



# City of Kingman

310 NORTH FOURTH STREET • KINGMAN • ARIZONA • 86401 • 928 • 753-5561  
www.cityofkingman.gov

January 30, 2019

Kingman Citizens for Honesty, Accountability, and Transparency  
Kristi Turman  
2583 Sandstone Street  
Kingman, AZ 86401

Dear Ms. Turman,

As stated in our meeting this date, I was recently asked to review the calculation for the signature requirement for the Kingman Citizens for Honesty, Accountability, and Transparency recall, serial number REC18-001. When your "Application for Recall Petition Serial Number" was filed in October, 2018, initially the number of signatures thought to be acquired was formulated by using the 2018 primary election votes cast; the initial number given, 410, is incorrect. The correct number of signatures, per the Arizona Constitution should have been formulated by the 2016 general election votes cast, bringing the updated signature requirement to 1946.

The Arizona Constitution, Article VIII, pt. 1 and ARS 19-201 states, "Every public officer holding an elective office, either by election, appointment or retention, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to that office. Such electoral district may include the whole state. A number of qualified electors equaling twenty-five per cent of the number of votes cast at the last preceding general election for all the candidates for the office held by the officer, even if the officer was not elected at that election, divided by the number of offices that were being filled at that election, by recall petition, may demand the officer's recall."

The City of Kingman sought outside legal advice from the League of Arizona Cities and Town's General Counsel, which directed the City to case law *Tellez v. Superior Court*, 104, Ariz. 169. That case law requires that all votes cast be used to formulate the total number of signatures required for the recall; "...votes cast for a deceased, disqualified or ineligible person are not to be treated as void..."

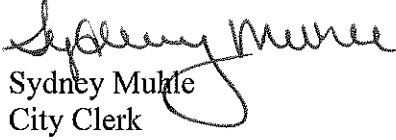
As a result of this information, we are issuing you an amended Application for Recall Petition Serial Number. Please see the revised calculation below:

Total Votes Cast	15,566
x25% required by statute	3891.5
+2 Council seats available	1945.75

Rounded to the next whole number, the new required signature threshold for this recall is 1,946 total signatures.

As per your request, I have enclosed a copy of the emails requesting this review. Should you have any questions or concerns regarding your application, please feel free to contact me by phone at (928)753-8335, by email at [smuhle@cityofkingman.gov](mailto:smuhle@cityofkingman.gov), or in person at 310 N. Fourth Street.

Sincerely,

  
Sydney Muhle  
City Clerk

## Sydney Muhle

---

**From:** Travis Lingenfelter  
**Sent:** Thursday, January 24, 2019 6:14 PM  
**To:** Sydney Muhle; Carl Cooper  
**Cc:** Ron Foggin  
**Subject:** RE: Recall Signatires Requirement.  
**Attachments:** C39086EC-3274-4BC2-A0B3-F24A06BB6D47.jpeg; 2F1F5CFE-D13C-4F79-83CC-BCC9859886B6.png

Since they filed the recall effort in October 2018, the last preceding general election would have been in 2016, where 2 Council seats were up.

15,556 total votes were cast / 2 seats available in general election = 7,778  
 $7,778 \times .25 = 1,944$  valid signatures required

Please confirm.

Sincerely,  
TL

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From: Travis Lingenfelter  
Sent: Thursday, January 24, 2019 10:15 AM  
To: Sydney Muhle; Carl Cooper  
Subject: Recall Signatires Requirement.

Hi Sydney,

According to ARS, the recall signatures required is determined by the total number of votes cast in the last general election for the office (14,990) divided by the number of seats to be filled in the General Election (2) and then multiplied by 25%.

$14,990$  total votes / 2 seats in General Election =  $7,495 \times .25 = 1,873$  signatures required.

I believe the 400+ figure provided is incorrect. Please see the screenshot from the AZ Secretary of State's Election Handbook.

Sincerely,  
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## Sydney Muhle

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**From:** Travis Lingenfelter  
**Sent:** Friday, January 25, 2019 4:45 PM  
**To:** Sydney Muhle; Carl Cooper  
**Cc:** Ron Foggin  
**Subject:** RE: Recall Signatires Requirement.  
**Attachments:** C9EA098C-8ED0-46E5-AF22-AB9C0C5782C7.jpeg;  
B8E90630-8472-4B69-8F7F-586973B34E01.png

ARS 19-201 states the calculation is based all votes cast for all candidates. I want to sit down and see all statute cited and the formula that will ultimately be used.

With respect, this is a big deal, my name will again be in the paper, the City will look foolish, and I will retain Roopali or similar election attorney to review this matter as necessary and in my best interests.. being the third time that statute has been misinterpreted.

Per statute it is the total votes cast for all candidate at the last preceding general election, divided by two seats up for grabs, then 25% of that number. It is not based upon the only the candidates that were ultimately elected.

Respectfully,  
TL

---

From: Sydney Muhle  
Sent: Friday, January 25, 2019 4:28 PM  
To: Travis Lingenfelter; Carl Cooper  
Cc: Ron Foggin  
Subject: RE: Recall Signatires Requirement.

Travis,

We are working on some additional information that we will get to you and the rest of the Council on Monday, but the math would be as follows :

Name	Total Votes
Scott Stehly, Jamie	5,684
Wayt, David	4,752
Total Votes	10,436
÷	2 council seats available
=	5,218
x	25%
	1,305 signatures required for the recall petition

Because Mr. Rucker dropped out of the race and there were no valid write-in candidates, the votes for them do not count.

Thank you,

Sydney Muhle, CMC  
City Clerk

City of Kingman  
310 N. Fourth St.  
Kingman, AZ 86401  
(928)753-8335  
Fax: (928)753-6867

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-----Original Message-----

From: Travis Lingenfelter  
Sent: Friday, January 25, 2019 9:30 AM  
To: Carl Cooper; Sydney Muhle  
Cc: Ron Foggin  
Subject: RE: Recall Signatires Requirement.

I'd like to schedule a time to meet with you in your office today to do the simple math.

Thanks,  
Travis

---

From: Carl Cooper  
Sent: Friday, January 25, 2019 8:58 AM  
To: Travis Lingenfelter; Sydney Muhle  
Cc: Ron Foggin  
Subject: RE: Recall Signatires Requirement.

Travis,

I am sorry for the slow response. I am running around between meetings and Syd is off today. We are looking into this issue and will let folks know what we come up with as soon as we can.

Carl Cooper  
Kingman City Attorney

-----Original Message-----

From: Travis Lingenfelter  
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**From:** Travis Lingenfelter  
**Sent:** Friday, January 25, 2019 4:54 PM  
**To:** Sydney Muhle; Carl Cooper  
**Cc:** Ron Foggin  
**Subject:** RE: Recall Signatires Requirement.  
**Attachments:** BB996EDA-AE8A-4EDB-A97B-17C3B2CDBEF2.png

Statute requires strict compliance for recalls. Nowhere in the recall statutes do I find anything about disqualifying a candidate that steps out last minute or disqualifying write in votes. Voters always retain the option of voting for a write-in.

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Cc: Ron Foggin  
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## Sydney Muhle

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**From:** Carl Cooper  
**Sent:** Monday, January 28, 2019 10:18 AM  
**To:** Travis Lingenfelter  
**Cc:** Ron Foggin; Jen Miles; Sydney Muhle  
**Subject:** RE: Recall Signatures Required

Travis,

The statute states that "...the number of votes cast at the last preceding general election for all the candidates..." Gary Rucker was not a candidate. He withdrew. Write-in votes would only count for write-in candidates that filled out the proper paperwork. There were none at that election. Votes or marks for someone other than an official candidate are invalid. They do not count in the calculation of the winner of the election nor do they count in this situation.

I understand your consternation but it makes no legal or practical sense to include invalid votes in this type of calculation.

Carl Cooper  
Kingman City Attorney

-----Original Message-----

**From:** Travis Lingenfelter  
**Sent:** Monday, January 28, 2019 7:20 AM  
**To:** Carl Cooper  
**Cc:** Ron Foggin; Jen Miles  
**Subject:** Recall Signatures Required

Good morning, Carl.

The Legislature understood that recalls overturn the democratic determination of the voters, and so they require strict compliance with statute. Statute state recognizes that ALL voters who went to the polls should have their votes counted. All voters showed up to participate in a democratic vote, and it doesn't matter if they didn't know Gary Rucker stepped out at the last minute, or if they voted for Gary Rucker on purpose regardless, or if they chose to use their vote for a write-in. Statute clearly says ALL VOTES CAST at the last preceding general election. To disqualify the votes of these voters is against strict compliance of statute for recalls, because the legislature wants all voters who cast a vote to be counted in the base number to respect the fact that every single one of these voters showed up at the polls and exercised their democratic rights.

The correct calculation in strict accordance with statute as written is:

15,556 Total Votes Cast in 2016 General Election / 2 seats to be filled at 2016 General Election = 7,778

7,778 x .25 = 1,944 Valid Kingman Voters' Signatures Required for Recall Petition

I would like to come in and discuss this this morning to determine if you agree, or if I need to retain Roopali or another elections attorney. Having the City being forced to spend over \$100,000 on a special election is something I will fight.

Respectfully,  
TL

## Sydney Muhle

---

**From:** Carl Cooper  
**Sent:** Monday, January 28, 2019 4:08 PM  
**To:** Travis Lingenfelter  
**Cc:** Ron Foggin; Jen Miles; Sydney Muhle  
**Subject:** RE: Recall Signatures Required

OK....we do have a case that the League dug up regarding a deceased candidate. It was a primary election to determine who moved forward to the general. In that case, the candidate died yet he received the highest number of votes. It was the second place candidates argument that he should be put on the ballot as a vote for a deceased candidate is invalid. The Court disagreed noting:

The general rule which we think the better is that the votes cast for a deceased, disqualified or ineligible person are not to be treated as void or thrown away but must be counted in determining the result of an election as regards to other candidates where such deceased or disqualified person received the highest number of votes. The courts have held that the result of its application is to render the election nugatory and to prevent the election of the person receiving the next highest number of votes. Corpus Juris Secundum states the majority rule to be as follows: "Votes cast for a deceased, disqualified, or ineligible person, although ineffective to elect such person to office, are not to be treated as void or thrown away but are to be counted in determining the result of the election as regards the other candidates." 29 C.J.S. Elections § 243, p. 676.  
Tellez v. Superior Court, 104 Ariz 169

So with that Sydney will be recalculating the petition requirements.

Carl Cooper  
Kingman City Attorney

-----Original Message-----

**From:** Travis Lingenfelter  
**Sent:** Monday, January 28, 2019 11:37 AM  
**To:** Carl Cooper  
**Cc:** Ron Foggin; Jen Miles  
**Subject:** RE: Recall Signatures Required

Please send me all documentation demonstrating the official public notice to the voters of Kingman that Gary Rucker was not at candidate. Clearly, no instructions were provided at the polls, as Gary came in second receiving 5,023 votes.

Respectfully,  
TL

---

**From:** Carl Cooper  
**Sent:** Monday, January 28, 2019 10:49 AM  
**To:** Travis Lingenfelter  
**Cc:** Ron Foggin; Jen Miles; Sydney Muhle  
**Subject:** RE: Recall Signatures Required

ARS 19-201

Carl Cooper  
Kingman City Attorney

-----Original Message-----

From: Travis Lingenfelter  
Sent: Monday, January 28, 2019 10:47 AM  
To: Carl Cooper  
Cc: Ron Foggin; Jen Miles; Sydney Muhle  
Subject: RE: Recall Signatures Required

Many voters that voted for Gary Rucker did not know that he was not a candidate. ARS 19-201.01 requires strict compliance with the statute on signatures for recalls, which means there is no wiggle room for interpretation. To over 5,000 Kingman voters, Gary Rucker was on the ballot and to their knowledge he was a candidate. To not count these citizens' votes in the total number of all votes cast for the purpose of a recall calculation undermines the democratic strict compliance of statute.

Please cite the Arizona state statute that says that if a candidate is on the ballot that all the citizens that vote for him or her are not counted in a recall calculation if they step out last minute. It is improper to not count their votes in a recall calculation, if you follow the strict compliance requirement.

---

From: Carl Cooper  
Sent: Monday, January 28, 2019 10:18 AM  
To: Travis Lingenfelter  
Cc: Ron Foggin; Jen Miles; Sydney Muhle  
Subject: RE: Recall Signatures Required

Travis,

The statute states that "...the number of votes cast at the last preceding general election for all the candidates..." Gary Rucker was not a candidate. He withdrew. Write-in votes would only count for write-in candidates that filled out the proper paperwork. There were none at that election. Votes or marks for someone other than an official candidate are invalid. They do not count in the calculation of the winner of the election nor do they count in this situation.

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**From:** Travis Lingenfelter  
**Sent:** Monday, January 28, 2019 5:50 PM  
**To:** Carl Cooper  
**Cc:** Ron Foggin; Jen Miles; Sydney Muhle  
**Subject:** RE: Recall Signatures Required  
**Attachments:** D0F35874-56EA-4DBD-AFD6-CAC42825C028.jpeg

Per the attached, my attorney was reviewing the same case. Her letter will be sent to Carl tomorrow morning.

Respectfully,

TL

---

**From:** Carl Cooper  
**Sent:** Monday, January 28, 2019 4:07 PM  
**To:** Travis Lingenfelter  
**Cc:** Ron Foggin; Jen Miles; Sydney Muhle  
**Subject:** RE: Recall Signatures Required

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ARS 19-201

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Receipt

I, Kristi Turman, do certify that I received a copy of the letter to the Kingman Citizens for Honesty, Accountability, and Transparency and Kristi Turman from Sydney Muhle, City Clerk for the City of Kingman, dated January 30, 2019.

Kristi Turman

Signature

Kristi Turman

Print

1-30-19 @ 4:44 PM

Date & Time