

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT BOARD

Thursday, July 12, 2018 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:

Leonard Waites, Chair
Chantal M. Galloway, Vice-Chair
Joanne Fine
Dr. William Kass
Valerie St. John
Chelsea Van Deventer

Members Absent:

None

Others Present

Edward Harness, CPOA
Katrina Sigala, CPOA
Tina Musscarella Gooch, POB Atty
Chief Mike Geier
Sarita Nair, CAO
Cdr. Michael Miller, APD
Cdr. Michelle Campbell, APD
Cdr. Paul Duran, APD
Lindsay Van Meter, Asst. City Atty
Jeremy Schmehl, Asst. City Atty
Chris Sylvan, CPC

Meeting Minutes

- PO Box 1293
- Albuquerque
- NM 87103
- www.cabq.gov
- I. **Welcome and call to order.** Chair Waites called to order the regular meeting of the Police Oversight Board at 5:01 p.m.
 - II. **Pledge of Allegiance.** Member Fine led the meeting in the Pledge of Allegiance.
 - III. **Mission Statement.** Chair Waites read the Police Oversight Board's mission statement.
 - IV. **Approval of the Agenda.**
 - a) A motion was made by Member Fine to approve the agenda as written. Member St. John seconded the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
 - V. **Public Comments**
 1. Pete Dinelli (see attachment) A document was distributed to the POB members titled *Police Oversight Board, ABQ Crime* members.
 - VI. **Review and Approval of Minutes.** For more information about minutes from prior POB meetings, please visit our website here: <http://www.cabq.gov/cpoa/police-oversight-board/pob-agenda-meeting-minutes>

a) Approval of the Minutes from June 14, 2018

1. Copies of the draft minutes from the June 14, 2018 POB meeting were distributed to each member in their packets.
2. A motion was made by Member Van Deventer to approve the minutes as written. Vice-Chair Galloway second the motion. The motion was carried by the following vote:

For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

VII. Reports from City Staff

- a) **APD – Commander Michael Miller with Internal Affairs gave the following report for APD:**
 1. **Statistical Data.** Commander Miller read the Statistical Data for the month of July 2018. A document titled *Police Oversight Board, APD Internal Affairs: Statistical Data for the Month of July 2018* was distributed to the POB members.
 2. Commander Miller will look into quarterly report of officer involved accidents and report back to POB.
- b) **City Council**
 1. There was no one from City Council's Office present to give a report.
- c) **Mayor's Office**
 1. **Chief Administrative Officer.** Sarita Nair presented her report
- d) **City Attorney**
 1. **Asst. City Atty. – Lindsay Van Meter** presented her report
- e) **Community Policing Councils**
 1. **CPC Manager. – Chris Sylvan** presented his report
- f) **Civilian Police Oversight Agency**
 1. **Executive Director – Edward Harness** presented his report
 2. **Example of Office of Police Accountability for Seattle** (see attached)

VIII. Reports from Subcommittees

- a) **Community Outreach Subcommittee – Chantal Galloway-**
 1. Met on June 26, 2018 at 2:30pm
 2. **POB Spokesperson.** A motion was made by Vice-Chair Galloway that Director Harness be responsible for responding to any and all communication that comes to the POB via email, and that you follow up POB Members within a timely manner, within a week of what happens. Member St. John second the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
 3. Next meeting July 24, 2018 at 2:30pm

- b) **Policy and Procedure Review Subcommittee – William Kass –**
 - 1. Member Kass gave an overview of his involvement with the Use of Force process and has been attending monthly meetings
 - 2. Vice-Chair Galloway and Member Van Deventer volunteered to be on the Policy and Procedure Subcommittee
 - 3. Next meeting July 19, 2018 at 3:00pm
- c) **Case Review Subcommittee – Valerie St. John –**
 - 1. Met June 25, 2018 at 3:00pm
 - 2. Next meeting July 31, 2018 at 1:30pm
- d) **Personnel Subcommittee –**
 - 1. No report given by board members

IX. Discussion

- a) **Oversight Ordinance Amendments.**
 - 1. Board Choose no further amendments.
- b) **APD Detective Selection / Training.**
 - 2. Chief Geier and Commander Duran gave a report on APD Detective Selection / Training and answered questions.
- c) **Motion to adjourn for ten minute break.** Member Fine motioned to adjourn break. Member St. John seconded the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, Kass, St. John, Van Deventer

---- 10 minute break began at 7:00 p.m. and the meeting reconvened at 7:13 p.m. ----

- d) **Motion to Resume.** Member Fine Motioned to resume the meeting. Vice-Chair Galloway seconded the motion. The motion was carried by the following vote:
For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer

- X. Consent Agenda Cases:** The CPOA’s findings in each case listed on the consent agenda are reviewed and approved by the POB. The findings become part of the officer’s file, if applicable. Copies of the full findings letters to the citizens are located at <http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings>.

a) Administratively Closed Cases

014-18	083-18	095-18	111-18	116-18
017-18	124-18	131-18	133-18	136-18
137-18	138-18			

b) Not Sustained

041-18

c) Unfounded

077-18

1. Motion. Member Fine motioned to approve the Administratively Closed cases presented. Chair Waites seconded the motion and there was no discussion of any cases. The motion was carried by the following vote:

For: 5 - Waites, Galloway, Fine, St. John, Kass

Against: 1 - Van Deventer

XI. Non-Consent Agenda.

a) There was no Non-Consent Cases to present

XII. Non-Concurrence Cases.

a) There was no Non-Concurrence Cases to present

XIII. Review of Appeals

a) Received response on case 038-18 and will be on the agenda for Case Review Committee

XIV. Serious Use of Force/Officer Involved Shooting Cases.

a) Case I-50-17 will be presented next POB.

b) City Attorney Jeramy Schmehl will provide an update on backlog of cases to Director Harness.

XV. POB's Review of *Garrity* Materials.

a) There were no *Garrity Materials* to discuss.

XVI. Meeting with Counsel re: Pending Litigation or Personnel issues:

Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues

a) Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7); and

b) Limited personnel matters pursuant to NMSA 1978; Section 10-15-1(H)(2)

XVII. Other Business.

- a) **Voting requirements for new board members.** Orientation and Trainings are separate from voting requirements in the policy and procedures. The timeline should work together, given the six month deadline for initial training.
- b) **Attendance of Counsel.** POB decided that representation of Counsel is not needed for monthly POB meetings and is available to meet outside of POB meetings to address any issues the board may have.
- c) **Policy and Procedures.** Changes for Policy and Procedures will be on August 9, 2018 POB Agenda. Member Van Deventer volunteered to be the point of contact to receive all responses from board members by July 31, 2018 and present them to Chair Waites.

- XVIII. Adjournment** – A motion was made by Vice-Chair Galloway to adjourn the meeting. Chair Waites second the motion. The motion was carried by the following vote:
For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
The meeting adjourned at 7:43 p.m.

Next Regularly scheduled POB meeting will be on August 9, 2018 at 5:00 p.m. in the Vincent E. Griego Chambers.

Attachments

POLICE OVERSIGHT BOARD

PUBLIC COMMENT SIGN IN

DATE: 7/12/2016

NAME (PLEASE PRINT)

1. PETE DINELLI

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2. _____

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ABQ CRIME DECREASE

first 3 months
of the year

	2017	2018	% change
ENFORCEMENT			
Traffic Stops	7,940	13,586	+71%
CRIME			
Auto Burglary	3,256	2,234	-31%
Auto Theft	1,904	1,668	-12%
Commercial Burglary	506	477	-6%
Residential Burglary	1,102	1,022	-7%
VIOLENT CRIME			
Homicide	12	18	+50%
Rape	111	98	-12%
Robbery	722	393	-46%
Aggravated Assault	926	840	-9%
Nonfatal Shootings	27	27	No change

Source: City of Albuquerque

C. CUNNINGHAM/JOURNAL

April 18, 2018 (www.PeteDinelli.com)

MURDER RATE IS ALARMING

There were 6 more murders in the first quarter of 2018 compared with 2017 which is a 50% increase. Property crimes by far are more common than murders.

The fact is, murders do not drive property crime trends, but it is the other way around.

A murder is usually committed when another crime is being committed such as armed robbery or domestic violence or it's a crime committed in the heat of anger and a gun is readily available.

It's difficult at best to bring down homicide rates, but it can be done when you bring down other violent crime such as armed robbery, aggravated assaults, illicit drug offenses and domestic violence.

In March of this year, 5 homicides were reported in six days!

Albuquerque has had twenty (21) homicides reported in 4 months thus far and counting! Albuquerque had 12 murders in the first quarter last year.

In 2017, violent crime rose by 18% over the previous year.

Since 2012, violent crime has dramatically increased in Albuquerque by 77%. The 77% increase in violent crime in 2017 was still significantly less than "nonfatal shootings" which increased by a whopping 148%.

According to APD statistics released for 2017, homicides increased by 23%, robberies increase by 43%, rapes increased by 21% and aggravated assaults increased 4.2%.

The dramatic increase in crime in 2017 followed a 15.5 percent increase in violent crime in 2016.

CONCLUSION

The good news is that Albuquerque's property crime rates for the first time in a number of years are declining.

The bad news is that our violent crime rates are still way too high.

In other words, your property may be safe, but you may want to carry a gun.

POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTH OF JUNE 2018

APD 911 Communications Center

Dispatched calls for Service for JUNE 2018: 44,774 (decrease from MAY (1,756))

INTERNAL CASES FOR THE MONTH OF JUNE 2018

I's

Total Internal Cases Completed the Month of JUNE: 6

Comprised of:

- **6-Internal Affairs Investigations**
- **0-Area Command Investigated case**

Internal Cases Administratively Closed: 0

Internal Cases Mediated: 0

Discipline imposed for Internal Cases/ JUNE 2018:

1: Training- Custody of Prisoners, Canine Unit Searches

1: Verbal Reprimand-Procedure

1: Suspension (8 hrs.)- Conduct

1: Suspension (160hrs.)-Compliance with laws, rules & regulations

EIRS FOR JUNE 2018: 69 alerts distributed

Pending IA Cases for the Month of JUNE 2018: 14

IA/IAC Cases opened in the month of JUNE 2018: 5



City of Seattle

Office of Police Accountability

July 2, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – SECOND QUARTER 2018

Dear Chief Best:

I write to inform you of the Management Action Recommendations (MAR) that have been recently issued by OPA. The MARs contained herein are for the following cases: 2017OPA-0511, 2017OPA-0980, 2017OPA-1008, 2017OPA-1091, 2017OPA-1132, 2017OPA-1196, 2017OPA-1301, 2017OPA-1289, 2018OPA-0553, and 2018OPA-0101.

Case Number

- 2017OPA-0511

Summary

- The Named Employee allegedly violated SPD policy when he posted a message on his personal Facebook account that concerned an open investigation, included confidential criminal information, and identified a minor.

Analysis

- Policy *1.110 - Public Information* addresses the release of information to the media and specifically prohibits the release of much of what was contained in the Named Employee's Facebook post.
- Although the Named Employee had Facebook friends that he knew were active members of the media and who had access to his page, it is unclear whether his posting of sensitive and confidential material constituted a "release" to the media as contemplated by the policy.

Recommendation

- Modify policy *1.110 - Public Information – POL-1 General Policy (2)* to define "release" as it pertains to SPD employees disseminating information to the media via social media. The definition should clarify that a "release" includes posting law enforcement information on social media.
-

Case Number

- 2017OPA-1301
- 2018OPA-0101

Summary

- In both cases, the Named Employee allegedly failed to properly activate/log-in to both his In-Car Video (ICV) and Body Worn Video (BWV) systems when responding to incidents.

Analysis

- The Named Employee felt he met the requirements of the BWV policy because he interpreted it as requiring an officer to record on ICV or BWV, but not necessarily on both.
- OPA interprets the policy as requiring that, when equipped with both ICV and BWV, both systems must be activated for each call response. The Named Employee's understanding of this policy is inconsistent with the reasoning behind equipping officers with BWV in addition to ICV, which is to have a second mechanism to more fully record law enforcement activity, not to have discretion to choose which camera to utilize.

Recommended Action

- Modify *16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity* to clarify that if officers are equipped with both ICV and BWV, they shall record on both systems. The new policy subsection could read: "Officers equipped with both ICV and BWV shall utilize both systems simultaneously when recording is required under 16.090-POL-1(5)(b). The failure to activate one or both systems constitutes a violation of policy and must be documented and reported consistent with 16.090-POL-1(4) and 16.090-POL-1(7)."
-

Case Number

- 2017OPA-1132
- 2018OPA-0053

Summary

- In the first case, prior to searching a residence for a suspect, the Named Employees failed to provide the subject with--and have her execute--a Consent to Search form. They also did not provide Ferrier warnings.
- In the second case, the Named Employees may have violated the Complainant's constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence.

Analysis

- Officers receive little training in search and seizure law and consent to search after the post-Basic Law Enforcement Academy phase of their employment. The failure to understand how to obtain consent and what constitutes consent can result in violations of the constitutional rights of individuals and the sanctity of their homes. OPA believes the officers' errors in these cases constitute ignorance of the law and mistakes rather than misconduct.

Recommended Action

- Provide Department-wide training on search and seizure law and policy *6.180 - Searches-General*. The training should specifically discuss the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.
-

Case Number

- 2017OPA-1091

Summary

- The Named Employees conducted a Terry stop, but failed to document it using a Terry Template, as is required by SPD policy.
-

Analysis

- The Named Employees said a Terry Template was unnecessary because they had probable cause to arrest based on open warrants.
- Law, policy, and the Consent Decree state that officers must document each time they stop and detain someone, regardless of whether they believe they have probable cause to make an arrest.

Recommended Action

- Modify policy 6.220 - *Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops* to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether the officers had probable cause to arrest at the time of the Terry stop.
-

Case Number

- 2017OPA-1196

Summary

- In reviewing a failure of an officer to carry a Taser during an incident, OPA evaluated whether the officer's supervisor failed to ensure the officer was carrying a Taser and/or that the Taser was in working condition.

Analysis

- SPD policy 5.100(III) sets forth the general responsibilities of patrol sergeants, including: "Check the personal appearance of assigned officers and ensure officers' equipment is in good condition." OPA's investigation of this case found that such inspections are rarely carried out, and sergeants are not held accountable for not doing so.

Recommended Action

- Modify policy 5.100 - *Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision* to clarify the frequency with which a patrol sergeant shall perform inspections to ensure that their officers are carrying the appropriate equipment and determine that the equipment is functioning properly.
 - Train patrol sergeants on their responsibility to perform inspections, including how to conduct an inspection and the frequency with which to conduct them.
-

Case Number

- 2017OPA-1008
- 2017OPA-0980

Summary

- The Named Employees failed to properly enter a firearm into evidence as required by Department policy and the unit manual.
- Another Named Employee failed to properly supervise the previously mentioned Named Employee.

Analysis

- SPD policy 7.010-POL-1 requires that employees secure collected evidence and place it into the Evidence Unit or an authorized evidence storage area before they end their shift. During their OPA

interview, one of the Named Employees contended that SPD policy did not define what an “authorized evidence storage area” was.

- Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. Although it instructs officers to comply with the SPD Manual, published directives/special orders, and Department training, it does not state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy.
- The FIT Manual lacks clarity regarding the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence.
- FIT previously did not take custody of rifles or shotguns; rather, such weapons were processed by CSI. OPA suggested that FIT institute this same process for handguns, as it may result in more consistent treatment of and processing standards for all firearms. FIT has since made this change.

Recommended Action

- Modify policy 7.010 - *Submitting Evidence* to define what an authorized evidence storage location is and clarify that personal offices are not such authorized locations.
 - Modify the *FIT Manual* to:
 - Clarify that officers will, as soon as feasible, take case evidence to the Evidence Unit.
 - Indicate what, if any, other authorized evidence storage locations exist in the FIT unit, noting that evidence should never be stored in personal offices.
 - Provide more detail on expectations for evidence handling.
 - More clearly define the expectations for the FIT Sergeant (such as memorializing the requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms)
 - Train FIT Detectives and supervisors in evidence handling.
 - Modify policy 5.001 - *Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy* to include unit manuals as one of the types of regulations to which officers are responsible for adhering.
 - Reevaluate the current FIT practice of taking possession and maintaining custody of handguns. (OPA recognizes that this has been implemented since initial conversations about this case occurred, but is noting it here nonetheless.)
-

Case Number

- 2017OPA-1289

Summary

- The Named Employee failed to conduct a preliminary inquiry into a bias allegation and to generate a Bias Review.

Analysis

- SPD policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. The Named Employee told OPA he did not know how to do a Bias Review and was not familiar with the Bias policy, even though he had served as an acting sergeant for about 20 to 25 days per year over several years. He further told OPA that he was not familiar with the policies concerning the investigation and reporting of force, as well as the policy concerning the reporting of misconduct. Lastly, the Named Employee told OPA that he had not attended SPD’s First Line Supervisor Training nor any other type of supervisor training during his over 25 years with the Department.
- The Named Employee was placed in a position where he was expected to supervise his fellow employees without any training on how to do so, per policy 4.020, which states that “Captains will

send officers to Department sergeant training for acting sergeant assignments over 60 consecutive days." Since the Named Employee's assignment as acting sergeant was for less than 60 consecutive days, training was not mandated.

Recommended Action

- *Modify policy 4.020 – Reporting and Recording Overtime/Out of Classification Pay 17. Officers Assigned as Acting Sergeants Receive Training* to require that Captains send officers to sergeant training prior to any acting sergeant assignment.

Thank you very much for your prompt attention to these matters. I look forward to receiving your written responses to these recommendations and, should you decide to act as a result, the progress of these actions. Alternatively, to the extent that the above recommendations are not feasible, or a different policy modification may be more fitting, OPA would appreciate the opportunity to help you find a workable solution through an in-person discussion.

Please feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Tito Rodriguez, Office of Police Accountability Interim Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office
Anne Bettesworth, Senior Policy Advisor, Office of Police Accountability

CITY of ALBUQUERQUE

TWENTY SECOND COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

1

ORDINANCE

2

AMENDING CHAPTER 9, ARTICLE 4, PART 1 ROA 1994, THE POLICE

3

OVERSIGHT ORDINANCE

4

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY

5

OF ALBUQUERQUE:

6

SECTION 1. SECTION 9-4-1-2 IS HEREBY AMENDED AS FOLLOWS:

7

“§ 9-4-1-2 PURPOSE.

8

The purpose of §§ 9-4-1-1 through 9-4-1-14 is to:

9

(A) Foster and perpetuate policing policies and practices that

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effectively maintain social order and which at the same time foster mutual

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trust and cooperation between police and civilians;

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(B) Ensure that the civilian police oversight body functions as

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independently as possible from the executive and legislative branches of

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government of the City of Albuquerque;

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(C) Provide civilians and police officers a fair and impartial system

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for the investigations and determinations on civilian police complaints;

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(D) Gather and analyze information, reports, and data on trends

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and potential issues concerning police conduct and practices and the related

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impacts on the community and individuals; and

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(E) Provide policy input, guidance and recommendations to the

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City Council, the Mayor and the Chief of Police for the development of policy

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for the Albuquerque Police Department].”

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SECTION 2. SECTION 9-4-1-4 IS HEREBY AMENDED AS FOLLOWS:

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“§ 9-4-1-4 CIVILIAN POLICE OVERSIGHT AGENCY.

25

There is hereby created a Civilian Police Oversight Agency (the

26

"CPOA") as an independent agency of City Government, not part of either the

27

City Administration or City Council that consists of a Police Oversight Board

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1 (the "POB") and an Administrative Office led by the CPOA Executive Director.
2 In addition to any other duties, the Administrative Office, through the
3 Executive Director and staff, shall investigate all civilian complaints relating to
4 police conduct, monitor and report on police internal affairs matters, provide
5 staffing to the POB, and manage the day to day operations of the CPOA. The
6 POB shall provide policy guidance for, and civilian oversight of the
7 Albuquerque Police Department and review and approve or amend the
8 findings and conclusions of all investigations completed by the Administrative
9 Office.

10 (A) Independence. The CPOA is independent of the Mayor's Office,
11 the City Council, and the Albuquerque Police Department with respect to the
12 performance of its oversight role and duties under §§ 9-4-1-1 through 9-4-1-14.

13 (1) Facility Location. The CPOA shall be housed in a facility
14 that is separate from any police presence and is located outside of the
15 Albuquerque/Bernalillo Government Center, the Police Department and/or all
16 of the police substations.

17 (2) Budget. The CPOA shall have a dedicated and
18 independent source of funding equal to, at a minimum, [1/2 0.8]% of APD's
19 annual operation budget, administer its own budget and supervise its own
20 staff in compliance with the City's Merit Ordinance and contractual services
21 policies and procedures. The CPOA shall recommend and propose its budget
22 to the Mayor and City Council during the City's budget process to carry out
23 the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including the funding
24 for staff, and all necessary operating expenses.

25 (3) Professional Legal Services. The CPOA may retain or
26 employ independent legal counsel on a contractual basis to advise and
27 represent the CPOA. If so retained, the CPOA's legal counsel shall represent
28 the CPOA in the courts, and shall advise the CPOA as to any legal matters
29 relating to §§ 9-4-1-1 through 9-4-1-14 and the CPOA's duties, responsibilities,
30 and procedures except for CPOA personnel matters which shall remain under
31 the authority of the City Attorney's Office.

32 (4) Applicability of City Policies and Ordinances. The CPOA
33 shall comply with all City ordinances and policies dealing with administrative

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1 functions including but not limited to those dealing with personnel, the merit
2 system, and procurements.

3 (B) Staff. The CPOA shall employ such staff as necessary to carry
4 out its functions as prescribed by this Article, including but not limited to an
5 executive director, [data research analyst, community engagement specialist,
6 and] professional investigative staff and other staff as may be necessary,
7 subject to budget sufficiency and City personnel policies and procedures.

8 (C) Responsibilities. The Civilian Police Oversight Agency is
9 responsible for civilian police oversight and has the following powers and
10 duties:

11 (1) Community Outreach. The CPOA shall develop,
12 implement, and from time to time amend as necessary, a program of
13 community outreach aimed at soliciting public input from the broadest
14 segment of the community in terms of geography, culture, ethnicity, and
15 socio-economics. The CPOA shall employ or designate a full time staff
16 member within the Administrative Office dedicated to community outreach
17 efforts. The CPOA shall report its community outreach efforts to the City
18 Council on an annual basis.

19 (2) Promotion of Accountability. The CPOA shall promote a
20 spirit of accountability and communication between the civilians and the
21 Albuquerque Police Department while improving community relations and
22 enhancing public confidence.

23 (3) Investigations. The Administrative Office shall
24 independently investigate all civilian complaints; shall audit and monitor all
25 incidences of use of force by police and all matters under investigation by
26 APD's Internal Affairs (IA) or other APD personnel tasked with conducting
27 administrative investigations related to a use of force incident; and shall
28 prepare proposed findings and recommendations on all officer involved
29 shootings and serious uses of force as defined by Article III, Paragraph 12,
30 Subsection (qq) of the court-approved DOJ Settlement Agreement with the
31 City of Albuquerque ("Serious Uses of Force").

32 (a) Where an officer has engaged in conduct that may
33 reasonably lead to a criminal charge against the officer, IA and the CPOA have

1 a shared interest in exercising care to avoid interfering with the criminal
2 process while simultaneously maintaining the integrity of the disciplinary
3 process for officers. Consistent with this shared interest, IA and the CPOA will
4 regularly confer and take reasonable steps to coordinate the handling of
5 investigations into matters that reasonably may lead to a criminal charge
6 against an officer. Before taking action related to a serious use of force or
7 officer involved shooting, the Director shall confer with the relevant
8 prosecuting agency and/or federal law enforcement agency to assess the
9 likelihood of an officer being criminally prosecuted based on the incident. The
10 Director may delay or decline to proceed with any action related to a serious
11 use of force or officer involved shooting until completion of the criminal
12 investigation unless, after consultation with the prosecuting agency, the
13 Director determines that proceeding is appropriate and will not compromise a
14 criminal investigation. If the Director seeks to proceed with investigating or
15 presenting to the POB a serious use of force or officer involved shooting
16 despite a prosecuting agency or federal law enforcement agency indicating
17 that doing so would interfere with a criminal investigation, the Director may
18 proceed only after obtaining approval to do so through a 2/3 vote of the POB.
19 The POB shall provide notice of any such vote permitting the Director to
20 proceed in such circumstances to APD and the police officer involved.

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21 (b) APD shall provide POB members, the Director,
22 and CPOA staff with reasonable access to APD premises, files, documents,
23 reports[, data (including APD raw data),] and [any] other materials that are
24 reasonably necessary for the agency to perform thorough, independent
25 investigations of civilian complaints and reviews of serious uses of force and
26 officer-involved shootings. [For purposes of this ordinance, "APD raw data"
27 includes but is not limited to any facts and statistics or other data gathered,
28 obtained, or otherwise within the possession of APD that has not yet been
29 processed or analyzed.] However, any material protected from disclosure by
30 law shall remain within the custody and control of APD at all times and will be
31 handled in accordance with the applicable legal restrictions.

32 (c) All complaints filed by police officers will be
33 investigated by Internal Affairs. Internal Affairs shall provide a weekly update

1 to the Director on all open internal investigations. The Director's investigation
2 report and findings shall indicate whether within the past year there were any
3 IA investigations or supervisor generated complaints against the officer(s)
4 involved in the incident being investigated or that are otherwise relevant to the
5 subject matter of the investigation, the general nature of the prior
6 investigations or complaints, and whether they resulted in any discipline.
7 Redacted personnel records including those of the Internal Affairs Unit shall
8 be made available to the POB on demand.

9 (d) Information that is covered by Garrity will be
10 treated as confidential to the extent permitted by law and may only be
11 reviewed by members of the POB by application in writing, and by majority
12 vote of the POB. If the POB votes to review Garrity material, members of the
13 POB may only do so on APD property. The POB may not remove or make
14 copies of such statements. If the POB desires to discuss the specific content
15 of statements protected by Garrity, such discussion will occur only in closed
16 session as permitted under the New Mexico Open Meetings Act, NMSA 1978, §
17 10-15-1(H)(2). The POB shall only summarize conclusions reached after a
18 review of a Garrity statement, but shall not disclose the statement. The POB
19 shall maintain the confidentiality of any Garrity material or records that are
20 made confidential to the extent permitted by law and is subject to the same
21 penalties as the custodian of those records for violating confidentiality
22 requirements. In addition to any other penalty, any POB member or other
23 person who violates the confidentiality provisions of this section shall be
24 removed from the POB, and shall be subject to prosecution for a misdemeanor
25 subject to the penalty provisions set forth in § 1-1-99. This provision shall
26 apply to all aspects of the POB's work.

27 (e) Mediation First. Whenever possible, and as
28 further described in § 9-4-1-6(C)(3) of this ordinance, mediation should be the
29 first option for resolution of civilian police complaints.

30 (f) POB Audits; Access to Files. The POB may, by
31 majority vote, perform an annual audit, or direct that an audit be performed, on
32 a random sample

33 of up to 10% of individual civilian police complaint investigations involving

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1 allegations of use of force, or in exceptional circumstances, for the purpose of
2 promoting an enhanced measure of quality assurance in the most challenging
3 cases the POB may, by a vote of two-thirds (2/3) of the members of the POB,
4 perform an audit, or direct that an audit be performed, on any individual
5 Citizen Police Complaint Investigation completed by the Administrative Office.
6 For purposes of its audit function, the POB shall have full access to
7 investigation files and may subpoena such documents and witnesses as
8 relevant to its audit function.

9 (g) Disciplinary Recommendations. The POB may, in
10 its discretion, recommend officer discipline from the Chart of Sanctions for
11 investigations that result in sustained civilian police complaints; and may also
12 recommend discipline based on any findings that result from review of
13 internal affairs investigations of officer involved shootings and serious uses
14 of force. Imposition of the recommended discipline is at the discretion of the
15 Chief of Police~~[, but- However,]~~ if the Chief of Police does not follow the
16 disciplinary recommendation of the POB, the Chief of Police shall respond in
17 writing, within 30 days [of the department's final disciplinary decision], with [a
18 detailed explanation of] the reason as to why the recommended discipline was
19 not imposed. [The Chief shall identify the specific findings of the POB with
20 which the Chief disagrees, or any other basis upon which the Chief declined
21 the POB's disciplinary recommendation.]

22 (4) Reports to Mayor & Council. The CPOA shall submit a
23 semi-annual written report to the Mayor and City Council according to § 9-4-1-
24 10 herein. The CPOA Executive Director shall provide a quarterly oral report to
25 the City Council at a regular or special meeting.

26 (5) CPOA Policy Recommendations. The CPOA shall
27 engage in a long-term planning process through which it identifies major
28 problems or trends, evaluates the efficacy of existing law enforcement
29 practices in dealing with the same, [analyzes and evaluates data (including
30 APD raw data), national trends, and police best practices,] and establishes a
31 program of resulting policy suggestions~~[, recommendations,]~~ and studies
32 each year. [For purposes of this ordinance "police best practices" refers to
33 law enforcement methods or techniques based upon the experiences and

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1 outcomes in other police departments or law enforcement agencies that have
2 documented superior results compared to other practices.] The CPOA's policy
3 recommendation process shall be as follows:

4 (a) [Policy Recommendations Originating from the
5 CPOA.] The POB shall review and analyze policy suggestions, analysis,
6 studies, and trend data collected or developed by the Administrative Office,
7 and shall by majority vote recommend [~~policies~~ policies] relating to training,
8 programs and procedures or other matters relating to APD. [Any such policy
9 recommendations shall be supported by specific, written findings of the POB
10 in support of the proposed policies.] The POB's policy recommendations shall
11 be submitted to APD and to the City Council. The POB shall dedicate a
12 majority (more than 50%) of its time to the functions described in this
13 subsection.

14 (b) [Policy Proposals by APD. APD shall provide
15 all policy proposal circulating through its policy development process to the
16 POB for review, comment, and recommendations prior to final adoption.

17 (c) The Chief of Police [or designee] shall respond [in
18 writing within 45 days to any such policy recommendations by the CPOA, in
19 writing within 45 days to any such policy recommendations by the CPOA, and
20 to every policy recommendation by the POB developed pursuant to
21 paragraphs 'a' or 'b' above by the first meeting of the POB following a final
22 action by APD on each respective policy. As part this response, APD shall
23 indicate whether [they the POB's policy recommendation] will be followed
24 through standard operating procedures or should be adopted as policy by the
25 City Council, or [specifically] explain any reasons why such policy
26 recommendations will not be followed or [should-were] not be adopted. [The
27 Chief or designee shall identify the specific basis upon which the Chief
28 declined to follow the POB's policy recommendation(s).

29 (e)(d) Within six months of its appointment, the POB
30 shall draft and approve policies, rules and procedures that ensure that the
31 POB shall dedicate a majority of its time to the functions described in this
32 subsection.

33 (e) The chair of the POB shall designate one POB

1 member to serve on each APD policy development committee. The Director
2 and the POB member designated by the Chair shall each serve as voting
3 members of such committees.]

4 [(6) Hearing on Written Responses by the Chief of Police. The
5 POB may schedule a hearing on the written responses required of Chief of
6 Police under subsections “(3)(g)” and “(5)(b)” of this section, and shall
7 provide ten day advance notice of such hearing to the Chief. The Chief of
8 Police (or designee) shall attend the hearing to answer questions relating to
9 the relevant written response(s) and answer any questions of the POB.]

10 SECTION 3. SECTION 9-4-1-5, “THE CPOA POLICE OVERSIGHT BOARD”
11 IS HEREBY AMENDED TO ADD A NEW SUBSECTION “J” AS FOLLOWS:

12 “[J. Subpoenas. The POB may by simple majority vote, and subject to
13 the New Mexico Rules of Civil Procedure, subpoena witnesses, administer
14 oaths, and require the production of records relevant to any of its duties or
15 responsibilities as prescribed under this ordinance. In the case of a refusal to
16 obey a subpoena issued to any person, the POB may make application to any
17 District Court in the state having jurisdiction to order the witness to appear
18 before the POB and to produce evidence if so ordered, or to give testimony
19 touching on the matter in question.]”

20 SECTION 4. SECTION 9-4-1-8 IS HEREBY AMENDED AS FOLLOWS:

21 “§ 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.

22 (A) Any person claiming to be aggrieved by actions of the
23 Police may file a written complaint against the department or any of its
24 officers. The POB shall submit rules and regulations governing civilian
25 complaint procedures to the City Council for approval, including rules and
26 regulations relative to time limits, notice and other measures to insure
27 impartial review of civilians' complaints against members of the police
28 department. Anonymous complaints shall be accepted.

29 (B) In cooperation with the POB, the Mayor shall designate
30 civilian city staff to receive written civilian complaints at various locations
31 throughout the city. The Police Department may also receive written
32 complaints. The party who receives the complaint shall immediately transmit
33 all civilian complaints for further investigation to the Director.

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1 (C) After the investigation of a civilian complaint is
2 completed, the Director shall analyze all relevant and material circumstances,
3 facts and evidence gathered under the investigation. For each investigation,
4 the Director shall prepare investigation reports with proposed findings and
5 recommendations and submit them to the POB for its review and
6 consideration. The Director may share any disciplinary recommendations with
7 the Chief of Police in advance of their submission to the POB only as
8 necessary to help ensure timeliness pursuant to any applicable personnel or
9 union contract requirements. The POB shall review the proposed findings and
10 recommendations, and shall by majority vote of members present: 1) approve
11 the findings and recommendations as proposed; 2) approve other findings
12 and recommendations as determined by the POB and supported by the
13 investigation file; or 3) defer action on the matter to allow for further
14 investigation or analysis by the Director. As part of its review, the full
15 investigation file shall be made available to the POB. [

16 (D) Upon approval of findings and recommendations by the
17 POB, the Director shall prepare and submit a public record letter to the civilian
18 complainant, with a copy to the Chief of Police, that outlines the findings and
19 recommendations as approved. Unless a hearing is requested by the civilian
20 complainant, within 30 days of receipt of the decision of the POB[,] the Chief
21 of Police shall notify the POB and the original civilian complainant of his or
22 her final disciplinary decision in this matter in writing, by certified mail [and as
23 otherwise prescribed by subsection 9-4-1-4(C)(3)(g) of this ordinance.]

24 SECTION 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
25 clause, word or phrase of this ordinance is for any reason held to be invalid or
26 unenforceable by any court of competent jurisdiction, such decision shall not
27 affect the validity of the remaining provisions of this ordinance. The Council
28 hereby declares that it would have passed this ordinance and each section,
29 paragraph, sentence, clause, word or phrase thereof irrespective of any
30 provision being declared unconstitutional or otherwise invalid.

31 SECTION 6. COMPILATION. The ordinance amendment prescribed by
32 SECTIONS 1, 2, 3, and 4 shall amend, be incorporated in and made part of the
33 Revised ordinances of Albuquerque, New Mexico, 1994.

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1 **SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five days**
2 **after publication by title and general summary.**

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