree on a determination, the issue will be held over until the third member is present.

## **4. CANVASSING PROCEDURES**

### **4.1 Application**

King County uses a digital scan system of recording votes and a stand-alone computer system to tally the recorded votes and to produce a printed report of the tally. This computerized tabulation system has been authorized pursuant to RCW 29A.12.050 and complies with the rules for emergency approval contained in Chapter 434-335-212 WAC. The guidelines provided herein comply with state statutes and shall be followed in conjunction with the procedures contained in the WAC. The canvass shall essentially consist of auditing the return ballot envelopes containing the voter's data, comparing the number of ballots cast and counted, and documenting the resolution (if one is found) of any discrepancies.

### **4.2 Programming Tests**

Prior to using the computerized vote tallying system for any primary or general election, programming tests shall be satisfactorily conducted and certified as required by law. (RCW 29A.12.130) The same procedures shall be followed for special elections except that the Secretary of State designee is not required to be present. (WAC 434-335-270 through 335)

### **4.3 Post-Election Audits**

As required by law, (RCW 29A.60.185), the Director shall complete at least one of the post-election audits described below after election day and before election certification.

Random Batch Audit: Procedures for conducting a random batch audit (RCW 29A.60.170) are as follows: 6 batches are randomly chosen from all batches fully processed. Those 6 batches are hand counted and the hand count compared to the results from the tabulation system. If there are any discrepancies a further 6 batches are randomly chosen and so on until a set of 6 batches contains no discrepancies.

Risk Limiting Audit: Procedures for conducting a risk limiting audit (RCW 29A.60.185) are as follows: A number of ballots (number determined based on the margin of the target contest) are randomly selected from ballots fully processed. Each of those ballots is retrieved and the relevant responses compared to the tabulated results. The target contest is randomly selected by the state if there is a state contest on the ballot and

by the Director if no state contest is on the ballot. If the audit does not meet its risk limit, then more ballots are audited until the risk limit is met or a full hand-count has been conducted.

#### **4.4 General Security of the Ballots**

At no time after a ballot has been voted and either deposited in a ballot drop box or mailed to the Elections Office in a sealed envelope shall a ballot be permitted to be in an unlocked and unsealed condition unless if in the presence of at least two authorized election staff and observers if provided, or if in the presence of the Canvassing Board itself.  
(RCW 29A.60.110 and WAC 434-261-045)

#### **4.5 Preparing Ballots for Tallying**

Mailed Ballots. Ballots returned by mail shall be delivered to the Ballot Processing work unit. They shall be considered sealed while in the return and security envelopes and shall be kept in secure storage when not being processed. After signature verification, election staff, as designated by the Board, shall open, and prepare the ballots for scanning, duplication, and adjudication.

#### **4.6 Manual Inspection of Ballots**

- a. A manual inspection is required of all mail ballots. A manual inspection means that all voting positions on both sides of the ballot will be examined to determine whether the ballot is readable by the vote tallying system. (WAC 434-261-070)
- b. Ballots shall be inspected for damage, write-in votes, incorrect or incomplete marks, and questions of voter intent. (WAC 434-261-070)
- c. If the manual inspection process detects any ballots that are determined to be unreadable in whole or in part, or that contain marks that differ from those in the voting instructions contained on or with the ballot, such that they might not be correctly tabulated by the vote tallying system, the ballot shall be adjudicated pursuant to the provisions of RCW 29A.60.125 and Section 4.6 of these rules or the ballot shall be forwarded to the Canvassing Board for resolution.
  - 1) Ballots with sufficient marking in one or more ovals filled in for any single response position shall be tabulated. This rule does not apply to ballots that the voter has corrected

pursuant to the instruction on the ballot as outlined in WAC 434-261-086 by crossing out the incorrect vote and voting the correct choice. Properly corrected ballots should be adjudicated pursuant to section 4.7.a.1 of these rules.

- 2) Ballots with insufficient marking in one or more ovals filled in for any single response position shall be forwarded to the Board for determination. This rule does not apply to ballots where voter intent can be clearly discerned according to the statewide standards on what is a vote under WAC 434-261-086 and yet the marks are incorrect as to prevent the ballot from being correctly tabulated by the tabulating equipment. (WAC 434-261-086). Ballots with clear voter intent should be adjudicated pursuant to section 4.7.a.5 of these rules.

d. Rejection of Ballots. Entire ballots shall be rejected if:

- 1) A voter has already voted one ballot (WAC 434-262-031(2(a)));
- 2) The voter is not qualified to vote in this election (WAC 434-262-031(2)(d)); or
- 3) A voter signature does not match the signature on file with the Elections Office or is unsigned. (RCW 29A.40.110(3), WAC 434-250-120).

e. Partial Rejection of Ballot. Those parts of a ballot are invalid, and no votes may be tabulated for those issues or offices where:

- 1) More votes are cast for an office or issue than are permitted by law (RCW 29A.60.040);
- 2) Write-in votes that do not meet the criteria provided in RCW 29A.60.021 (RCW 29A.60.040);
- 3) The issue or office is not marked with sufficient definitiveness to determine the voter's intent; (RCW 29A.60.040) or
- 4) The voter has voted for candidates or issues for which they are not entitled to vote. (WAC 434-262-031(2)(d))

## 4.7 Ballot Adjudication

The following rules are to be used in conjunction with WAC 434-261-086 and the statewide standards set forth by the Office of the Secretary of State:

- a. The Board delegates to authorized election staff the authority to adjudicate ballots in the following situations:
  - 1) The voter has corrected the ballot pursuant to the instruction on the ballot and has marked another choice. (WAC 434-261-086(1)(c))
  - 2) The voter has written in the name of a candidate for an office where that same candidate's name is listed on the ballot regardless of whether the voter completed the oval or not. (WAC 434-261-086 (1)(i))
  - 3) The ballot is physically altered or damaged that it cannot be counted correctly by the tabulating equipment and the intent of the voter is not in question because the ballot is otherwise correctly marked.

Examples of this situation include a torn ballot, a ballot with errant writing or scribbles in the timing marks, a ballot that was marked with ink that bled through, a ballot that a voter attempted to correct with whiteout, a ballot with adhesive tape applied to it.

- 4) The voter has marked the ballot correctly but with a marking device that is unreadable by the tabulating equipment.
- 5) The issues or offices are marked with a consistent pattern and sufficient definitiveness to determine voter intent and yet the marks are incorrect such that the ballot may be incorrectly tabulated by the tabulating equipment. Examples of this situation are provided in WAC 434-261-086(1)(b).

- 6) The voter has attempted to correct their ballot in a way other than as instructed but has provided clear written instructions directing how the vote should be counted. (WAC 434-261-086(1)(e))
- b. Adjudication Instructions (RCW 29A.60.125; WAC 434-261-100)
    - 1) Each ballot to be adjudicated must be assigned a unique control number with such number being listed on the face of the ballot (a unique image number in the tabulation software satisfies this requirement). A log shall be kept of the adjudicated ballots containing at least the following information:
      - (a) The ballot's unique control number.
      - (b) The initials of at least two people who participated in the adjudication of the ballot.
      - (c) The total number of ballots adjudicated.
  - c. Audit of Duplicated Ballots (RCW 29A.60.185 (2); WAC 434-261-100 (1))
    - 1) Duplicated ballots are defined as a ballot for which the image is not visible in the electronic record, i.e., a ballot that was scanned via placeholder card.
    - 2) For duplicated ballots a second team of two must compare the votes in the tabulation system with the markings on the physical ballots to ensure that all of the votes were adjudicated correctly.

#### **4.8 Board Assessment and Determination**

- a. In the event the following situations arise, all ballots concerned will be delivered to the Board for review along with a signed concise record of the facts in question or in dispute, and for each ballot, a determination shall be made by the Board as to whether it shall be counted, partially counted or rejected. (RCW 29A.60.050)

- 1) Any ballot wherein marks upon the ballot raise a question of voter intent and the resolution must be determined by the Board. (WAC 434-261-086(1)(s))
- 2) Any ballot where the eligibility of the voter to cast the ballot has not been resolved. (See Chapter 6 - Provisional Ballots)
- 3) Challenged ballots. (RCW 29A.08.810) (See Chapter 5 – Voter Registration Challenges).
- 4) Any ballot for which there is a question of its validity, or the validity of the votes cast thereon that cannot be resolved by election staff pursuant to the Board’s delegation.

#### **4.9 Processing Irregular Ballots for Board Review**

- a. Group of Ballots. Ballots sent to the canvassing board for review and disposition will be grouped as best as possible according to similarities in circumstance or issue.
- b. Code Numbers and Logs. Each person responsible for preparing ballots for review by the Board shall maintain a log of all such ballots identified by unique number and the date submitted to the Board and summary of the Board’s determination after review.
- c. Board Review. The Deputy Director, or designee, shall present ballots prepared for the Board to review. The determination of the Board shall be a matter of record and shall be entered upon the envelope, accompanied documentation or container holding the ballots for review and shall be signed by the Board members. The Deputy Director or designee shall be responsible for ensuring that all reviewed ballots are processed as determined by the Board. If the Board determines that the ballot must be adjudicated before being tabulated, the usual rules for adjudicating a ballot shall be followed.
- d. Board Determination. The Board shall make the determination of ballots either in groups of similar ballots or ballots marked in a similar way or make the determination of a single ballot. For example, the Board may determine that a group of ballots was post marked on time and valid for continued processing and that another group of ballots was postmarked too late and are to be rejected. Further, the Board may make the determination that a group of ballots all marked for candidates in a similar way are votes for the respective candidates.

#### **4.10 Initial Reports**

As soon as possible after the initial election results have been tabulated, the Director shall produce an unofficial tabulated report of how the votes were tallied for each candidate for office and how each measure carried on the ballot for that election. The report shall include the initial tabulation of all mail ballots received. It shall be referred to as the "unofficial cumulative election report." The Director may, as a convenience to interested parties, produce interim unofficial cumulative reports reflecting partial returns between 8 p.m. on election night and the Preliminary Abstract. A schedule of such reports will be provided in advance.

#### **4.11 Canvassing the Returns**

Mail ballots received prior to certification shall be canvassed by comparing the number of ballots received against the tally of mail ballots produced by the central count, and accounting for those ballots that were not counted. The canvass report will identify the numbers and reasons for not counting these ballots.

#### **4.12 Preliminary Abstract**

The Director shall produce a Preliminary Abstract of the votes, which shall consist of a tabulation of the election returns to date for all offices and measures on the ballot by precinct. Provisional ballots will not have been included in the Preliminary Abstract at this point. (WAC 434-262-020)

#### **4.13 Reports and Abstracts**

Pursuant to the requirements of RCW 29A.60.235, the Director shall have prepared reconciliation reports at the time the election is certified.

- a. Staff Reports. The Deputy Director or a designee shall see that the following detailed reports are presented to the Board prior to the certification of the election: accessible voting center reconciliation report; provisional ballot report; election summary report; mail ballot rejection report; and the provisional ballot rejection report.
- b. Errors or Discrepancies. If the Board discovers errors or discrepancies in any report or abstract submitted to the Board, these errors and discrepancies shall be investigated. The Board shall take whatever corrective steps a majority of the Board members deems necessary. Authorized corrective action includes changing or modifying a report. (RCW 29A.60.210 and WAC 434-262-050)



- c. Corrective Action Documentation. If the Board takes corrective action involving any report or abstract, a written narrative of the cause of errors or discrepancies discovered, and the corrective action taken shall be prepared. Each member of the Board shall initial any alterations or modifications to the Director's Abstract of Votes, and each shall also sign a written narrative. (WAC 434-262-060)

#### **4.14 Official County Canvass Report and Certification**

- a. Upon verifying the Director's Abstract of Votes and documenting any corrective action taken, the Board members shall sign a certification that the abstract is a full, true and correct representation of the votes cast for the listed issues and offices. In addition, the official county seal shall be applied.
- b. The certification, the Director's Abstract of Votes, and any written narrative of errors or discrepancies, shall constitute the official county canvass report.
- c. If the election encompassed jurisdictions not wholly contained within King County, a copy of the certified report shall be forwarded to the Secretary of State or the appropriate auditor of the county in which the rest of the jurisdiction is located.
- d. The vote totals contained in the official county canvass report shall constitute the official election returns and shall not be altered or amended except following a recount, or upon order of the superior court, or by the Board reconvened specifically for that purpose. (WAC 434-262-070)

## 5. VOTER REGISTRATION CHALLENGES

### 5.1 Duty of Canvassing Board Generally

The Board is statutorily charged with the duty to hear and determine voter registration challenges filed with the Elections Office less than 45 days prior to an election in which the challenged voter is eligible to vote. (RCW 29A.08.820)

### 5.2 Procedures for Challengers

a. Qualifications of Challengers.

- 1) A challenger must be a registered voter or the county prosecuting attorney. (RCW 29A.08.810(2))

b. Time for Challenge.

- 1) In order to affect the validity of a ballot, challenges must be filed at least 45 days before an election.
- 2) If the challenged voter registered or moved less than 60 days before an election, a challenge must be filed at least 10 days before the election or 10 days after the voter registered, whichever is later.

c. All Challengers Must:

- 1) File a signed affidavit subject to penalties of perjury swearing that, to the challenger's personal knowledge that the challenged voter is not qualified to vote or does not reside at the address given on their voter registration record.
- 2) The challenger must provide the factual basis for the challenge, including any information required by RCW 29A.08.810(1)(c).
- 3) The challenge may not be based on unsupported allegations by anonymous third parties. All documents pertaining to the challenge are public records.

### 5.3 Procedures for Challenged Voters

- a. Challenged Voters May:
  - 1) Vote a ballot which shall be placed in a sealed envelope separate from other voted ballots and transmitted to the Board at the close of election day (RCW 29A.08.820), or
  - 2) Properly transfer or re-register until the day before the primary, special, or general election. (RCW 29A.08.840)
- b. If the challenged voter votes a challenged ballot, the challenged voter may:
  - 1) Appear at the Board hearing in person to present the relevant facts and arguments; or
  - 2) File an affidavit with the Board presenting any facts or arguments to support the validity of the registration. (RCW 29A.08.840)

### 5.4 Director's Procedures

- a. The Director Shall:
  - 1) Within seventy-two hours of receiving the challenge, publish on the Elections internet website, the entire content of the challenge filed under RCW 29A.08.835. Immediately after publishing any voter challenge, the Elections Director shall notify any person who requests to receive such notification on an ongoing basis.
  - 2) If the challenge is not in proper form or the factual basis for the challenge does not meet the legal grounds for a challenge, the Elections Director may dismiss the challenge and notify the challenger of the reasons for the dismissal. A challenge is not in proper form if it is incomplete on its face or does not substantially comply with the form issued by the Secretary of State.
  - 3) If the challenge is in proper form and the factual basis meets the legal grounds for a challenge, the Elections Director must notify the challenged voter

and provide a copy of the challenge. The Elections Director shall also provide to any person, upon request, a copy of all materials provided to the challenged voter. If the challenge is to the residential address provided by the voter, the challenged voter must be provided notice of the exceptions allowed in RCW 29A.08.112 and 29A.04.151, and Article VI, section 4 of the state Constitution. A challenged voter may transfer or reregister until the day before the election. The Elections Director must schedule a hearing and notify the challenger and the challenged voter of the time and place for the hearing.

- 4) All notice must be by certified mail to the address provided in the voter registration record, and any other addresses at which the challenged voter is alleged to reside, or the county auditor reasonably expects the voter to receive notice. The challenger and challenged voter may either appear in person or submit testimony by affidavit.
- 5) The challenger has the burden to prove by clear and convincing evidence that the challenged voter's registration is improper. The challenged voter must be provided a reasonable opportunity to respond. If the challenge is to the residential address provided by the voter, the challenged voter may provide evidence that they reside at the location described in their voter registration records, or meets one of the exceptions allowed in RCW 29A.08.112 or 29A.04.151, or Article VI, section 4 of the state Constitution. If either the challenger or challenged voter fails to appear at the hearing, the challenge must be resolved based on the available facts.
- 6) If the challenge is based on an allegation under RCW 29A.08.810(1) (a), (b), (d), or (e) and the canvassing board sustains the challenge, the challenged ballot shall not be counted. If the challenge is based on an allegation under RCW 29A.08.810(1)(c) and the canvassing board sustains the challenge, the board shall permit the voter to correct their voter registration and any races and ballot measures on

the challenged ballot that the voter would have been qualified to vote for had the registration been correct shall be counted.

- 7) If the challenger fails to prove by clear and convincing evidence that the registration is improper, the challenge must be dismissed, and the pending challenged ballot must be accepted as valid. Challenged ballots must be resolved before certification of the election. The decision of the Elections Director or Canvassing Board is final subject only to judicial review by the superior court under chapter 34.05 RCW.

### **5.5 Time of Hearing**

The Board hearing shall occur no later than the time for certifying the primary, special or general election. The decision of the Board shall be made within the same time limit. (RCW 29A.08.840)

### **5.3 Procedure at the Board Hearing**

- a. Oath. All witnesses shall be placed under oath.
- b. Number of Witnesses. The number of witnesses shall not be limited unless the testimony becomes repetitive or goes beyond the time limits for presenting testimony.
- c. Length of Hearing. The challenger and challenged voter shall be provided adequate time to present evidence.
- d. Questioning of Witnesses. Members of the Board shall be free to examine any witness at any time in the proceeding.
- e. Burden and Standards of Proof. The burden is always on the challenger to prove by clear and convincing evidence that the challenged voter's registration is improper. (RCW 29A.08.840)
- f. Recording. The Board hearing shall be transcribed by a court reporter or electronically recorded.

### **5.7 Decision**

The decision of the Board shall be issued prior to the certification of the election at issue. The Canvassing Board's decision shall be final and subject only to judicial review by the superior court under chapter 34.05 RCW. (RCW 29A.08.840)

#### **5.4 Remedies**

The effect of a Board decision that a challenged registration is valid shall be to count the ballot and to give the registration full effect. Registrations determined to be invalid shall be canceled immediately and the voted ballot shall not be counted. If the challenge is based on an allegation under RCW 29A.08.810(1)(c) and the Board sustains the challenge, the Board shall permit the voter to correct their registration and any races and ballot measures on the challenged ballot that the voter would have been qualified to vote for had the registration been correct shall be counted. (RCW 29A.08.840)

## **6. PROVISIONAL BALLOTS**

The purpose of a provisional ballot is to provide a means of voting to an individual whose voter registration status is in question while protecting the integrity of the election process. If the voter has already returned a ballot but then attempts to vote at the accessible voting center, the voter shall be issued a provisional ballot.

### **6.1 Processing Provisional Ballots**

Ascertain whether the voter is in fact registered and has not already returned a ballot.

- a. If "yes" the ballot shall be counted.
- b. If "no" check cancellation files to see if the voter was previously canceled. If yes, the time and reason for the cancellation shall be noted. If the Director determines that the cancellation was correct and valid, or that there exists no record of a prior registration in this county, the ballot shall not be counted. If the Director determines that the cancellation was in error, the voter's registration shall be immediately reinstated, and the ballot counted. (RCW 29A.08.625)

## 7. MAIL BALLOTS

### 7.1 General Provisions

- a. Processing of Mail Ballots. The initial processing of mail ballots, which includes signature and postmark verification shall be performed by Elections staff as delegates of the Canvassing Board and shall commence as soon as possible.
- b. Opening of Mail Ballots. Ballots shall not be removed from the outer envelopes until after verification and validation are completed. The opening of the inner security envelope and the extraction of the mail ballot should take place in the presence of political party observers if they are available, after which the ballots will be locked and sealed when not being processed. (RCW 29A.40.110). (See also Chapter 4 – Canvassing Procedures.)
- c. Setting of Vote Tallying System. The vote tallying devices used to tally mail ballots shall be set to electronically flag all over-voted contests and blank ballots. A team of two elections staff will review to confirm if the marks are a true overvote or is in fact a voter correction at which time the team will adjudicate the contest to reflect voter intent rules. Blank ballots will also be electronically reviewed by a team of two to confirm the ballot is blank.

### 7.2 Review of Returned Ballot Envelopes

- a. Examination. Delegates shall examine the postmark and signature on each mail ballot return envelope.
  - 1) Postmark shall be examined in accordance with Section 7.3 and applicable state laws to determine timeliness.
  - 2) Signatures must be on the appropriate place on the envelope following the affidavit. (WAC 434-250-120)
- b. Comparison of Signatures. The delegates of the Board shall then verify that the voter's signature is the same as the signature on file for that voter. (RCW 29A.40.110 (3)) A signature is considered a match if conditions set forth in WAC 434-379-020 are met.



- c. Any returned ballot where the Board's delegates have a question regarding whether the voter's signature is the same as the original, the signature shall be referred to the Board. In comparing signatures, the Board may take into account the date of the original signature, the current age of the voter, or any other circumstances that might account for differences between the two signatures. (WAC 434-250-120 and 434-379-020)

### **7.3 Time of Voting**

- a. Deadline. All voted mail ballots received at a ballot drop box by 8 p.m. on Election Day or received through the U.S. Postal Service with a postmark by Election Day for the primary, special, or general election shall be included in the canvass. All other returned ballots shall be handled as follows:
- b. Ballot Received After Election Day: Determination of Date of Mailing.
  - 1) Overseas, and/or Service Voters.
    - (a) Voter Attestation. The date of mailing shall be the date indicated by the voter on the return envelope. (RCW 29A.40.110)
    - (b) Postmarks. If the voter signs the return envelope but fails to date it, the date on the postmark shall control. If the envelope is neither dated nor postmarked, the ballot shall not be counted.
  - 2) All Other Voters.
    - (a) Postmarks. The date of mailing shall be the postmark, if present and legible. (RCW 29A.40.110)
    - (b) Illegible Postmarks. If the postmark is missing or illegible, the date on the return envelope to which the voter attests shall determine the date of mailing. (RCW 29A.40.110)
- c. Ballots Postmarked After Election Day. All mail ballots showing a postmark subsequent to the date of a primary, special or general election, or a date indicated by the voter subsequent to the date of the primary, special or general election as provided above, shall

not be counted. The voter will be credited with having returned a ballot, but the ballot shall not be counted in the determination of any validation requirements. (RCW 29A.40.110)

#### **7.4 Voters Unable to Sign Ballot**

In cases where the voter is unable to sign their name, the ballot will be considered valid and the votes tabulated if the voter places a mark upon the return envelope in or near the signature block, which is then witnessed by and attested to by the signatures of two other persons. (WAC 434-250-120)

#### **7.5 Special Ballots**

- a. General Duties. Special absentee ballots, as authorized by RCW 29A.40.050, shall be canvassed in the same manner as regular mail ballots. (RCW 29A.40.050(3))
- b. Special and Regular Ballots Both Voted. If a regular mail ballot and a special ballot are both properly voted and returned by the same voter, the special ballot shall be void. (RCW 29A.40.050(4))

#### **7.6 Ballots Returned by Email or Facsimile**

UOCAVA voters may return their ballots via email or fax and shall be processed in a manner similar to mail ballots.

Non- UOCAVA voters are prohibited from returning their ballots via email or fax and must return their ballots at a drop box location or through USPS.

#### **7.7 Multiple Ballots Enclosed Within One Return Envelope**

Duplicate to a single ballot and only count the votes in common. (WAC 434-262-031)

## **8. TIES**

### **8.1 Elections**

Tie votes in elections shall be publicly decided by lot in the manner authorized by RCW 29A.60.221.

### **8.2 The Method for Resolving Ties by Lot**

The method for resolving ties by lot shall be by the tossing of a coin or by another method approved by the Board. The Board shall designate which candidate will be indicated by each side of the coin prior to the toss.

### **8.3 Recount**

If a tie results from the original tabulation of the ballots, the Board may direct a recount as provided in Chapter 9 before taking action to resolve the tie.

## 9. RECOUNTS

### 9.1 Definition

“Recount” means the process of re-tabulating ballots and producing amended election returns based on that re-tabulation, even if the vote totals have not been changed.

### 9.2 Criteria for Mandatory Recount

- a. The Canvassing Board on its own motion shall conduct a recount of all votes cast for a position at no cost to any candidate if the difference in the number of votes cast for a candidate apparently qualified for the general election ballot or elected to any office, and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates . (RCW 29A.64.021)
- b. If such a difference occurs for a position or office that appears on the ballot in more than one county, the direction to conduct the recount shall be given by the Secretary of State. (RCW 29A.64.021)
- c. For statewide measures meeting the statutory criteria for a recount, the Board shall conduct a recount as directed by the Secretary of State. (RCW 29A.64.090)

### 9.3 Requested Recount

- a. Eligibility to Request a Recount. An officer of a political party, or any person for whom votes were cast in a primary who was not declared nominated or any person for whom votes were cast at an election, may file a written application for a recount of the votes cast for all candidates for that office. A group of five or more registered voters may file a written application for a recount of votes cast upon any local ballot measure. (RCW 29A.64.011)
- b. A group of registered voters should also designate one of their memberships as chairperson and shall indicate the voting residence of each member of the group. (RCW 29A.60.011)

- c. Time for Filing Recount Application. The person filing an application for recount must do so in writing within two business days after the Board or Secretary of State has declared the official results of the primary or election office or issue for which the recount is requested. (RCW 29A.64.011)
- d. Contents of Application for Recount. The person filing a recount application shall include all information required in RCW 29A.64.011.
- e. Deposit. The person filing a recount application shall deposit with the Board a sum in the amount and manner determined by RCW 29A.64.030.

#### **9.4 General Procedures for All Recounts**

- a. Time for Recount. Election staff shall determine the date, time and place at which the recount will be conducted. (RCW 29A.64.030)
- b. Notice of Recount. The Director shall send notice of the time and place of the recount as determined by RCW 29A.64.030.
- c. Observers. Interested persons may attend and observe a recount proceeding by the Board subject to physical limitations of the Elections Office. Observers will follow procedures set forth in RCW 29A.64.030 and by the observer guidelines provided to all observers participating in the process.
- d. Recounting Votes. The sealed containers shall be opened, and the ballots recounted in the presence of the Board or its delegates and observers. The recount shall be conducted according to the methods determined by RCW 29A.64.011, 29A.64.021, and 29A.64.041.
- e. Challenges. Challenges of ballots and/or voters shall not be allowed prior to or during a recount. The prior decision of the Board either including or excluding a particular ballot during the canvassing process is not in question during the recount. (RCW 29A.08.810; the statutes governing the contesting of election results are provided in Chapter 29A.68 RCW.)

## **9.5 Special Procedures for Requested Recounts**

- a. Written Request to Stop. The applicant or applicants may file a written request to stop the recount with the Board at any time. (RCW 29A.64.041)
- b. Partial Recount. In those cases where a partial recount has been conducted and the results of the recount, as reflected in the amended declaration of results of the election, changes the results of the original election certified by the Board, the Board shall order a complete recount of all the ballots cast for the office or issue for the jurisdiction in question. (RCW 29A.64.050)

## **9.6 Posting Results of the Recount**

- a. Immediately upon completion of the recount or at the time specified by the Secretary of State, the Director will provide the affected candidates and/or the requester, and at the Director's discretion, any other interested parties, with the results of the recount. If the results of the recount differ from the results recorded in the official County Canvass Report, the Director shall advise those present that an amended Abstract of Votes shall be prepared and certified.
- b. Amended Abstracts. Upon the completion of the canvass of the recount of the ballots, the Director shall prepare for the Board's certification an amended abstract showing the revised cumulative summary of the recounted ballots, if any, as well as the votes cast in each precinct in which the office or proposition was submitted to the voters. Copies of the certified amended abstract must be distributed to the same persons or agencies as the original certified Abstract of Votes. (RCW 29A.64.061)

## **9.7 Repeated Recounts**

After the original count, canvass, and certification of the results, the votes cast in any precinct may be recounted and the results certified no more than twice. (RCW 29A.64.070)

## **9.8 Final Cost of Recount**

The Board shall determine the actual expenses incurred for conducting a recount. The costs shall be determined based on the results and based on RCW 29A.64.081.

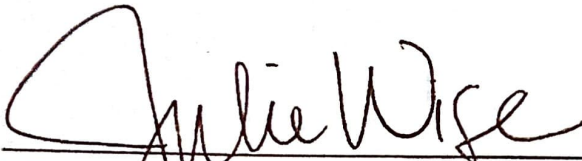
## **9.9 Manual Counting of Ballots**


- a. General. The determination of conducting a manual count of the ballots included in a recount is as follows:
  1. The method is requested by RCW 29A.64.011 or set by RCW 29A.64.021.
  2. When the computerized vote tallying system becomes inoperative, or the tabulation program is shown to be defective, or
  3. During a recount of the ballots where fewer than 200 ballots are involved, or when specified by the party requesting a recount or when required by law, or
  4. When a ballot type is used which cannot be processed by the vote tallying equipment, or
  5. When so directed by the Board.

**ADOPTION**

The foregoing Administrative Rules are ADOPTED by the King County Canvassing Board

this 10<sup>th</sup> day of May, 2022.

  
\_\_\_\_\_  
Julie Wise, Director, King County Elections

  
\_\_\_\_\_  
Susan Slonecker, Designee, Prosecuting Attorney's Office

  
\_\_\_\_\_  
Janine Weihe, Designee, King County Council



**Appendix A:**

**Voter Intent – Statewide Standards on What is a Vote**

[https://www.sos.wa.gov/assets/elections/administrators/2018\\_voter-intent\\_web.pdf](https://www.sos.wa.gov/assets/elections/administrators/2018_voter-intent_web.pdf)