

Civilian Police Oversight Agency
Policies and Procedures
(April 16, 2016 Resolution Draft)

ARTICLE I -- PURPOSE

1. Recognizing that a properly conceived and functioning police oversight system is necessary to promote accountability of police officers and protect the rights of citizens, the City Council adopted the Police Oversight Ordinance, § 9-4-1-1 to 9-4-1-14.
2. Through the Police Oversight Ordinance, the City Council created the Civilian Police Oversight Agency ("CPOA") as an independent agency of City Government, not part of either the City Administration or City Council. The CPOA is overseen by the Police Oversight Board ("POB") and operates through an Administrative Office. The Executive Director of the CPOA leads the Administrative Office and reports to the POB.
3. These policies and procedures set forth the structure of the CPOA and the manner in which it will operate. The policies and procedures may be supplemented by office policies the POB may approve related to internal operations of the Administrative Office.

ARTICLE II -- MEETINGS

1. **Regular Meetings.** The POB will hold regular monthly meetings, which it currently schedules at 5:00 p.m. on the second Thursday of every month in the Vincent E. Griego Chambers, Albuquerque/Bernalillo County Government Center.
2. **Special Meetings.** Special meetings may be called by the Chairperson or a majority of the members upon three days notice. On the petition of 1,000 or more civilians in the City of Albuquerque, the POB also shall hold a special meeting for the purpose of responding to the petition, and hearing and inquiring into matters identified therein as the petitioners' concern.
3. **Emergency Meetings.** Notwithstanding any provision contained in these policies and procedures, the Chairperson may, in the event of an emergency, call with whatever notice is possible under the circumstances, a meeting of the POB to consider any matter. "Emergency" for the purpose of this section refers to unforeseen circumstances that, if not addressed immediately by the POB, will likely result in injury or damage to persons or property or substantial financial loss to the City and/or the CPOA specifically. Within ten days of taking action on an emergency matter, the POB shall report to the New Mexico Attorney General's Office the action taken and the circumstances creating the emergency, unless a state or national emergency has been declared.
4. **Open Meetings.** Except as may otherwise be provided in the Constitution of the State of New Mexico or the Open Meetings Act, all meetings of a quorum of members of the POB held for the purpose of formulating public policy, discussing public business or taking any

action within the POB's authority or the delegated authority of the POB, are to be public meetings open to the public at all times. Each year, the Chairperson of the POB shall introduce, and the POB shall adopt, a resolution establishing procedures to provide reasonable notice of POB meetings to the public. Meetings will be conducted with a prepared, timely posted agenda, and, except for emergency matters, the POB shall take action only on items included in the agenda. Regularly scheduled meetings will be televised live on the appropriate government access channel, if it is operating. Special meetings shall be videotaped and aired on the appropriate government access channel.

5. **Quorum.** A majority of the appointed and approved members of the POB serving at any time shall constitute a quorum thereof.

6. **Public Comment and Addressing Meetings.**

A. The POB will provide an opportunity for public comment at the beginning of each meeting and for each agenda item during a meeting. Public comment shall be limited to three minutes, unless extended by the Chairperson.

B. When an individual civilian police complaint is on the agenda for the POB to review, the complainant or complainant's authorized representative will be provided with a minimum of five minutes to address the POB relating to the complaint and investigation.

C. Public comment must be directed to the POB through the Chairperson or presiding Board member, not at staff members or members of the audience.

D. The POB may invite representatives of the City, other government bodies, or the public to speak on matters relevant to the POB's work.

E. Items displayed during an individual's public comment must be removed at the end of that person's public comment.

F. No signs, props, posters, or banners will be allowed in the meeting chambers other than those that are 8½" x 11" or smaller. Such material shall not be held or waived in a manner that blocks the view of others or creates a distraction from the speaker or the business at hand.

7. **Records.** The CPOA Analyst shall serve as the custodian of records for the POB and shall retain the minutes and records of all POB proceedings.

8. **Attendance.** Board members shall attend all meetings of the POB unless excused by the Chairperson.

9. **Disturbing Meetings.** It shall be unlawful to disturb any meeting of the POB or any of its subcommittees, or to behave in a disorderly manner at any such meeting. There will be no tolerance for disruptive public outbursts or disruptions that impede the orderly progress of a meeting. The Chairperson or presiding Board member will provide one warning to anyone who

causes a disruption. Upon a second or continued disruption, the Chairperson or presiding Board member will ask that person to leave the Chambers, and, if necessary, will ask that security escort that person out of the Chambers. Such removal from the Council Chambers or Committee Room will be effective for the remainder of that meeting. If continued disruptions occur, the Chairperson or presiding Board member may recess the meeting until order is restored, and, if necessary, may clear the Chambers or Committee Room of persons participating in the disturbance.

ARTICLE III -- ORGANIZATION OF THE POLICE OVERSIGHT BOARD

1. **Election of Chairperson and Vice-Chairperson.** The POB shall elect one of its members as the Chairperson and one as the Vice-Chairperson. No officer shall be eligible to immediately succeed himself or herself in the same office. The POB shall select the Chairperson and Vice-Chairperson at the first meeting in the month of March of each calendar year or upon vacancy of an office to fill the remaining term. The Chairperson and Vice-Chairperson shall serve at the pleasure of the POB until March 1st of the next year or until their successors have been selected.

2. **Powers and Duties of the Chairperson and Vice-Chairperson.**

A. The Chairperson shall:

- (1) Call the POB to order and, upon a quorum being present, proceed to business;
- (2) Preserve order and decorum and, during POB meetings, have general direction of the Vincent E. Griego Chambers or any location where the meeting is held;
- (3) Have the responsibility for preparation of the agenda and dissemination of the agenda with the public notice for the meeting;
- (4) Decide all questions of order, subject to a Board member's right to appeal to the POB as a whole;
- (5) Have the right to speak, as other Board members, on general questions from his or her chair;
- (6) Vote upon all questions in the same manner as other Board members;
- (7) Announce the result promptly on the completion of every vote;

- (8) Appoint all subcommittees, subject to the approval of the POB;
- (9) Sign all resolutions, letters, and official documents on behalf of the POB;
- (10) Receive all formal messages and communications from the Mayor, City Council, and others;
- (11) Hold over or refer to the appropriate subcommittee any issue of interest to the POB;
- (12) Have the authority to sign all agreements for professional/technical services entered into by the POB to facilitate its functions pursuant to applicable procurement statutes and requirements.

B. In the absence of the Chairperson, upon the Chairperson's inability to act, or upon request of the Chairperson, the Vice-Chairperson shall preside and shall have all the powers and authority of the Chairperson.

3. **Subcommittees.**

A. The POB may create such subcommittees as it deems necessary or desirable in performing the functions it is authorized to perform. Subcommittees shall consist of any number of Board members fewer than a quorum.

B. Subcommittees only shall conduct business when a quorum of the subcommittee is present. A Board member may designate an alternate Board member to attend a subcommittee meeting when the Board member regularly assigned to the subcommittee is unable to attend. A majority of the members of the POB assigned to a subcommittee and designated alternates shall constitute a quorum of a subcommittee.

C. The Chairperson of a subcommittee shall vote on all matters before the subcommittee in the same manner as other members of the subcommittee. The Chairperson also may make or second motions.

D. At each regular POB meeting following a subcommittee meeting, the subcommittee Chairperson shall give an oral report from the subcommittee meeting. The regular meeting minutes shall contain a summary of the subcommittee report.

E. The POB Chairperson may request that subcommittee reports be submitted in writing and provided to the full POB. If written reports are submitted, reports of the minority of the subcommittee may be also included.

F. Subcommittees shall report on all matters referred to them without unnecessary delay. If a subcommittee refuses or neglects to report on any matter referred to it, the Chairperson may take the matter from the subcommittee.

G. A subcommittee may be designated to review civilian police complaints and related matters. Any subcommittee designated responsibility for reviewing civilian police complaints may recommend that specific complaint cases be placed as a consent agenda item for a POB meeting. At such meeting, any Board member may request that a complaint case on the consent agenda be removed and placed instead on the non-consent agenda.

H. The policies and procedures of the POB apply to all subcommittees, except as otherwise provided and except that subcommittees may establish their own time limitations for witnesses addressing the subcommittee and for debate by members of the subcommittee, and except that notice to the public, including an agenda, shall be given for any regular or special meeting of a quorum of the members of any subcommittee.

4. **Conflicts of Interest.** A Board member shall withdraw from any proceeding in which he or she has a direct or indirect conflict of interest, or does not believe he or she can provide a fair and impartial hearing. Board members should err on the side of caution and withdraw from any proceeding in which there is an appearance of a conflict of interest.

5. **Removal of Members.** Any POB member may be removed for cause by a two-thirds vote of either the POB or the City Council. The appointment of any POB member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the POB reports such absence to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists requiring an appointment for the length of the unexpired term.

6. **Orientation and Training.** Upon appointment, POB members shall complete an orientation and training consisting of the following:

A. Required Orientation: Prior to participating in any POB meetings, newly appointed members must first:

- (1) Be trained by the CPOA staff or CPOA legal counsel on CPOA and Albuquerque Police Department (“APD”) rules, policies, and procedures; and
- (2) Attend at least one POB meeting as an observer.

B. Required Training. Each POB member shall complete a training program within the first six months of the member's appointment that consists, at a minimum, of the following:

- (1) Completion of the APD Civilian Police Academy. For purposes of this training requirement, APD may offer an abbreviated, two-day

weekend Civilian Police Academy available only to POB members.

- (2) Civil rights training, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force.
- (3) At least two APD ride-alongs.
- (4) Annual firearms simulation training.
- (5) Internal Affairs training.
- (6) Training provided to APD officers on use of force, including a review and familiarization with all APD policies related to use of force, and including policies related to APD's internal review of force incidents.
- (7) Equity and Cultural Sensitivity training.
- (8) Training on the 2014 Department of Justice ("DOJ") Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and

Findings Letter of April 10, 2014 (or any subsequent findings letters).
- (9) Training on the Police Oversight Ordinance.
- (10) Training on state and local laws regarding public meetings and the conduct of public officials.
- (11) A briefing that identifies and explains the curriculum of all training received or to be received by APD officers, including any outside training not provided by the City.

C. Required On-Going Training. POB members shall receive eight hours of annual training on any changes in law, policy, or training, as well as developments in the implementation of the 2014 DOJ Settlement Agreement (or any subsequent agreements) until such time as the terms of the agreement are satisfied.

D. POB members shall participate in at least two police ride-alongs for every six months of service on the POB.

E. CPOA investigators shall receive at least 40 hours of initial training in

conducting misconduct investigations within the latter of one year of the operational date of the DOJ Settlement Agreement or one year of hire. CPOA investigators also shall receive at least eight hours of training each year thereafter. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.

7. **CPOA Staff.** CPOA employees shall staff, coordinate, and provide technical support for all scheduled POB meetings, publicize all findings and reports, recommendations, and/or suggested policy changes. The POB also may consult with CPOA staff for relevant information that will aid the POB in its work.

8. **Executive Director**

A. Selection and removal of the Executive Director shall be governed by the Police Oversight Ordinance.

B. In the event of the prolonged absence of the Executive Director, or during a period after the Executive Director has ended contractual obligations with the City and a temporary appointment has not yet been completed, complaints will be assigned to CPOA investigators subject to the Chairperson's direction, including with regard to determining any need for outside independent investigators. In such circumstances, CPOA investigators shall continue preparing proposed findings and recommendations for civilian complaints. The Chairperson may designate an acting Executive Director for purposes of presenting civilian complaints to the POB during any such period of time.

C. The POB shall annually review the performance of the CPOA Executive Director taking into consideration the obligations and duties prescribed by the Police Oversight Ordinance and the performance of the CPOA Administrative Office.

9. **Independent Counsel.** The CPOA may retain or employ independent legal counsel on a contractual basis to advise and represent the CPOA. If so retained, the CPOA's legal counsel shall represent the CPOA in the courts, and shall advise the CPOA as to any legal matters relating to the Police Oversight Ordinance and the CPOA's duties, responsibilities, and procedures except for CPOA personnel matters, which shall remain under the authority of the City Attorney's Office.

10. **Indemnification of CPOA Staff and POB.** The City shall hold harmless, indemnify, and defend the Executive Director, CPOA staff, and POB members when liability is sought for conduct allegedly committed within the scope of the relevant individual's duties, responsibilities, and service to the CPOA. This shall include providing the impacted individual with legal representation including, where appropriate, outside counsel.

ARTICLE IV- PROCEDURES

1. **Definitions.**

A. "Use of Force" means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person.

B. "Serious Use of Force" means: (1) all uses of lethal force by an APD officer; (2) all critical firearm discharges by an APD officer; (3) all uses of force by an APD officer resulting in serious physical injury or requiring hospitalization; (4) all head, neck, and throat strikes with an object or neck holds; (5) all uses of force by an APD officer resulting in a loss of consciousness; (6) all canine bites; (7) more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, or an ECW application for longer than 15 seconds, whether continuous or consecutive; (8) any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject; and (9) more than three strikes with a baton. The term "serious use of force" is defined differently in the Memorandum of Understanding for the Multi-Agency Task Force in which APD participates to investigate officer involved shootings, serious uses of force (as defined in the Memorandum of Understanding), and in-custody deaths. The definition of "serious use of force" in this Agreement is not intended to substitute or alter in any way the definition in the Memorandum of Understanding.

2. **General Rules.** Any matter not covered by these rules shall be governed by Roberts' Rules of Order (latest edition), or, if not covered by Roberts' Rules of Order, by a decision of the Chairperson, subject to the right of appeal.

3. **Amendment of Rules.** These rules, or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of all POB members.

4. **Suspension of Rules.** These rules, or any part thereof, may be temporarily suspended by a vote of two-thirds of the Board members present. The following shall apply if fewer than nine Board members are present:

<u>Board Members Present</u>	<u>2/3 Vote</u>
8	6
7	5
6	4
5	4
4	3

When the suspension of a rule is requested and no objection is offered, the Chairperson shall announce the rule suspended, and the POB may proceed accordingly.

4. **Time Computation.** In computing any period of time prescribed or allowed by these rules or the Police Oversight Ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Unless otherwise specified, any period prescribed or allowed by these rules that is longer than (10) days shall be calculated as calendar days. If the last day of any designated period is a Saturday, Sunday, or legal holiday, the period will end on the next business day.

5. **Order of Business.**

A. The POB shall consider business in the following order:

- (1) Welcome and Call to Order
- (2) Pledge of Allegiance
- (3) Public Comment
- (4) Review/Approval of Minutes
- (5) Hearings on Requests for Reconsideration
- (6) Findings by POB
- (7) Reports from Sub-Committees
- (8) Reports from CPOA or City staff, including the CPOA Executive Director, Independent Counsel, Mayor, City Council, City Attorney, and Albuquerque Police Department.
- (9) Other Business

B. The Chairperson shall have the discretion to proceed out of order to any order of business or return to any prior order of business.

6. **Motions.** No motions shall be entertained or debated until announced by the Chairperson, and every motion shall be seconded prior to debate.

7. **Debate.**

A. Any Board member wishing to speak, debate, make a motion, submit a report, or conduct other business shall address the Chairperson and shall not proceed further until recognized by the Chairperson.

B. If two or more Board members seek recognition at the same time, the Chairperson shall name the one who shall speak first.

C. The Board member who sponsors a motion shall have the privilege of opening and closing debate. A Board member may direct an inquiry and receive a response without yielding the floor.

D. No Board member shall be permitted to speak more than once on any motion until every Board member desiring to be heard has been allowed to speak. Nor shall any Board member except the sponsor of the motion speak more than a total of ten minutes on any motion.

E. No Board member shall be interrupted when speaking, nor shall any motion be in order until the Board member has concluded.

F. No question shall be asked of the Board member except those directed through the Chairperson with the consent of the Board member.

8. **Voting.**

A. Voting shall be in the form of "Yes" or "No." Any action on a question is lost by a tie vote. Every Board member who is within the room shall vote upon each question, except those who have disqualified themselves due to a conflict of interest.

B. A Board member shall be allowed to change his or her vote but only before the result has been announced.

C. A Board member may request to vote by telephone or other similar device when a medical or emergency situation exists. Such voting can only take place upon the approval of the Chairperson and provided that the Board member can be heard on a speaker to enable the POB and the public to determine when the Board member is speaking and casting a vote.

D. Reconsideration. Any Board member who voted with the prevailing side on any question may move at the same meeting to reconsider the question. A motion to reconsider shall require the affirmative vote of a majority of Board members present.

E. An appeal may be made on any decision of the Chairperson. The Board member appealing the Chairperson's decision will speak and the Chairperson may respond. Such appeals shall be acted upon immediately, and no other motions shall be entertained until the question has been decided. A vote of the majority of the Board members present shall be required to sustain an appeal.

F. Any Board member may move to end debate. A majority of the Board members present must agree to end the debate or it may continue.

G. A Board member may be permitted to explain his or her vote, but only after the roll call has been completed and the result has been announced.

9. **Decorum.** Board members or other speakers shall confine their remarks to the question under discussion or debate, avoiding personal attacks. No Board

member shall engage in private discourse or commit any other act tending to distract the attention of the POB from the business before it.

10. **Early Departure.** Any Board member leaving a POB meeting early shall make the Chairperson aware of such departure as early as possible, so that allowances in scheduling business can be made. Any Board member leaving a subcommittee meeting when the departure will cause a loss of quorum shall make every effort to secure an alternate Board member to sit on the subcommittee.

ARTICLE V -- INVESTIGATION AND REVIEW OF CIVILIAN COMPLAINTS, SERIOUS USES OF FORCE, AND OFFICER INVOLVED SHOOTINGS

1. Civilian Complaints.

A. Any person claiming to be aggrieved by the actions of the APD may file a complaint against the department or any of its officers or employees. Anonymous and third-party complaints shall be accepted, and there is no time limitation on when a complaint may be filed with the CPOA.

B. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any Spanish-speaking individual with limited English proficiency who wishes to file a complaint about APD personnel shall be provided with a complaint form in Spanish. Efforts will be made to accommodate other non-English speakers. All such complaints will be investigated in accordance with policies and procedures set forth herein and associated policies.

C. The CPOA will receive and process all civilian complaints directed against the APD and any of its officers or employees. The Executive Director shall independently investigate, or cause to be investigated, all civilian police complaints and prepare findings and recommendations for review by the POB. The Executive Director shall oversee, monitor and review all investigations and findings prepared for complaints assigned to staff or an outside investigator. For all investigations, the Executive Director shall make recommendations and give advice to the POB regarding APD policies and procedures as the Executive Director deems advisable.

D. All civilian complaints filed with other offices within the City authorized to accept civilian complaints, including the APD, shall be referred by the recipient to the Executive Director for investigation within three business days of receipt.

E. The Executive Director shall ensure that the investigation of all civilian complaints filed with the CPOA begin immediately after the complaints are filed and proceed as expeditiously as possible. The Executive Director shall be prepared to brief the POB on the status of any investigations that ~~were not, or~~ are not on track to be completed in sufficient time for the POB to make disciplinary recommendations in advance of the deadline for the Chief of Police ("Chief") to impose discipline.

F. The Executive Director shall ensure that investigations of civilian complaints

are as thorough as necessary to reach reliable and complete findings, and are objective, fair, impartial, and free from political influence. In addition to other information and evidence the CPOA obtains through investigation, investigators shall review records provided by the City that reflect:

- (1) the complete disciplinary history of the officers involved in incidents under review;
- (2) where their inclusion will aid the investigation, documents, reports, and other materials for incidents related to those under review, such as incidents involving the same officer(s);
- (3) all APD policies and training; and
- (4) where their inclusion will aid the investigation, documents, reports, and other materials for incidents that may evince an overall trend in APD's use of force, internal accountability, policies, or training.

G. After the investigation of a civilian complaint is completed, the Executive Director shall analyze all relevant and material circumstances, facts and evidence that investigators gathered during the investigation related to the issues raised in the complaint and potential collateral violations of APD policies and procedures, or criminal law. The Executive Director shall then prepare investigation reports with proposed findings and recommendations for each investigation, and submit them to the POB for its review and consideration. In cases in which clear evidence suggests misconduct involved a different officer, a second investigation should be opened relating to the second officer's actions.

H. The Executive Director shall explicitly identify and recommend to the POB one of the following dispositions for each allegation of misconduct in a civilian complaint:

- (1) "Unfounded," where the investigation determines, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer;
- (2) "Sustained," where the investigation determines, by a preponderance of the evidence, ~~that~~ the alleged misconduct did occur;
- (3) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred;
- (4) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training;
- (5) "Sustained violation not based on original complaint," where the investigation determines, by a preponderance of the evidence, that

misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation; or

- (6) "Administratively closed," where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of the lack of information in the complaint. Administrative closing of a complaint investigation shall be used only for the most minor policy violations that do not constitute a pattern of misconduct, duplicate allegations, or allegations that even if true would not constitute misconduct. Administratively closed complaints may be re-opened if additional information becomes available. In such cases, the deadlines for investigation and review set forth above shall run from when the complaint is re-opened.

I. The burden of proof is not imposed on any party to a civilian complaint but instead rests with the investigating agency.

J. All investigations of civilian complaints shall be completed within 90 days of initiation of the complaint investigation. The 90-day period shall not include time for review. An extension of the investigation of up to 30 days may be granted, but only if the request for an extension is in writing and is approved by the Chief. To the extent permitted by state and city law, extensions may also be granted in extenuating circumstances, such as military deployments, hospitalizations of the officer, and extended absences. The Chief has 30 days from completion of the investigation to impose discipline. Investigations shall be submitted to the POB with sufficient time for Board members to determine the appropriate disposition and submit any recommendation related to discipline to the Chief for consideration before the deadline for imposing discipline expires. The POB may make findings and recommendations on complaints that are not resolved within these timelines despite any limitations it may have on the purposes for which APD may use the POB's findings and recommendations.

K. If at any time during a misconduct complaint intake or investigation a CPOA investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Bureau commanding officer and transfer the investigation to the Internal Affairs Bureau.

L. The Executive Director, CPOA staff, and POB members may file complaints against APD personnel pursuant to the Police Oversight Ordinance in the same manner as any other citizen. Such complaints shall be addressed as follows:

- (1) Any Board member who is a complainant or witness for a civilian police complaint shall be recused from participating in any findings, votes, or recommendations concerning the complaint.
- (2) Where a member of the CPOA staff is a complainant or witness for a civilian police complaint, the Executive Director shall retain an

independent outside investigator to investigate the complaint. Absent a conflict of interest that precludes forming a quorum, the POB will process and decide the complaint in the same manner it decides other civilian complaints. If there is a conflict of interest that precludes forming a quorum, the POB will refer the investigative file to the Chief for his consideration of possible discipline.

- (3) If the Executive Director is a complainant or witness for a civilian police complaint, or if the Executive Director otherwise determines that a conflict precludes the Executive Director from participating in the investigation and presentation of a civilian police complaint to the POB, an independent investigator shall perform the functions of the Executive Director for purposes of that complaint.

2. **Serious Uses of Force and Officer Involved Shootings.**

A. The Executive Director shall receive all APD reports of serious uses of force (as defined in DOJ Settlement Agreement) and officer involved shootings. The Executive Director shall timely review these materials and assign them for investigation or review by the investigative staff.

B. The Executive Director will oversee, monitor, and review all investigations or reviews of serious uses of force and officer-involved shootings, and make findings for each. All findings will be made available to the public on the CPOA website as soon as practicable.

C. Before taking action related to a serious use of force or officer involved shooting, the Executive Director shall confer with the relevant prosecuting agency and/or federal law enforcement agency to assess the likelihood of an officer being criminally prosecuted based on the incident. The Executive Director may delay or decline to proceed with any action related to a serious use of force or officer involved shooting until completion of the criminal investigation unless, after consultation with the prosecuting agency, the Executive Director determines that proceeding is appropriate and will not compromise a criminal investigation. If the Executive Director seeks to proceed with investigating or presenting to the POB a serious use of force or officer involved shooting despite a prosecuting agency or federal law enforcement agency indicating that doing so would interfere with a criminal investigation, the Executive Director only may proceed after obtaining approval to do so through a 2/3 vote of the POB.

3. **Investigation Protocol.**

A. CPOA investigators only shall advise APD personnel of their Fifth Amendment rights where there is a reasonable likelihood of a criminal investigation or prosecution of the subject employee.

B. In each investigation the CPOA conducts, the Executive Director and assigned investigator shall consider all relevant evidence, including circumstantial, direct, and physical evidence.

- (1) There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the Executive Director or investigator disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history or any concern regarding mental illness.
- (2) During its investigation, the CPOA shall take into account any convictions for crimes of dishonesty of a civilian complainant or any witness, but only as relevant to credibility.
- (3) The CPOA shall take into account the record of any involved officers who have been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation. The investigator shall, at a minimum, obtain from Internal Affairs all information related to such prior determinations for any officer whose credibility is at issue in any investigation.

C. Any findings and recommendations the Executive Director prepares shall indicate whether within the past year there were any IA investigations or supervisor generated complaints against the officer(s) involved in the incident being investigated or that are otherwise relevant to the subject matter of the investigation, the general nature of the prior investigations or complaints, and whether they resulted in any discipline.

D. In addition to determining whether APD personnel engaged in misconduct, investigations shall assess and document whether the action(s) under review were in compliance with training and legal standards, and whether the incident suggests the need for a change in policy, procedure, or training.

4. **Access to APD Documents and Subpoenas.**

A. The City shall provide reasonable access to APD premises, files, documents, reports, and other materials for inspection by POB members, CPOA investigative staff, and the Executive Director upon reasonable notice.

B. The POB may issue subpoenas on its own initiative. When the POB issues a subpoena, a showing of relevance is not required and an appeal need not be pending.

C. The subpoena shall be issued by the City Clerk's Office and signed by the Chair or his/her designee.

D. Any applicable witness and travel fees and costs associated with service of process shall be paid by the CPOA.

5. **POB Review.**

A. The POB shall review the proposed findings and recommendations the Executive Director prepares, and shall by majority vote of members present:

- (1) Approve the findings and recommendations as proposed;
- (2) Approve other findings and recommendations as the POB determines are supported by the investigation file;
- (3) Defer action on the matter to allow for further investigation or analysis by the Executive Director.

B. The full investigation file shall be available to the POB for its review subject to the limitations on access and confidentiality set forth in Article VII below.

C. In reviewing completed investigations, the POB shall assess and document whether:

- (1) the incident suggests that APD should revise strategies and tactics;
- (2) the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures;
- (3) the incident suggests revisions to policy or procedures.

D. For civilian complaints, the Executive Director shall prepare and submit a public record letter to the civilian complainant, with a copy to the Chief, that outlines the findings and recommendations the POB approved. The Executive Director shall transmit that letter the next business day following the meeting during which the POB took action on the complaint.

E. Unless the civilian complainant requests a hearing, within 30 days of receipt of the decision of the POB, the Chief shall notify the POB and the original civilian complainant of his or her final disciplinary decision related to the complaint in writing, by certified mail.

F. The Executive Director may share any disciplinary recommendations with the Chief in advance of submitting those recommendations to the POB only as necessary to help ensure timeliness pursuant to any applicable personnel or union contract requirements.

6. **Requests for Reconsideration.**

A. Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations the POB approved may request reconsideration by the POB within thirty (30) calendar days (inclusive of weekends and holidays) of receipt of the public record letter.

B. The POB may grant a request for reconsideration only upon a showing by the complainant that:

- (1) a policy was misapplied in the evaluation of the complaint;
- (2) the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion; or
- (3) the findings and recommendations were not consistent with the record evidence.

C. The POB shall notify the Chief of the request for hearing and hold a hearing on the matter at its next regularly scheduled meeting provided that there is a period of at least ten (10) days between the receipt of the request for hearing and the next POB meeting.

D. The Executive Director shall ensure notice is provided to the complainant at least one week prior to a hearing on the request for reconsideration.

E. Reconsideration hearings shall be included in the POB agenda.

F. Complainants may submit a written request to delay a hearing on a request for reconsideration for up to two months. Failure to appear at a scheduled hearing or to request a delay in writing may result in the POB acting on the request for reconsideration without further input from the complainant.

G. Time for hearings on a request for reconsideration shall be divided as follows:

- (1) 15 minutes for the complainant or representative
- (2) 5 minutes for the police officer, if present
- (3) 10 minutes for APD
- (4) 10 minutes for the CPOA Executive Director or designee
- (5) 5 minutes for the complainant or representative

The POB may combine separate appeals of the same action, in which case each appeal will receive an equal share of the complainant's time. The Chairperson shall indicate in advance the division of time. The parties shall decide on the speakers to use the time.

H. New evidence may be accepted by the POB during the hearing on a request for reconsideration. Whether to accept new evidence a party proffers is left to the discretion of the POB, and the POB may decide to rely on the evidence on the record. If the POB decides that additional evidence is necessary and appropriate for the proper disposition of the request for reconsideration, it may accept the evidence offered during the hearing or require the CPOA

Executive Director to obtain such evidence for future presentation. New evidence which could have been put in the record during previous investigations or hearings is not favored for introduction during a hearing on a request for reconsideration. New evidence that clarifies evidence already in the record may be allowed. New evidence offered to contradict evidence in the record may be allowed if such evidence appears convincing and is material to the proper disposition of a complaint.

I. Board members may ask questions at any time of any witness present. When a Board member asks questions, the time limits set forth above are stayed until questioning is completed.

J. With regard to any request for reconsideration that has been filed with and is pending before the POB:

- (1) No Board member shall communicate outside a hearing with the complainant or the complainant's representative.
- (2) No Board member shall knowingly communicate with a member of the public or an organization about the subject of the request for reconsideration. Information and correspondence that is not in the record at the time the request for reconsideration is submitted only may be considered in making a decision if it is accepted as new evidence as set forth above.
- (3) No Board member shall conduct their own investigations or add their own evidence to the record regarding any hearings on requests for reconsideration.
- (4) Any correspondence regarding the subject of a request for reconsideration that is an ex parte communication and is inadvertently received by a Board member shall be delivered to the CPOA Executive Director and be available for review by the complainant.
- (5) Notwithstanding the above, the CPOA Executive Director and CPOA staff may, upon the request of a Board member, communicate with that Board member at any time and by any means. Copies of any written materials from the CPOA Executive Director shall be distributed to all parties.

K. Upon close of the hearing on a request for reconsideration, the POB may modify or change the findings and/or recommendations of the public record letter and may make further recommendations to the Chief regarding the findings and/or recommendations and any discipline the Chief has imposed or proposed. Decisions on requests for reconsideration shall be determined by a majority of the Board members present. If the vote ends in a tie, the original findings and recommendations remain in place.

L. Within twenty (20) days of receipt of the POB's decision, the Chief shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

7. **Appeals of Disciplinary Decisions to the Chief Administrative Officer.** If any person who has filed a civilian complaint is not satisfied with the Chief's final disciplinary decision or any matter relating to the Chief's handling of his or her complaint, he or she may request that the Chief Administrative Officer review the complaint, the findings of the POB and the action of the Chief. The complainant must make such a request in writing within thirty (30) calendar days (inclusive of weekends and holidays) of receipt of the Chief's letter notifying the complainant of his or her final disciplinary decision related to the complaint. Upon completion of his or her review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief regarding disciplinary action, to complete the disposition of the complaint. The Chief Administrative Officer shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief, and the Executive Director of the CPOA, the results of his or her review and any action taken.

8. **Maintenance of Documentation Regarding Findings.** The POB's final findings shall be placed with the Chief's findings and discipline imposed in the Internal Affairs Unit Discipline Status Sheet in the officer's Retention File, in IA Pro, and in any other electronic track system in which APD maintains records related to findings and discipline.

9. **Disciplinary Recommendations.**

A. The POB may, in its discretion, recommend officer discipline from the Chart of Sanctions for investigations that result in sustained civilian police complaints. The POB also may recommend discipline based on any findings that result from review of internal affairs investigations, including but not limited to officer involved shootings.

B. Imposing discipline the POB recommends is at the discretion of the Chief, but if the Chief does not follow the POB's disciplinary recommendation, the Chief shall respond in writing, within thirty (30) days, with the reason as to why the recommended discipline was not imposed.

10. **Audits.** The POB may, by majority vote, perform an annual audit, or direct that an audit be performed, on a random sample of up to 10% of individual civilian police complaint investigations involving allegations of use of force. In exceptional circumstances, for the purpose of promoting an enhanced measure of quality assurance in the most challenging cases, the POB may, by a vote of two-thirds of the members of the POB, perform an audit, or direct that an audit be performed, on any individual civilian police complaint investigation by the CPOA.

11. **Policy Recommendations.**

A. The Executive Director will provide quarterly reports updating the POB on the results of the CPOA's long-term planning process. Through the long-term planning process, the

CPOA will identify major problems or trends, evaluate the efficacy of existing law enforcement practices in dealing with the same, and establish a program of resulting policy suggestions and studies each year. The POB shall review and analyze policy suggestions, analysis, studies, and trend data the CPOA has collected or developed supplemented by such additional data and information it obtains directly or instructs the CPOA to collect.

B. By majority vote, the POB may recommend policies related to programs and procedures or other matters relating to APD.

C. The Chief must respond to any policy recommendations from the CPOA in writing within forty-five (45) days. The Chief's response must indicate whether the APD will follow the recommendations through standing operating procedures, whether the recommendations should be adopted as policy by the City Council, or whether the Department will not follow any of the policy recommendations and any reasons why they will not be followed.

D. The POB must dedicate a majority of its time to policy recommendations.

12. **Monitoring.**

A. The Executive Director shall monitor and periodically report to the POB on claims of excessive force. This shall include reporting to the POB on APD-related settlements in excess of \$25,000 at the regularly scheduled POB meeting following each such settlement.

B. The CPOA shall track allegations regarding misconduct involving individuals who are known to be homeless or have a mental illness, even if the complainant does not specifically label the misconduct as such.

C. The CPOA shall conduct an annual review of APD's policies against retaliation and the implementation of those policies. This review shall consider the alleged incidents of retaliation that occurred or were investigated during the reporting period, the discipline imposed for retaliation, and supervisors' performance in addressing and preventing retaliation. The CPOA shall coordinate this review with Internal Affairs, which is responsible for reviewing the same issues. Following such review, the City shall modify its policy and practice, as necessary, to protect individuals, including other APD personnel, from retaliation for reporting misconduct.

13. **Reporting.** The Executive Director shall submit to the POB draft semi-annual written reports for the POB's approval for submission to the Mayor and City Council. The reports shall include, but need not be limited to:

A. Data relating to the number, kind and status of all complaints received during the reporting period, including those complaints sent to mediation.

B. Discussion of issues of interest the POB has undertaken, which may include suggested policy and/or procedural changes, a listing of complaints and allegations by Council

District, statistical ethnicity of subject officers, statistical ethnicity of complainants, other demographic category of complainants (if known, race, ethnicity, age, sex, gender expression or gender identity, sexual orientation, and limited English) and updates on prior issues and/or recommendations.

C. The CPOA's findings and the Chief's issuance of discipline on those findings, and the ongoing disciplinary trends of the APD.

D. Information on all public outreach initiatives the POB or Executive Director undertook during the reporting period, including speaking engagements, public safety announcements, and/or public information brochures on the oversight process.

E. The status of the long-term planning process, identifying major problems, policy suggestions, and studies.

F. Identification of any matters that may necessitate the City Council's consideration of legislative amendments to the Police Oversight Ordinance.

G. The amount of time the POB dedicated to policy activities relative to its other activities over the preceding quarter.

H. Discussion, with supporting data, of whether the CPOA has a sufficient number of well-trained staff assigned and available to complete and review thorough and timely misconduct investigations in accordance with the requirements of the Settlement Agreement/Consent Decree between the City of Albuquerque and the DOJ.

ARTICLE VI -- BUDGET

1. **Budget.** CPOA staff shall present to the POB a budget at such a time as to provide the POB sufficient time to recommend and propose the CPOA budget to the Mayor and City Council during the City's annual budget process. The proposed budget shall provide for sufficient funding to carry out the powers and duties set forth in the Police Oversight Ordinance, including the funding for staff and all necessary operating expenses.

ARTICLE VII -- CONFIDENTIALITY AND ACCESS TO INVESTIGATION MATERIALS

1. POB Hearings.

A. The POB hearing process shall be open to the public to the extent legally possible so that it does not conflict with state or federal law.

B. The CPOA's attorney may designate details of investigations privileged or confidential when the law so requires.

C. Compelled statements given to the Executive Director or a designated independent investigator will not be made public.

D. The Executive Director may summarize conclusions reached from a compelled statement for the report to the POB and the Chief, and in the public record letter sent to the complainant.

E. Nothing in these policies and procedures or the Police Oversight Ordinance affects the APD's ability to use a compelled statement in a disciplinary proceeding.

2. **POB Access to Investigation Materials.**

The POB shall have reasonable access to the following documents and information:

A. Redacted personnel records for APD personnel, including those of the Internal Affairs Unit, shall be made available to the POB on demand.

B. Information that could be construed to be covered by *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) will be made available to the POB on application submitted in writing pursuant to a majority vote of the POB. Where the POB votes to review such material, it shall do so only in a closed session to the extent permitted under the New Mexico Open Meetings Act.

C. The POB shall maintain the confidentiality of any *Garrity* material or records that are made confidential by law. The POB is subject to the same penalties as the custodian of those records for violating confidentiality requirements. In addition to any other penalty, any POB member or other person who violates his or her confidentiality obligations shall be removed from the POB and shall be subject to prosecution for a misdemeanor subject to the penalty provisions set forth in § 1-1-99.