# CITY OF ALBUQUERQUE

## CIVILIAN POLICE OVERSIGHT BOARD

Tuesday, December 4, 2018 – 1:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

**Members Present:**
Leonard Waites, Chair
Chantal Galloway, Vice Chair
Joanne Fine
Valerie St. John
Dr. William Kass
Chelsea Van Deventer(late)

**Members Absent:**

**Others Present**
Edward Harness, CPOA
Katrina Sigala, CPOA
Tina Gooch, Atty
Mariposa Padilla-Sivage, Atty

### Special Meeting Minutes

I. **Welcome and call to order.** Chair Waites called to order the special meeting of the Police Oversight Board at 1:01 p.m.

II. **Pledge of Allegiance.** Member St. John 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 Vice-Chair Galloway to approve the agenda. Member Kass seconded the motion. The motion was carried by the following vote:
**For: 5 – Waites, Galloway, Fine, Kass, St. John**

V. **Public Comments.**

None

******* Member Van Deventer arrived at 1:04pm *******

VI. **Amending Police Oversight Ordinance**

a) **O-18-23 Approved Committee Substitute.** Board reviewed the ordinance and amendments as proposed by City Council, received public comments and reviewed APD Forward's comments submitted by email (see attached).

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov



*Albuquerque - Making History 1706-2006*

**VII. Meeting with Counsel re: Closed Discussion and Possible Action on 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)**

**i. Intervention into pending federal litigation**

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

**i.Executive Director's Contract**

a) **Motion.** Motion by Chair Waites to take a member by member vote to move into a closed session for the limited purpose of discussing a personnel matter. Member Van Deventer seconded the motion. The motion was carried by the following vote:

b) **Roll call vote by board members.**
**For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer**

**---- Meeting on Personnel issues began at 3:14 p.m. and the meeting reconvened at 4:13 p.m. ---**

******* Member Kass left at 4:10 pm *******

a) **Motion.** Vice-Chair Galloway motioned to reconvene the special meeting into regular session. Member Fine seconded the motion. The motion was carried by the following vote:

b) **Roll call vote by board members.**
**For: 5– Waites, Galloway, Fine, St. John, Van Deventer**

**VIII. Adjournment.** A motion was made by Vice-Chair Galloway to adjourn the meeting. Member Fine seconded the motion. The motion was carried by the following vote:
**For: 5 – Waites, Galloway, Fine, St. John, Van Deventer**

The meeting adjourned at 4:13 p.m.

***Next Regularly scheduled POB meeting will be on December 13, 2018 at 5:00 p.m. in the Vincent E. Griego Chambers.***

APPROVED:

Leonard Waites, Chair
Civilian Police Oversight Agency

12/13/18
Date

CC: Julian Moya, City Council Staff
Katy Duhigg, City Clerk
Ken Sanchez, City Council President

Minutes drafted and submitted by:
Katrina Sigala, Administrative Assistant

# Attachments

## SUMMARY OF PROPOSED CHANGES TO ORDINANCE

**LEGEND**

Underlined only: alterations from CPOA June 2018 proposed changes

*Italic*: alterations from CPOA September 2018 proposed changes (STB proposed - for discussion only)

Highlighted: alterations from City Council November 20, 2018 proposed changes

**Bold**: alterations in both CPOA June 2018 proposed changes and from City Council November 20, 2018 proposed changes

**§ 9-4-1-2 PURPOSE.**

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

(A) Foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians;

(B) Ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque;

(C) Provide civilians and police officers a fair and impartial system for the investigations and determinations on civilian police complaints;

(D) Gather and analyze **[information, reports, and]** data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals; and

(E) Provide **[~~policy~~ input,]** guidance **[and recommendations]** to the City Council, the Mayor and the Chief of Police **[for the development of policy for the Albuquerque Police Department]**.

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(Ord. 2014-019)

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

There is hereby created a Civilian Police Oversight Agency (the "CPOA") as an independent agency of City Government[~~, not part of either~~. The CPOA shall function independently of, but shall remain accountable to] the City Administration[, ~~or~~ the] City Council [~~that~~, the City Attorney's Office, and APD. The CPOA] consists of a Police Oversight Board (the "POB") and an Administrative Office led by the CPOA Executive Director. In addition to any other duties, the Administrative Office, through the Executive Director and staff, shall investigate all civilian complaints relating to police conduct, monitor and report on police internal affairs matters, provide

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**Commented [A1]:** The CASA provides: "The City shall ensure that the agency remains accountable to, but independent from, the Mayor, the City Attorney's Office, the City Council, and APD."

staffing to the POB, and manage the day to day operations of the CPOA. The POB shall provide policy guidance for, and civilian oversight of the Albuquerque Police Department and review and approve or amend the findings and conclusions of all investigations completed by the Administrative Office.

(A) *Independence.* The CPOA is independent of the Mayor's Office, the City Council, [*the City Attorney's Office,*] and the Albuquerque Police Department with respect to the performance of its oversight role and duties under §§ 9-4-1-1 through 9-4-1-14. [*The Mayor's Office, the City Council, the City Attorney's Office, and the Albuquerque Police Department cannot alter the CPOA's findings, operations, or processes without amending this Ordinance.*] ¶ 272

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

(2) *Budget.* The CPOA shall have a dedicated and independent source of funding equal to, at a minimum, [~~1/2~~ 0.8]% of APD's annual operation budget, administer its own budget [in compliance with state and local laws] and supervise its own staff in compliance with the City's Merit Ordinance and contractual services policies and procedures. The CPOA shall recommend and propose its budget to the Mayor and City Council during the City's budget process to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-14, including [itemized listings for] the funding for staff, and all necessary operating expenses. ¶ 278

**Commented [A2]:** The CASA's only budgeting requirements are as follows: "The City shall provide the agency a dedicated budget and grant the agency the authority to administer its budget in compliance with state and local laws."

(3) *Professional Legal Services.* 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 §§ 9-4-1-1 through 9-4-1-14 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.

(4) *Applicability of City Policies and Ordinances.* The CPOA shall comply with all City ordinances and policies dealing with administrative functions including but not limited to those dealing with personnel, the merit system, and procurements.

(B) *Staff.* The CPOA shall employ such staff as necessary to carry out its functions as prescribed by this Article, including but not limited to an executive director, [data research analyst, community engagement specialist, and] professional investigative staff and other staff as may be necessary, subject to budget sufficiency and City personnel policies and procedures. ¶¶ 288, 291

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

(1) *Community Outreach.* The CPOA shall develop, implement, and from time to time amend as necessary, a program of community outreach aimed at soliciting public input from the broadest segment of the community in terms of geography, culture, ethnicity, and socio-economics. The CPOA shall employ or designate a full time staff member within the Administrative Office dedicated to community outreach efforts. The

CPOA shall report its community outreach efforts to the City Council on an annual basis [through a written report and oral presentation at a City Council Meeting].

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(2) *Promotion of Accountability* [and Impartiality]. The CPOA shall promote a spirit of accountability and communication between the civilians and the Albuquerque Police Department while improving community relations and enhancing public confidence. [The CPOA shall also promote a spirit of impartiality in its review of civilian police complaints, and shall ensure that officer conduct is reviewed on a case by case basis and judged fairly and objectively. Unless evidence establishes otherwise, the CPOA shall ensure that the public is aware that the facts of an individual case are not necessarily, on their own, reflective of the department as a whole.]

**Commented [A3]:** The CASA only requires that "individuals appointed to serve on the agency...have demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints...."

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

(a) Where an officer has engaged in conduct that may reasonably lead to a criminal charge against the officer, IA and the CPOA have a shared interest in exercising care to avoid interfering with the criminal process while simultaneously maintaining the integrity of the disciplinary process for officers. Consistent with this shared interest, IA and the CPOA will regularly confer and take reasonable steps to coordinate the handling of investigations into matters that reasonably may lead to a criminal charge against an officer. Before taking action related to a serious use of force or officer involved shooting, the 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 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 Director determines that proceeding is appropriate and will not compromise a criminal investigation. If the 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 Director may proceed only after obtaining approval to do so through a 2/3 vote of the POB. The POB shall provide notice of any such vote permitting the Director to proceed in such circumstances to APD and the police officer involved.

(b) APD shall provide POB members, the Director, and CPOA staff with reasonable access to APD premises, files, documents, reports[, data (including APD raw data),] and [any] other materials that are reasonably necessary for the agency to perform thorough, independent investigations of

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civilian complaints and reviews of serious uses of force and officer-involved shootings. **[For purposes of this ordinance, "APD raw data" includes but is not limited to any facts and statistics or other data gathered, obtained, or that are otherwise within the possession of APD that has not yet been processed or analyzed. ~~However,~~ Notwithstanding the foregoing,]**any material protected from disclosure by law shall remain within the custody and control of APD at all times and will be handled in accordance with the applicable legal restrictions.

Commented [A4]: City Council's November 20, 2018 proposed changes use "before being" instead of "that has not yet been"

(c) All complaints filed by police officers will be investigated by Internal Affairs. Internal Affairs shall provide a weekly update to the Director on all open internal investigations. The Director's investigation report and findings 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. Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand.

(d) Information that is covered by *Garrity* will be treated as confidential to the extent permitted by law and may only be reviewed by members of the POB by application in writing, and by majority vote of the POB. If the POB votes to review *Garrity* material, members of the POB may only do so on APD property. The POB may not remove or make copies of such statements. If the POB desires to discuss the specific content of statements protected by *Garrity*, such discussion will occur only in closed session as permitted under the New Mexico Open Meetings Act, NMSA 1978, § 10-15-1(H)(2). The POB shall only summarize conclusions reached after a review of a *Garrity* statement, but shall not disclose the statement. The POB shall maintain the confidentiality of any *Garrity* material or records that are made confidential to the extent permitted by law and 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 the confidentiality provisions of this section 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. This provision shall apply to all aspects of the POB's work.

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

(f) *POB Audits; Access to Files.* 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, or 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 (2/3) of the members of the POB, perform an audit, or direct that an audit be performed, on any individual Citizen Police

Complaint Investigation completed by the Administrative Office. For purposes of its audit function, the POB shall have full access to investigation files and may subpoena such documents and witnesses as relevant to its audit function.

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

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

(5) *CPOA Policy Recommendations.* The CPOA shall engage in a long-term planning process through which it identifies major problems or trends, evaluates the efficacy of existing law enforcement practices in dealing with the same, **[analyzes and evaluates data (including APD raw data), national trends, and police best practices,]** and establishes a program of resulting policy suggestions**[, recommendations,]** and studies each year. **[For purposes of this ordinance "police best practices" refers to law enforcement methods or techniques based upon experiences and outcomes in other police departments or law enforcement methods or techniques based upon the experiences and outcomes in other police departments or law enforcement agencies that have documented superior results compared to other practices.]** The CPOA's policy recommendation process shall be as follows:

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

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

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

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Commented [A5]: City Council's November 20, 2018 proposed changes include the following language in place of this language: "within 45 days of final action on a policy by APD."

~~(e)~~ (d)] Within six months of its appointment, the POB shall draft and approve policies, rules and procedures that ensure that the POB [~~shall dedicate a majority of its time to the functions described in this subsection~~ is effectively accomplishing its duties under this article].

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[(e) The chair of the POB shall designate one POB member to serve on each APD policy development committee. The Director and the POB member designated by the Chair shall each serve as voting members of such committees, and shall report back to the board about the outcomes and votes cast at the next regularly scheduled meeting of the POB.]

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

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*(7) Monitoring. 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.]*

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(Ord. 2014-019; Am. Ord. 2015-006; Am. Ord. 2016-013)

## § 9-4-1-5 THE CPOA POLICE OVERSIGHT BOARD.

(A) *Composition.* The POB shall be composed of [~~nine~~ seven] at-large members who broadly represent the diversity and demographics of the City by way of, including but not limited to, cultural, gender and geographic diversity; and who are representative of the stakeholders of the police oversight process, and who reside within the City of Albuquerque.

Commented [A6]: The CASA does not specify the number of members that must serve on the POB.

(B) *Qualifications.* In addition to the composition standards set forth above, the following are the minimum qualifications for members of the POB:

(1) Have not been employed by law enforcement for one year prior to appointment; and

(2) Successfully pass a background check; and

(3) Personal history lacking any pattern of unsubstantiated complaints against APD; and

(4) A demonstrated ability to engage in mature, impartial decision making; and

(5) A commitment to transparency and impartial decision making; and

(6) Residency within the City of Albuquerque.

(C) *Appointment of Members.* The City Council shall establish a well-publicized, fair and equitable application process for appointment to the POB[, and for filling vacancies]. The City Council, through its staff, shall accept applications from prospective POB members. Staff shall formulate recommendations for appointments based on evaluation of the qualification criteria listed in subsections (A) and (B) above and submit recommendations for appointment(s) to the City Council for its approval. If a member is eligible for reappointment, [~~staff may suggest~~ that member may request] reappointment [~~of that member~~] without a formal application process and the City Council may reappoint accordingly.

(D) *Membership Term.* POB members shall serve a maximum of two three-year terms on a staggered basis so that no more than [~~five~~ two] of the members are eligible for reappointment or replacement each year.

(E) *Removal of Members.* Any POB member may be removed for cause by a two-thirds majority vote of either the POB itself or the City Council. [In addition to any other reasonable cause, any conduct inconsistent with the requirements and provisions of this ordinance, any partiality as it relates to the evaluation of civilian police complaints, or an inability to objectively adjudicate civilian police complaints shall constitute cause for removal.] The appointment of any member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the POB 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.

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**Commented [A7]:** The CASA does not address grounds for removal of a POB member but provides that "individuals appointed to serve on the agency ... have demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints..."

(F) *Orientation and Training.* Upon appointment or reappointment POB members shall complete a[~~n~~ *24 hour*] orientation and training program consisting of the following:

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(1) *Required* [Initial] *Orientation* [and Training]. Prior to participation in any meeting of the POB, a newly appointed member must first:

(a) Be trained by the CPOA staff or CPOA legal counsel on CPOA [~~and APD rules,~~] policies, and procedures; and

(b) Attend at least one POB meeting as an observer (except ~~initial appointees~~ for reappointed members).

[~~(2) *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:~~

~~(a) Completion of those portions of the APD Civilian Police Academy that APD determines are necessary for the POB to have a sound understanding of the Department, its policies, and the work officers perform. For purposes of this training requirement, APD shall identify those portions of the standard APD Civilian Police Academy Program that are optional for POB members and shall make other aspects of the program available for POB members to complete independently;~~

(c) Be trained on this ordinance and the duties, obligations, and responsibilities that it imposes on POB members and the CPOA;

(d) State and local laws regarding public meetings, inspection of public records, governmental transparency, and the conduct of public officials;

(e) Ethics for public officials;

~~(b)~~(f)] Civil Rights training, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force;

[~~(c) At least two APD ride-along;~~]

~~(d) Annual firearms simulation training;~~

~~(e) Internal Affairs training;~~

~~(f)~~(g)] Training provided to APD officers on use of force, including a review and familiarization with all APD policies relating to use of force, and including policies related to APD's internal review of force incidents;

[~~(g) Equity and Cultural Sensitivity training;~~]

(h) Training on the 2014 DOJ Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and Findings Letter of April 10, 2014 (or any subsequent findings letters);

[~~(i) Training on this Police Oversight Ordinance;~~

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Required by ¶ 276, but see subsection 3 below.

**Commented [A8]:** The CASA only requires training that covers "the City ordinance under which the agency is created."

**Commented [A9]:** The CASA only requires training that covers "state and local laws regarding public meetings and the conduct of public officials."

**Commented [A10]:** The CASA only requires training that covers "the conduct of public officials."

~~(j) Training on state and local laws regarding public meetings and the conduct of public officials;~~] and

[~~(k)~~(j)] A briefing that identifies and explains the curriculum of all training [currently] received or to [anticipated] be received by APD officers, including any outside training not provided by the city.

(3) *Required On-Going Training.* POB members shall [~~be provided with~~ receive] eight hours of annual training on any changes in law, policy, or training in the areas outlined under subsection (2) above, 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. POB members shall also participate in at least two police ride-alongs for every six-months of service on the POB.

(4) *Recommended Training.* POB members are encouraged to [complete those portions of the civilian police academy that APD determines are necessary for the POB to have a sound understanding of the Department, its policies, and the work officers perform, and to] attend conferences and workshops relating to police oversight, such as the annual NACOLE conference at city expense depending on budget availability.

[(5) The Director shall track training progress for each POB member, verify completion of the initial and on-going training requirements for each POB member, and include this information for each POB member as part of the semi-annual reports required by this ordinance.]

(G) *Chair.* The POB shall elect one of its members as the Chairperson and one as Vice-Chairperson, who shall each hold office for one year and until their successors are elected. No officer shall be eligible to immediately succeed himself or herself in the same office. Officers shall be elected in the month of March of each calendar year or upon vacancy of an office to fill the remaining term.

(H) *Subcommittees.* The POB may appoint such subcommittees as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to POB members [and no POB member shall serve on any more than two (2) committees at any given time].

(I) *Meetings.* The POB shall conduct regularly scheduled public meetings in compliance with the New Mexico Open Meetings Act, with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney. Each POB meeting will begin with public comments. Only the regularly scheduled monthly meetings and special meetings held pursuant to submission of petitions will be televised live on the appropriate government access channel. All other meetings of the POB shall be videotaped and aired on the appropriate government access channel; however, there is no requirement for providing live television coverage.

1. *Public Comment.* The POB shall allow general public comment at each of its meetings, and the POB shall also allow comment on each of its agenda items other than Citizen Police Complaints. The complainant or complainant's authorized representative in a Citizen Police

**Commented [A11]:** The CASA does not require civilian police academy training. The CASA only requires training that covers "all APD policies related to use of force, including policies related to APD's internal review of force incidents" and "training provided to APD officers on use of force."

The CASA also provides that "[t]he agency shall also review and recommend changes to APD policy."

**Commented [A12]:** The CASA only requires training of POB members. It does not require tracking of training or reports regarding training.

**Commented [A13]:** The CASA does not place a limit on the number of committees on which POB members can serve.

Complaint will be provided with a minimum of five minutes to address the POB relating to the complaint and investigation.

[(J) Subpoenas. Upon justification by the Director acceptable to the POB, the POB may by simple majority vote, and subject to the New Mexico Rules of Civil Procedure, subpoena witnesses, administer oaths, and require the production of records relevant to any of its duties or responsibilities as prescribed under this ordinance. **In the case of a refusal to obey a subpoena issued to any person, the POB may make application to any District Court in the state having jurisdiction to order the witness to appear before the POB and to produce evidence if so ordered, or to give testimony touching on the matter in question.** Any summoned person is entitled to legal counsel during all CPOA or POB Proceedings.]

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**Commented [A14]:** City Council's November 20, 2018 proposed changes replace this language with "authorize the Director to subpoena such documents and witnesses as necessary to carry out the CPOA's investigatory functions. The summoned person may petition the POB or the district court of the county where he or she resides to vacate or modify the administrative subpoena."

(Ord. 2014-019; Am. Ord. 2015-006; Am. Ord. 2016-013)

**§ 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.**

(A) The staff and administration of the CPOA shall be directed by the CPOA Executive Director (the "Director").

(B) In addition to any other duties expressed or implied by this ordinance the Director shall:

(1) Independently investigate, or cause to be investigated, all civilian police complaints and prepare findings and recommendations for review by the POB;

(2) Review and monitor all Internal Affairs investigations and other administrative investigations related to officer involved shooting investigations and serious uses of force investigations. The Director shall prepare and submit findings and recommendations to the POB relating to officer involved shootings and serious uses of force, and shall report on general trends and issues identified through monitoring or auditing of Internal Affairs;

(3) Provide staffing to the Police Oversight Board and ensure that the duties and responsibilities of the CPOA are executed in an efficient manner, and manage the day to day operations of the CPOA.

[*(C) The City of Albuquerque shall insure that the CPOA has a sufficient number of well-trained staff to complete and review thorough and timely misconduct investigations.*

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*(D) The Executive Director shall retain and supervise full-time qualified investigative staff to conduct thorough, independent investigations of APD's civilian complaints and review of serious uses of force and officer-involved shootings.*

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*(1) Investigators shall receive at least 40 hours of initial training in conducting misconduct investigations.*

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*(2) Investigators shall receive continuing training of at least eight hours each year. The training shall include instruction on APD's policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations.*]

[~~(C)~~ *(E)*] The Administrative Office will receive and process all civilian complaints directed against the Albuquerque Police Department and any of its officers. The Director shall independently investigate and make findings and recommendations for review by the POB for such civilian complaints, or assign them for independent investigation by CPOA staff or an outside independent investigator. If assigned to staff or an outside investigator, the Director shall oversee, monitor and review all such investigations and findings for each. All findings relating to civilian complaints, officer involved shootings, and serious uses of force shall be forwarded to the POB for its review and approval. For all investigations, the Director shall make recommendations and give advice regarding Police Department policies and procedures to the POB as the Director deems advisable.

(1) Investigation of all civilian complaints filed with the CPOA shall begin immediately after complaints are filed and proceed as expeditiously as possible, and if an investigation exceeds a timeframe of nine months the Director must report the reasons to the POB; and

(2) All civilian complaints filed with other offices within the city authorized to accept civilian complaints, including the Police Department, shall be immediately referred to the Director for investigation; and

(3) Mediation [~~*should be the first option for resolution of civilian police complaints*~~ *should only be used for complaint that do not involve misconduct.*] Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. At the discretion of the Director an impartial system of mediation should be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur; and

¶ 184

(4) The Director shall monitor all claims of officer involved shootings and serious uses of force. No APD related settlements in excess of $25,000 shall be made for claims without the knowledge of the Director. The Director shall be an ex-officio member of the Claims Review Board; and

(5) All investigations shall be thorough, objective, fair, impartial, and free from political influence; and

(6) The Director shall maintain and compile all information necessary to satisfy the CPOA's semi-annual written reporting requirements in § 9-4-1-10; and

(7) If at any point during an investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the APD Internal Affairs Bureau commanding officer and transfer the administrative investigation to the Internal Affairs Bureau. The CPOA may review the IA investigation and continue processing the complaint at any time upon the conclusion of any criminal proceeding.

[~~(D)~~ *(F)*] The Director shall have access to any Police Department information or documents that are relevant to a civilian's complaint, or to an issue which is ongoing at the CPOA.

[~~(E)~~ *(G)*] The Administrative Office shall staff, coordinate and provide technical support for all scheduled POB meetings, publicize all findings and reports, recommendations, and/or suggested policy changes.

[~~(F)~~ *(H)*] The Director shall play an active public role in the community, and whenever possible, provide appropriate outreach to the community, publicize the civilian complaint process, and identify locations within the community that are suitable for civilians to file complaints in a non-police environment.

[~~(G)~~ *(I)*] The Director shall be provided the necessary professional and/or clerical employees for the effective staffing of the Administrative Office, and shall prescribe the duties of these staff members. Such professional and clerical employees will be classified city employees. All CPOA staff with investigative duties shall be professional investigators trained in professional investigation techniques and practices.

[~~(H)~~ *(J)*] The Director shall report directly to the POB and lead the Administrative Office; independently investigate or supervise all investigations of civilian complaints, audit all IA investigations of complaints, recommend and participate in mediation of certain complaints, and supervise all CPOA staff.

[(I) The Director shall satisfy the initial and ongoing training requirements for POB members as prescribed by Section 9-4-1-5(F) and report completion of training activities to the Chair of the POB.] ¶¶ 274-76

(Ord. 2014-019; Am. Ord. 2016-013)

**§ 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS, SELECTION, RETENTION AND EVALUATION.**

(A) Qualifications for the position of Director shall minimally include the requirement of a law degree and experience in criminal investigations.

(B) The Director will be a full-time [~~contractual~~] city employee [directly responsible only to the POB.] to be selected, removed, or reviewed as follows: ¶ 279

(1) The POB, through CPOA staff, shall accept applications from candidates. The POB shall review the applications and interview candidates, and [~~*submit to the City Council* a ranked list of the three candidates~~ *select the candidate*] that it finds to be the best qualified to be the Director[, ~~*and the City Council shall appoint the Director from the three by majority vote. The POB's recommendation to Council shall be*~~] based on the candidate[ ']s[-] integrity, capability for strong management and abilities in investigations, law, management analysis, public administration, criminal justice administration or other closely related fields. [The POB's recommendation shall, at a minimum, include an ¶ 279

evaluation of the candidates against the provisions and requirements of this subsection 9-4-1-7.]

(2) [*The term of the Director shall be for three years. Once confirmed, the Director may be removed only upon: 1) a recommendation of removal to the City Council by the affirmative vote of two-thirds of the members of the POB; and 2) acceptance of the POB's recommendation by a simple majority vote of the City Council.*

*(3) Upon the completion of the Director's* ~~In lieu of recommending three candidates to the Council~~], the POB may [~~*recommend to the Council the reconfirmation of*~~ *reconfirm*] the incumbent Director. [Together with any recommendation for reconfirmation by the POB, the POB shall submit to the City Council a written basis for its recommendation to include a formal evaluation of the Director's past performance, including an evaluation against the duties established for the Director by this ordinance.] Should the [~~Council~~ POB] decline to reconfirm the incumbent Director, the [~~*Council President shall notify*~~] the POB [~~*that it needs to provide the Council with*~~ *shall appoint a new Direct* ~~three alternate candidates~~] pursuant to the provisions of subsection (B)(1).[, and the POB shall so submit within 90 days of such notice. The City Council may decline to reconfirm the incumbent Director only for reasonable cause, including but not limited to any failure to fulfill all the requirements obligations of this ordinance, or ineffective leadership of the I organization in its mission toward civilian police oversight]. Should the Director not be reconfirmed [or should the confirmation vote be delayed or postponed for any reason], the current Director may continue to serve in the same capacity until a new Director is selected and [~~approved~~ confirmed] by the City Council. If for any reason there is a period of time during which there is no Director, the [~~*City Council*~~ *POB*] may appoint a temporary Director of its choosing by a majority vote. A temporary Director shall serve in that capacity only for a period not to exceed six months[, during which time the POB shall work diligently to select a permanent director].

(3) The term of the Director shall be for three years. Once confirmed, the Director may be removed only upon: 1) a recommendation of removal to the City Council by the affirmative vote of two-thirds of the members of the POB; and 2) acceptance of the POB's recommendation by a simple majority vote of the City Council.

(C) The POB shall annually review the performance of the Director taking into consideration the obligations and duties prescribed by this ordinance and the performance of the Administrative Office. [A copy of these performance evaluations shall be delivered to the Chief of Police, the Mayor, and the President of the City Council for receipt by the Council.]

(Ord. 2014-019; Am. Ord. 2015-006)

**§ 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.**

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers. [*Complaint forms and information*

**Commented [A15]:** For ease of comparison, the City Council's November 20, 2018 proposed changes read, in their entirety, as follows:

In lieu of recommending three candidates to the Council, the POB may recommend to the Council the reconfirmation of the incumbent Director. [Together with any recommendation for reconfirmation by the POB, the POB shall submit to the City Council a written basis for its recommendation to include a formal evaluation of the Director's past performance, including an evaluation against the duties established for the Director by this ordinance.] Should the Council decline to reconfirm the incumbent Director, the Council President shall notify the POB that it needs to provide the Council with three alternate candidates pursuant to the provisions of subsection (B)(1)[, and the POB shall so submit within 90 days of such notice. The City Council may decline to reconfirm the incumbent Director only for reasonable cause, including but not limited to any failure to fulfill all the requirements obligations of this ordinance, or ineffective leadership of the I organization in its mission toward civilian police oversight]. Should the Director not be reconfirmed [or should the confirmation vote be delayed or postponed for any reason], the current Director may continue to serve in the same capacity until a new Director is selected and [~~approved~~ confirmed] by the City Council. If for any reason there is a period of time during which there is no Director, the City Council may appoint a temporary Director of its choosing by a majority vote. A temporary Director shall serve in that capacity only for a period not to exceed six months[, during which time the POB shall work diligently to select a permanent director].

In contrast, CPOA's November 2018 proposed changes read, in their entirety, as follows:

*Upon the completion of the Director's term* ~~*In lieu of recommending three candidates to the Council*~~], the POB may [~~*recommend to the Council the reconfirmation of*~~ *reconfirm*] the incumbent Director. Should the [~~Council~~ POB] decline to reconfirm the incumbent Director, the [~~*Council President shall notify*~~] the POB [~~*that it needs to provide the Council with*~~ *shall appoint a new Direct* ~~three alternate candidates~~] pursuant to the provisions of subsection (B)(1). Should the Director not be reconfirmed, the current Director may continue to serve in the same capacity until a new Director is selected and approved by the [~~*City Council*~~ *POB pursuant to the provisions of subsection (B)(1).*] If for any reason there is a period of time during which there is no Director, the [~~*City Council*~~ *POB*] may appoint a temporary Director of its choosing by a majority vote. A temporary Director shall serve in that capacity only for a period not to exceed six months.

**Commented [A16]:** The CASA requires the agency to select the Executive Director, not City Council.

**Commented [A17]:** The CASA requires the agency to supervise the Executive Director, not APD, the Mayor, or City Council.

*materials, in both English and Spanish, must be made available at appropriate government properties, including APD headquarters, areas stations, APD's website, the City of Albuquerque's website, city hall, public libraries, community centers, and the CPOA's office.* Neither the POB nor any of its members shall file or initiate a complaint on behalf of a member of the public. Any POB member who files or otherwise initiates a complaint shall recuse from taking any action on the complaint, including evaluating the complaint and voting on its disposition.] The POB shall submit rules and regulations governing civilian complaint procedures to the City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of civilians' complaints against members of the police department. Anonymous complaints [*and complaints submitted on behalf of third parties*] shall be accepted.

¶ 165

¶ 165

**Commented [A18]:** The CASA does not prevent a POB member for filing or initiating a complaint, or recusing oneself from taking any action on the complaint.

**Commented [A19]:** The CASA only provides that "complaint may be submitted anonymously or on behalf of another person" and requires APD to "accept all misconduct complaints, including anonymous and third-party complaints."

**Commented [A20]:** The CASA only requires that "individuals appointed to serve on the agency...have demonstrated commitment to impartial, transparent, and objective adjudication of civilian complaints...."

¶¶ 165, 172, 273

(B) [~~*In cooperation with the POB, the Mayor shall designate civilian city staff to receive written civilian complaints at various locations throughout the city. The Police Department may also receive written complaints.*~~ *The CPOA shall accept all complaints, whether written, verbal, in person, by mail, telephone, facsimile, or electronic mail. Individuals may also submit written complaints anonymously or on behalf of a third party through the APD or City websites.*] The party who receives the complaint shall immediately transmit all civilian complaints for further investigation to the Director. [*All civilian complaints received by Internal Affairs shall be referred to the CPOA within three business days.*

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*(C) All investigations into misconduct complaints must be as thorough as necessary to reach reliable and complete findings. The investigator shall interview each complainant in person, absent exceptional circumstances, and the interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to observe an incident, or involved in any significant event before or after the original incident, shall provide a written statement regarding their observations, even to state that they did not observe anything. The CPOA shall consider all relevant evidence, including direct, circumstantial, and physical evidence. The CPOA will not give automatic preference for an officer's statement over a non-officer's statement, nor will the CPOA disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history. The CPOA shall take into account any convictions for crimes of dishonesty of the complainant or witness. The CPOA "shall make all efforts to resolve material inconsistences between witness statements.*]

¶ 183

[~~*(C)*~~*(D)*] After the investigation of a civilian complaint is completed, the Director shall analyze all relevant and material circumstances, facts and evidence gathered under the investigation. For each investigation, the Director shall prepare investigation reports with proposed findings and recommendations and submit them to the POB for its review and consideration. The Director may share any disciplinary recommendations with the Chief of Police in advance of their submission to the POB only as necessary to help ensure timeliness pursuant to any applicable personnel or union contract requirements.

[(D)] [The POB [hold a hearing to] shall review the proposed findings and recommendations[~~and~~. The POB shall adopt and follow rules for such hearings that implement the requirements of this ordinance and quasi-judicial procedures as prescribed under New Mexico Law. For purposes of these hearings, the POB members shall, at a minimum:

**Commented [A21]:** The CASA only provides: "The Executive Director, with approval of the agency, shall have the authority to recommend disciplinary action against officers." The CASA does not require hearing rules and quasi-judicial procedures.

¶ 285

(1) Remain impartial in deliberations and decisions and abstain from any independent investigation or review of information not presented by the investigation report or within the investigation file;

(2) Refrain from any ex-parte communication relating to the matters and parties under consideration, and recuse from any related hearings as may be necessary based on improper ex parte communication; any ex- parte correspondence that is inadvertently received by a member shall be referred to or otherwise disclosed to the Director and, when appropriate, made available for review by the relevant complaint and APD officer or their representatives; and

(3) Recuse from any hearing in which he or she has a direct or indirect personal conflict of interest or cannot otherwise accord a fair and impartial review, or in which such member's participation would create the appearance of impropriety or partiality.

(E) At the close of evidence and any related deliberation, the POB] and shall by majority vote of members present: 1) approve the findings and recommendations as proposed; 2) approve other findings and recommendations as determined by the POB and supported by the investigation file; or 3) defer action on the matter to allow for further investigation or analysis [on specifically identifiable matters] by the Director. As part of its review, the full investigation file shall be made available to the POB. [

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

¶¶ 285, 289

(Ord. 2014-019; Am. Ord. 2016-013)

**§ 9-4-1-9 REQUESTS FOR HEARING; APPEALS OF DISCIPLINARY DECISIONS.**

(A) *Requests for Hearing.* Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations approved by the POB may request reconsideration by the POB within 30 days (inclusive of weekends and holidays) of receipt of the public record letter. 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) that the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion, or 3) that the findings and recommendations were not consistent with the record evidence. The POB shall notify the Chief of Police 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 days between the receipt of the request for hearing and the next POB meeting. [Any such hearing shall be conducted in accord with quasi-judicial procedures and section 9-4-1-8(D).] Upon close of the hearing the POB may modify or change the findings and/or recommendations of the public record letter and may make further recommendations to the Chief of Police regarding the findings and/or recommendations and any discipline imposed by the Chief of Police or proposed by the Chief of Police. Within 20

**Commented [A22]:** The CASA does not require hearing rules and quasi-judicial procedures.

days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

(B) *Appeals of the Disciplinary Decision.* If any person who has filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief of Police'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 of Police by requesting such review in writing within 30 days (inclusive of weekends and holidays) of receipt of the Chief of Police's letter pursuant to § 9-4-1-9(A). Upon completion of his or her review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police 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 of Police and the Director, of the results of his or her review and any action taken.

(Ord. 2014-019)

**§ 9-4-1-10 REPORTS.**

The CPOA shall be responsible for regularly informing the Mayor, the City Council, and the public by submitting semi-annual written reports that include but are not limited to the following information:

(A) Data relating to the number, kind and status of all complaints received including those complaints sent to mediation[, *including any dispositions by the Executive Director, CPOA, and the Chief of Police;*

*(B) Data relating to the number and type of serious force incidents received and considered, including any dispositions by the Executive Director, CPOA, and the Chief of Police;*

*(C) Data relating to the number of officer-involved shootings received and considered, including any dispositions by the Executive Director, CPOA, and the Chief of Police;*] ¶ 292

[~~*(B)*~~ *(D)*] Discussion of issues of interest undertaken by the POB 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*~~ *demographic categories*] of complainants, and updates on prior issues and/or recommendations;

[~~*(C)*~~ *(E)*] The CPOA's findings and the Chief of Police's issuance of discipline on those findings and the ongoing disciplinary trends of the Police Department;

[*(F) Policy changes submitted by APD, including any dispositions by the Executive Director, CPOA, and the Chief of Police;*

*(G) Policy changes recommended by CPOA, including any dispositions by the Executive Director, CPOA, and the Chief of Police; (D) Information on all public outreach initiatives undertaken by the POB or the Director such as speaking engagements, public safety announcements, and/or public information brochures on the oversight process;*]

[~~(E)~~ *(H)*] The status of the long-term planning process identifying major problems, policy suggestions, and studies as required by § 9-4-1-4(C)(5);

[*(I) Trends or issues with APD's use of force, policies, or training;*]

[~~(F)~~ *(J)*] Identification of any matters that may necessitate the City Council's consideration of legislative amendments to this Police Oversight Ordinance; and

[~~(G)~~ *(K)*] The amount of time that the POB dedicated to the policy activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the past quarter.

(Ord. 2014-019)

**§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.**

The City Council believes that full participation and cooperation of all parties involved is essential to the success of the new police oversight process, and that APD hereby agrees and understands that its full cooperation is necessary, hereby agrees to mandate that its officers provide honest and truthful responses to all questions by the Director, CPOA staff or the designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the Director, CPOA staff, or the independent investigator, he or she may be subject to termination or disciplinary action at the discretion of the Chief of Police. [*The CPOA shall not advise APD personnel of their Fifth Amendment rights unless there is a reasonable likelihood of criminal investigation or prosecution.*] Compelled statements given to the Director, CPOA staff or the designated independent investigator, by a police officer will be used only for the Director's investigation and the closed session review of the investigation file by the POB, if any. The actual statement will remain confidential and will not be included in a final report. The Director may summarize conclusions reached from a compelled statement for the investigation report and in the public record letter to the complainant.

¶ 187

(Ord. 2014-019)

Is this a complete rewrite? Yes

11/20/2018 DRAFT

# CITY of ALBUQUERQUE
## TWENTY THIRD COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY: Isaac Benton and Brad Winter

ORDINANCE

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

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

SECTION 1. SECTION 9-4-1-1 THROUGH 9-4-1-14 ARE HEREBY AMENDED AS FOLLOWS:

"§ 9-4-1-1 SHORT TITLE.

Sections 9-4-1-1 through 9-4-1-14 may be cited as the Police Oversight Ordinance.

§ 9-4-1-2 PURPOSE.

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

(A) Foster and perpetuate policing policies and practices that effectively maintain social order and which at the same time foster mutual trust and cooperation between police and civilians;

(B) Ensure that the civilian police oversight body functions as independently as possible from the executive and legislative branches of government of the City of Albuquerque;

(C) Provide civilians and police officers a fair and impartial system for the investigations and determinations on civilian police complaints;

(D) Gather and analyze [information, reports, and] data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals; and

(E) Provide [~~policy~~ input,] guidance [and recommendations] to the City Council, the Mayor and the Chief of Police [for the development of policy for the Albuquerque Police Department]."

§ 9-4-1-3 LEGISLATIVE FINDINGS.

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(A) The City of Albuquerque deserves a highly professional well trained Police Department; however, an effective oversight function has not yet evolved to the satisfaction of the community's needs.

(B) In 1996 the City Council initiated a process to independently review the City's mechanisms of police oversight since the system had not been independently evaluated since 1988. As a result of that process, the City Council abolished the then existing Public Safety Advisory Board, and in lieu thereof established the current Police Oversight Commission (POC).

(C) In 2013 the City Council initiated a new process aimed at evaluating potential improvements to the POC and its processes by establishing an Ad Hoc Police Oversight Task Force (POTF). The POTF evaluated the City's current system, studied oversight options, held three Town Hall Meetings to receive input from the public, and presented their final recommendations.

(D) On April 10, 2014, the City also received findings from the United States Department of Justice that in part concluded that the City's external oversight system contributed to overall systemic problems with the Police Department's use of force in encounters with civilians.

(E) The Council understands that a properly conceived and functioning police oversight system is necessary to promote accountability of the police officers and protect the rights of civilians, and finds that adopting the recommendations of the POTF will advance these goals and will help respond to the shortcomings identified by the Department of Justice,

(F) The Council hereby abolishes the POC and replaces it with a Civilian Police Oversight Agency as prescribed by this Article.

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

There is hereby created a Civilian Police Oversight Agency (the "CPOA") as an independent agency of City Government[~~, not part of either~~. The CPOA shall function independently of, but shall remain accountable to] the City Administration[~~, or~~ the] City Council[~~that~~, the City Attorney's Office, and APD.] [The CPOA] consists of a Police Oversight Board (the "POB") and an Administrative Office led by the CPOA Executive Director. In addition to any other duties, the Administrative Office, through the Executive Director and

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staff, shall investigate all civilian complaints relating to police conduct, monitor and report on police internal affairs matters, provide staffing to the POB, and manage the day to day operations of the CPOA. The POB shall provide policy guidance for, and civilian oversight of the Albuquerque Police Department and review and approve or amend the findings and conclusions of all investigations completed by the Administrative Office.

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

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

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

IS THIS REQUIRED FOR

(3) Professional Legal Services. 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 §§ 9-4-1-1 through 9-4-1-14 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.

(4) Applicability of City Policies and Ordinances. The CPOA shall comply with all City ordinances and policies dealing with administrative functions including but not limited to those dealing with personnel, the merit system, and procurements.

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(B) Staff. The CPOA shall employ such staff as necessary to carry out its functions as prescribed by this Article, including but not limited to an executive director, professional investigative staff and other staff as may be necessary, subject to budget sufficiency and City personnel policies and procedures.

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

(1) Community Outreach. The CPOA shall develop, implement, and from time to time amend as necessary, a program of community outreach aimed at soliciting public input from the broadest segment of the community in terms of geography, culture, ethnicity, and socio-economics. The CPOA shall employ or designate a full time staff member within the Administrative Office dedicated to community outreach efforts. The CPOA shall report its community outreach efforts to the City Council on an annual basis [through a written report and oral presentation at a City Council Meeting].

(2) Promotion of Accountability [and Impartiality]. The CPOA shall promote a spirit of accountability and communication between the civilians and the Albuquerque Police Department while improving community relations and enhancing public confidence. [The CPOA shall also promote a spirit of impartiality in its review of civilian police complaints, and shall ensure that officer conduct is reviewed on a case by case basis and judged fairly and objectively. Unless evidence establishes otherwise, the CPOA shall ensure that the public is aware that the facts of an individual case are not necessarily, on their own, reflective of the department as a whole.]

APOA NARRATIVE

How do we do THAT?

(3) Investigations. The Administrative Office shall independently investigate all civilian complaints; shall audit and monitor all incidences of use of force by police and all matters under investigation by APD's Internal Affairs (IA) or other APD personnel tasked with conducting administrative investigations related to a use of force incident; and shall prepare proposed findings and recommendations on all officer involved shootings and serious uses of force as defined by Article III, Paragraph 12,

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Subsection (qq) [(or as subsequently amended)] of the court-approved DOJ Settlement Agreement with the City of Albuquerque ("Serious Uses of Force").

(a) Where an officer has engaged in conduct that may reasonably lead to a criminal charge against the officer, IA and the CPOA have a shared interest in exercising care to avoid interfering with the criminal process while simultaneously maintaining the integrity of the disciplinary process for officers. Consistent with this shared interest, IA and the CPOA will regularly confer and take reasonable steps to coordinate the handling of investigations into matters that reasonably may lead to a criminal charge against an officer. Before taking action related to a serious use of force or officer involved shooting, the 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 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 Director determines that proceeding is appropriate and will not compromise a criminal investigation. If the 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 Director may proceed only after obtaining approval to do so through a 2/3 vote of the POB. The POB shall provide notice of any such vote permitting the Director to proceed in such circumstances to APD and the police officer involved.

(b) APD shall provide POB members, the Director, and CPOA staff with reasonable access to APD premises, files, documents, reports[, data (including APD raw data),] and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings. [~~However~~ For purposes of this ordinance, "APD raw data" includes but is not limited to any facts and statistics or other data gathered, obtained, or that are otherwise within the possession of APD before being processed or analyzed. Notwithstanding the foregoing], any material

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protected from disclosure by law shall remain within the custody and control of APD at all times and will be handled in accordance with the applicable legal restrictions.

(c) All complaints filed by police officers will be investigated by Internal Affairs. Internal Affairs shall provide a weekly update to the Director on all open internal investigations. The Director's investigation report and findings 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. Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand.

(d) Information that is covered by Garrity will be treated as confidential to the extent permitted by law and may only be reviewed by members of the POB by application in writing, and by majority vote of the POB. If the POB votes to review Garrity material, members of the POB may only do so on APD property. The POB may not remove or make copies of such statements. If the POB desires to discuss the specific content of statements protected by Garrity, such discussion will occur only in closed session as permitted under the New Mexico Open Meetings Act, NMSA 1978, § 10-15-1(H)(2). The POB shall only summarize conclusions reached after a review of a Garrity statement, but shall not disclose the statement. The POB shall maintain the confidentiality of any Garrity material or records that are made confidential to the extent permitted by law and 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 the confidentiality provisions of this section 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. This provision shall apply to all aspects of the POB's work.

(e) Mediation First. Whenever possible, and as further described in § 9-4-1-6(C)(3) of this ordinance, mediation should be the

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first option for resolution of civilian police complaints.

(f) POB Audits; Access to Files. 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, or 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 (2/3) of the members of the POB, perform an audit, or direct that an audit be performed, on any individual Citizen Police Complaint Investigation completed by the Administrative Office. For purposes of its audit function, the POB shall have full access to investigation files and may subpoena such documents and witnesses as relevant to its audit function.

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

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

(5) CPOA Policy Recommendations. The CPOA shall engage in a long-term planning process through which it identifies major problems or trends, evaluates the efficacy of existing law enforcement practices in dealing with the same, [<u>analyzes and evaluates data (including</u>

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APD raw data), national trends, and police best practices,] and establishes a program of resulting policy suggestions[, recommendations,] and studies each year. [For purposes of this ordinance "police best practices" refers to law enforcement methods or techniques based upon the experiences and outcomes in other police departments or law enforcement agencies that have documented superior results compared to other practices.] The CPOA's policy recommendation process shall be as follows:

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

DIMINISHED POLICY INPUT

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

(c)] The Chief of Police [or designee] shall respond [~~in writing within 45 days to any such policy recommendations by the CPOA, in writing within 45 days to any such policy recommendations by the CPOA, and~~ to policy recommendations made by the CPOA pursuant to paragraphs 'a' or 'b' above in writing within 45 days of final action on a policy by APD. As part this response, APD shall] indicate whether [~~they~~ the POB's policy recommendation] will be followed through standard operating procedures or should be adopted as policy by the City Council, or [specifically] explain any reasons why such policy recommendations will not be followed or [~~should~~ were] not be adopted.

[~~(c)~~(d)] Within six months of its appointment, the POB shall draft and approve policies, rules and procedures that ensure that the POB [~~shall dedicate a majority of its time to the functions described in this~~

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~~subsection~~ is effectively accomplishing its duties under this Article].

[(e) The chair of the POB shall designate one POB member to serve on each APD policy development committee. The Director and the POB member designated by the Chair shall each serve as voting members of such committees, and shall vote in a manner consistent with any prior related action by the POB, and shall report back to the board about the outcomes and votes cast at the next regularly scheduled meeting of the POB.]

§ 9-4-1-5 THE CPOA POLICE OVERSIGHT BOARD.

(A) Composition. The POB shall be composed of [~~nine~~ seven] at-large members who broadly represent the diversity and demographics of the City by way of, including but not limited to, cultural, gender and geographic diversity; and who are representative of the stakeholders of the police oversight process, and who reside within the City of Albuquerque.

(B) Qualifications. In addition to the composition standards set forth above, the following are the minimum qualifications for members of the POB:

(1) Have not been employed by law enforcement for one year prior to appointment; and

(2) Successfully pass a background check; and

(3) Personal history lacking any pattern of unsubstantiated complaints against APD; and

(4) A demonstrated ability to engage in mature, impartial decision making; and

(5) A commitment to transparency and impartial decision making; and

(6) Residency within the City of Albuquerque.

(C) Appointment of Members. The City Council shall establish a well-publicized, fair and equitable application process for appointment to the POB[, and for filling vacancies]. The City Council, through its staff, shall accept applications from prospective POB members. Staff shall formulate recommendations for appointments based on evaluation of the qualification criteria listed in subsections (A) and (B) above and submit recommendations for appointment(s) to the City Council for its approval. If a member is eligible

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for reappointment, [~~staff may suggest~~ that member may request] reappointment [~~of that member~~] without a formal application process and the City Council may reappoint accordingly.

(D) Membership Term. POB members shall serve a maximum of two three-year terms on a staggered basis so that no more than [~~five~~ two] of the members are eligible for reappointment or replacement each year.

(E) Removal of Members. Any POB member may be removed for cause by a two-thirds majority vote of either the POB itself or the City Council. [In addition to any other reasonable cause, any conduct inconsistent with the requirements and provisions of this ordinance, any partiality as it relates to the evaluation of civilian police complaints, or an inability to objectively adjudicate civilian police complaints shall constitute cause for removal.] The appointment of any member who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the POB 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.

(F) Orientation and Training. Upon appointment or reappointment, POB members shall complete an orientation and training program consisting of the following:

(1) Required [Initial] Orientation [and Training]. Prior to participation in any meeting of the POB, a newly appointed member must first:

(a) Be trained by the CPOA staff or CPOA legal counsel on CPOA [~~and APD rules,~~] policies, and procedures; and

(b) Attend at least one POB meeting as an observer (except ~~initial appointees~~ for reappointed members).

[~~(2) 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:~~

~~(a) Completion of those portions of the APD Civilian Police Academy that APD determines are necessary for the POB to have a sound understanding of the Department, its policies, and the work officers~~

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~~perform - for purposes of this training requirement, APD shall identify those portions of the standard APD Civilian Police Academy Program that are optional for POB members and shall make other aspects of the program available for POB members to complete independently;~~

(c) Be trained on this ordinance and the duties, obligations, and responsibilities that it imposes on POB members and the CPOA;

(d) State and local laws regarding public meetings, inspection of public records, governmental transparency, and the conduct of public officials;

(e) Ethics for public officials;

~~(b)~~(f) Civil Rights training, including the Fourth Amendment right to be free from unreasonable searches and seizures, including unreasonable use of force;

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[~~(c) At least two APD ride-alongs~~];

~~(d) Annual firearms simulation training;~~

~~(e) Internal Affairs training;~~

~~(f)~~(g)] Training provided to APD officers on use of force, including a review and familiarization with all APD policies relating to use of force, and including policies related to APD's internal review of force incidents;

[~~(g) Equity and Cultural Sensitivity training;~~]

(h) Training on the 2014 DOJ Settlement Agreement with the City of Albuquerque (or any subsequent agreements), and Findings Letter of April 10, 2014 (or any subsequent findings letters);

[~~(i) Training on this Police Oversight Ordinance;~~

~~(j) Training on state and local laws regarding public meetings and the conduct of public officials;~~] and

[~~(k)~~(i)] A briefing that identifies and explains the curriculum of all training [currently] received or [anticipated] to be received by APD officers, including any outside training not provided by the city.

(3) Required On-Going Training. POB members shall [~~be provided with~~ receive] eight hours of annual training on any changes in law,

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policy, or training in the areas outlined under subsection (2) above, 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. POB members shall also participate in at least two police ride-alongs for every six-months of service on the POB.

(4) Recommended Training. POB members are encouraged to [complete those portions of the civilian police academy that APD determines are necessary for the POB to have a sound understanding of the Department, its policies, and the work officers perform, and to] attend conferences and workshops relating to police oversight, such as the annual NACOLE conference at city expense depending on budget availability.

[(5) The Director shall track training progress for each POB member, verify completion of the initial and on-going training requirements for each POB member, and include this information for each POB member as part of the semi-annual reports required by this ordinance.]

(G) Chair. The POB shall elect one of its members as the Chairperson and one as Vice-Chairperson, who shall each hold office for one year and until their successors are elected. No officer shall be eligible to immediately succeed himself or herself in the same office. Officers shall be elected in the month of March of each calendar year or upon vacancy of an office to fill the remaining term.

(H) Subcommittees. The POB may appoint such subcommittees as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to POB members [and no POB member shall serve on any more than two (2) committees at any given time].

(I) Meetings. The POB shall conduct regularly scheduled public meetings in compliance with the New Mexico Open Meetings Act, with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney. Each POB meeting will begin with public comments. Only the regularly scheduled monthly meetings and special meetings held pursuant to submission of petitions will be televised live on the appropriate government access channel. All other meetings of the POB shall

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be videotaped and aired on the appropriate government access channel; however, there is no requirement for providing live television coverage.

1. Public Comment. The POB shall allow general public comment at each of its meetings, and the POB shall also allow comment on each of its agenda items other than Citizen Police Complaints. The complainant or complainant's authorized representative in a Citizen Police Complaint will be provided with a minimum of five minutes to address the POB relating to the complaint and investigation.

[J. Subpoenas. Upon justification by the Director acceptable to the POB, the POB may by simple majority vote authorize the Director to subpoena such documents and witnesses as necessary to carry out the CPOA's investigatory functions. The summoned person may petition the POB or the district court of the county where he or she resides to vacate or modify the administrative subpoena. In the case of a refusal to obey a subpoena issued to any person, the Director may make application to any District Court in the state having jurisdiction to order the witness to appear before the POB and to produce evidence if so ordered, or to give testimony touching on the matter in question. Any summoned person is entitled to legal counsel during all CPOA or POB proceedings.]

§ 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.

(A) The staff and administration of the CPOA shall be directed by the CPOA Executive Director (the "Director").

(B) In addition to any other duties expressed or implied by this ordinance the Director shall:

(1) Independently investigate, or cause to be investigated, all civilian police complaints and prepare findings and recommendations for review by the POB;

(2) Review and monitor all Internal Affairs investigations and other administrative investigations related to officer involved shooting investigations and serious uses of force investigations. The Director shall prepare and submit findings and recommendations to the POB relating to officer involved shootings and serious uses of force, and shall report on general trends and issues identified through monitoring or auditing of internal

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Affairs;

(3) Provide staffing to the Police Oversight Board and ensure that the duties and responsibilities of the CPOA are executed in an efficient manner, and manage the day to day operations of the CPOA.

(C) The Administrative Office will receive and process all civilian complaints directed against the Albuquerque Police Department and any of its officers. The Director shall independently investigate and make findings and recommendations for review by the POB for such civilian complaints, or assign them for independent investigation by CPOA staff or an outside independent investigator. If assigned to staff or an outside investigator, the Director shall oversee, monitor and review all such investigations and findings for each. All findings relating to civilian complaints, officer involved shootings, and serious uses of force shall be forwarded to the POB for its review and approval. For all investigations, the Director shall make recommendations and give advice regarding Police Department policies and procedures to the POB as the Director deems advisable.

(1) Investigation of all civilian complaints filed with the CPOA shall begin immediately after complaints are filed and proceed as expeditiously as possible, and if an investigation exceeds a timeframe of nine months the Director must report the reasons to the POB; and

(2) All civilian complaints filed with other offices within the city authorized to accept civilian complaints, including the Police Department, shall be immediately referred to the Director for investigation; and

(3) Mediation should be the first option for resolution of civilian police complaints. Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. At the discretion of the Director an impartial system of mediation should be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur; and

(4) The Director shall monitor all claims of officer involved shootings and serious uses of force. No APD related settlements in excess of $25,000 shall be made for claims without the knowledge of the Director. The

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Director shall be an ex-officio member of the Claims Review Board; and

(5) All investigations shall be thorough, objective, fair, impartial, and free from political influence; and

(6) The Director shall maintain and compile all information necessary to satisfy the CPOA's semi-annual written reporting requirements in § 9-4-1-10; and

(7) If at any point during an investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the APD Internal Affairs Bureau commanding officer and transfer the administrative investigation to the Internal Affairs Bureau. The CPOA may review the IA investigation and continue processing the complaint at any time upon the conclusion of any criminal proceeding.

(D) The Director shall have access to any Police Department information or documents that are relevant to a civilian's complaint, or to an issue which is ongoing at the CPOA.

(E) The Administrative Office shall staff, coordinate and provide technical support for all scheduled POB meetings, publicize all findings and reports, recommendations, and/or suggested policy changes.

(F) The Director shall play an active public role in the community, and whenever possible, provide appropriate outreach to the community, publicize the civilian complaint process, and identify locations within the community that are suitable for civilians to file complaints in a non-police environment.

(G) The Director shall be provided the necessary professional and/or clerical employees for the effective staffing of the Administrative Office, and shall prescribe the duties of these staff members. Such professional and clerical employees will be classified city employees. All CPOA staff with investigative duties shall be professional investigators trained in professional investigation techniques and practices.

(H) The Director shall report directly to the POB and lead the Administrative Office; independently investigate or supervise all investigations of civilian complaints, audit all IA investigations of complaints, recommend and participate in mediation of certain complaints, and supervise

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all CPOA staff.

[(I) The Director shall satisfy the initial and ongoing training requirements for POB members as prescribed by Section 9-4-1-5(F) and report completion of training activities to the Chair of the POB.]

§ 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS, SELECTION, RETENTION AND EVALUATION.

(A) Qualifications for the position of Director shall minimally include the requirement of a law degree and experience in criminal investigations.

(B) The Director will be a full-time [~~contractual~~] city employee [directly responsible only to the POB,] to be selected, removed, or reviewed as follows:

(1) The POB, through CPOA staff, shall accept applications from candidates. The POB shall review the applications and interview candidates, and submit to the City Council a ranked list of the three candidates that it finds to be the best qualified to be the Director and the City Council shall appoint the Director from the three by majority vote. The POB's recommendation to Council shall be based on the candidates' integrity, capability for strong management and abilities in investigations, law, management analysis, public administration, criminal justice administration or other closely related fields. [The POB's recommendation shall, at a minimum, include an evaluation of the candidates against the provisions and requirements of this subsection 9-4-1-7.]

(2) In lieu of recommending three candidates to the Council, the POB may recommend to the Council the reconfirmation of the incumbent Director. [Together with any recommendation for reconfirmation by the POB, the POB shall submit to the City Council a written basis for its recommendation to include a formal evaluation of the Director's past performance, including an evaluation against the duties established for the Director by this ordinance.] Should the Council decline to reconfirm the incumbent Director, the Council President shall notify the POB that it needs to provide the Council with three alternate candidates pursuant to the provisions of subsection (B)(1)[, and the POB shall so submit within 90 days of such notice. The City Council may decline to reconfirm the incumbent Director only for reasonable cause, including but not limited to any failure to fulfill all the

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requirements obligations of this ordinance, or ineffective leadership of the organization in its mission toward civilian police oversight]. Should the Director not be reconfirmed [or should the confirmation vote be delayed or postponed for any reason], the current Director may continue to serve in the same capacity until a new Director is selected and [~~approved~~ confirmed] by the City Council. If for any reason there is a period of time during which there is no Director, the City Council may appoint a temporary Director [~~of its choosing~~] by a majority vote. . A temporary Director shall serve in that capacity only for a period not to exceed six months[, during which time the POB shall work diligently to select a permanent director].

WHY TERM IF CITY EMPLOYEE

(3) The term of the Director shall be for three years. Once confirmed, the Director may be removed only upon: 1) a recommendation of removal to the City Council by the affirmative vote of two-thirds of the members of the POB; and 2) acceptance of the POB's recommendation by a simple majority vote of the City Council.

(C) The POB shall annually review the performance of the Director taking into consideration the obligations and duties prescribed by this ordinance and the performance of the Administrative Office. [A copy of these performance evaluations shall be delivered to the Chief of Police, the Mayor, and the President of the City Council for receipt by the Council.]

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

AND A MUST TAKE ALL COMPLA

(A) Any person claiming to be aggrieved by actions of the Police may file a written complaint against the department or any of its officers. [Neither the POB nor any of its members shall file or initiate a complaint on behalf of a member of the public. Any POB member who files or otherwise initiates a complaint shall recuse from taking any action on the complaint, including evaluating the complaint and voting on its disposition.] The POB shall submit rules and regulations governing civilian complaint procedures to the City Council for approval, including rules and regulations relative to time limits, notice and other measures to insure impartial review of civilians' complaints against members of the police department. Anonymous complaints shall be accepted.

CONTRADICT

(B) In cooperation with the POB, the Mayor shall designate civilian city

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staff to receive written civilian complaints at various locations throughout the city. The Police Department may also receive written complaints. The party who receives the complaint shall immediately transmit all civilian complaints for further investigation to the Director.

(C) After the investigation of a civilian complaint is completed, the Director shall analyze all relevant and material circumstances, facts and evidence gathered under the investigation. For each investigation, the Director shall prepare investigation reports with proposed findings and recommendations and submit them to the POB for its review and consideration. The Director may share any disciplinary recommendations with the Chief of Police in advance of their submission to the POB only as necessary to help ensure timeliness pursuant to any applicable personnel or union contract requirements. [

(D) ]The POB shall [hold a hearing to] review the proposed findings and recommendations[~~and~~. The POB shall adopt and follow rules for such hearings that implement the requirements of this ordinance and quasi-judicial procedures as prescribed under New Mexico Law. For purposes of these hearings, the POB members shall, at a minimum:

(1) Remain impartial in deliberations and decisions and abstain from any independent investigation or review of information not presented by the investigation report or within the investigation file;

(2) Refrain from any ex-parte communication relating to the matters and parties under consideration, and recuse from any related hearings as may be necessary based on improper ex parte communication; any ex-parte correspondence that is inadvertently received by a member shall be referred to or otherwise disclosed to the Director and, when appropriate, made available for review by the relevant complaint and APD officer or their representatives; and

(3) Recuse from any hearing in which he or she has a direct or indirect personal conflict of interest or cannot otherwise accord a fair and impartial review, or in which such member's participation would create the appearance of impropriety or partiality.]

[(E) At the close of evidence and any related deliberation, the POB] shall

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by majority vote of members present: 1) approve the findings and recommendations as proposed; 2) approve other findings and recommendations as determined by the POB and supported by the investigation file; or 3) defer action on the matter to allow for further investigation or analysis [on specifically identifiable matters] by the Director. As part of its review, the full investigation file shall be made available to the POB.[

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

§ 9-4-1-9 REQUESTS FOR HEARING; APPEALS OF DISCIPLINARY DECISIONS.

(A) Requests for Hearing. Any person who has filed a civilian complaint and who is dissatisfied with the findings and/or recommendations approved by the POB may request reconsideration by the POB within 30 days (inclusive of weekends and holidays) of receipt of the public record letter. 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) that the findings or recommendations were arbitrary, capricious or constituted an abuse of discretion, or 3) that the findings and recommendations were not consistent with the record evidence. The POB shall notify the Chief of Police 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 days between the receipt of the request for hearing and the next POB meeting. [Any such hearing shall be conducted in accord with quasi-judicial procedures and section 9-4-1-8(D).] Upon close of the hearing the POB may modify or change the findings and/or recommendations of the public record letter and may make further recommendations to the Chief of

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Police regarding the findings and/or recommendations and any discipline imposed by the Chief of Police or proposed by the Chief of Police. Within 20 days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

(B) Appeals of the Disciplinary Decision. If any person who has filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief of Police'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 of Police by requesting such review in writing within 30 days (inclusive of weekends and holidays) of receipt of the Chief of Police's letter pursuant to § 9-4-1-9(A). Upon completion of his or her review, the Chief Administrative Officer shall take any action necessary, including overriding the decision of the Chief of Police 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 of Police and the Director, of the results of his or her review and any action taken.

§ 9-4-1-10 REPORTS.

The CPOA shall be responsible for regularly informing the Mayor, the City Council, and the public by submitting semi-annual written reports that include but are not limited to the following information:

(A) Data relating to the number, kind and status of all complaints received including those complaints sent to mediation;

(B) Discussion of issues of interest undertaken by the POB 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, and updates on prior issues and/or recommendations;

(C) The CPOA's findings and the Chief of Police's issuance of discipline on those findings and the ongoing disciplinary trends of the Police Department;

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(D) Information on all public outreach initiatives undertaken by the POB or the Director such as 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 as required by § 9-4-1-4(C)(5);

(F) Identification of any matters that may necessitate the City Council's consideration of legislative amendments to this Police Oversight Ordinance; and

(G) The amount of time that the POB dedicated to the policy activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the past quarter.

§ 9-4-1-11 EVALUATION.

Contingent upon funding, in the first six months of 2016 and at least every four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the City Council shall issue a Request for Proposal for an independent consultant to undertake a complete evaluation and analysis of the entire police oversight process, and recommend any necessary changes or amendments that would appropriately improve the process.

§ 9-4-1-12 SPECIAL MEETINGS.

On the petition of 1,000 or more civilians in the City of Albuquerque filed in the Office of the City Clerk, the POB shall hold a special meeting for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed with the POB by the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the POB and shall comply with the State Open Meetings Act.

§ 9-4-1-13 CONFIDENTIALITY.

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. However, upon the opinion of the CPOA Attorney that the law permits such action, some of the details of the investigations of the Director, or the designated independent investigator, shall become privileged and confidential. The

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details of investigations should not be open to the public subject to the opinion of the CPOA Attorney and the Director. Compelled statements given to the Director, or the designated independent investigator, will not be made public. The Director may summarize conclusions reached from a compelled statement for the report to the POB and the Chief of Police, and in the public record letter sent to the complainant. Nothing in this ordinance affects the ability of APD to use a compelled statement in a disciplinary proceeding.

§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.

The City Council believes that full participation and cooperation of all parties involved is essential to the success of the new police oversight process, and that APD hereby agrees and understands that its full cooperation is necessary, hereby agrees to mandate that its officers provide honest and truthful responses to all questions by the Director, CPOA staff or the designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the Director, CPOA staff, or the independent investigator, he or she may be subject to termination or disciplinary action at the discretion of the Chief of Police. Compelled statements given to the Director, CPOA staff or the designated independent investigator, by a police officer will be used only for the Director's investigation and the closed session review of the investigation file by the POB, if any. The actual statement will remain confidential and will not be included in a final report. The Director may summarize conclusions reached from a compelled statement for the investigation report and in the public record letter to the complainant.

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

SECTION 6. COMPILATION. The ordinance amendment prescribed by SECTIONS 1, 2, 3, and 4 shall amend, be incorporated in and made part of the

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Revised ordinances of Albuquerque, New Mexico, 1994.

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

Quasi Judicial Officials

Child Support

Domestic Violence

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APD forward

**Comments on Amendments to Police Oversight Ordinance**
**(Winter/Benton, draft dated 11/20/18)**

**TO: Finance and Government Affairs Committee**
**DATE: November 30, 2018**

APD Forward appreciates the opportunity to submit comments on the following Police Oversight Ordinance amendments. Our primary concern is ensuring that the ordinance fully complies with the Court Approved Settlement Agreement (CASA) and that the CPOA and POB are independent and effective.

**P. 3, line 15:** The CPOA requested a funding increase.

APD FORWARD SUPPORTS THIS REQUEST.

**P. 4, lines 24-26**: ***"Unless evidence establishes otherwise, the CPOA shall ensure that the public is aware that the facts of an individual case are not necessarily, on their own, reflective of the department as a whole."***

This language seems vague and unworkable. How would the CPOA determine what "evidence" establishes whether or not the facts of an individual case applies to the department? The CPOA's scope of responsibility does not include making public statements for the specific purpose of safeguarding APD's reputation in instances where the public may be drawing inferences from a single case. It is unclear what appropriate actions the CPOA could take to ensure the public is aware that the facts of an individual case are not representative of APD as a whole.

APD FORWARD OPPOSES THIS CHANGE.

**P. 7, lines 21-25**: Regarding disciplinary recommendations, the draft requires a response from the chief ***"within 30 days [of the department's final disciplinary decision], with [a detailed explanation of] the reason as to why the recommended discipline was not imposed. [The Chief shall identify the specific findings of the POB with which the Chief disagrees, or any other basis upon which the Chief declined the POB's disciplinary recommendation.]"***

APD FORWARD SUPPORTS THIS CHANGE.

**P. 8, line 1:** ***"Police best practices"*** is very narrowly defined. This narrow definition prevents recommending innovative practices that other departments may not have tried. For example,

the APD Crisis Intervention Unit began using the "ECHO" model adapted from the UNM School of Medicine. That model was designed to enable primary health care practitioners in rural and frontier areas to speak with experts from UNM who could guide and train rural practitioners to deliver care typically outside the rural practitioners' expertise. APD has used the model to provide training on crisis intervention techniques. The ECHO model is a live webinar-based weekly call-in session conducted by mental health professionals and experienced CIT police officers on crisis intervention strategies. The participants then debrief a difficult call with the psychiatrists and CIT officers with experience in the field. It is proving to be a promising model and important resource, not only for APD, but for other officers and first responders who participate regularly from around the state and around the country. This model is the first of its kind that any police department in the country has implemented. Under the narrow definition, this model could not be evaluated or recommended by the CPOA.

APD FORWARD RECOMMENDS THE FOLLOWING REVISION: ***"analyzes and evaluates data . . ., innovative practices, national trends, and police best practices."***

**P. 8, lines 15-17, 33**: This amendment eliminates the requirements that the POB dedicate a majority of its time to identifying major problems or trends within the department, collecting and analyzing data, reviewing police best practices, and making corresponding policy recommendations. This is a major change, one that undoes a principal recommendation by the Police Oversight Task Force created in 2014 to overhaul the Police Oversight Commission. Police oversight in Albuquerque has a long history of failing to see the forest for the trees. While the former Police Oversight Commission was consumed with the details of a few individual cases, APD was going through its worst string of lethal shootings in 30 years.

To make the CPOA effective at preventing a future "pattern and practice" of unconstitutional policing, the ordinance must ensure that it not only investigates citizen complaints but also addresses systemic problems and policy shortcomings.

APD FORWARD OPPOSES THIS CHANGE.

**P. 9, lines 2-7**: ***". . . and shall vote in a manner consistent with any prior related action by the POB . . ."*** This language seems vague and could tie the hands of appointees unnecessarily or inappropriately, especially where the POB's views are not yet established, where the POB may wish to change a previous position but has not had the opportunity to do so, or where the issue in question does not line up precisely with a previous POB position.

APD FORWARD OPPOSES THIS PORTION OF THE AMENDMENT.

***". . . and shall report back to the board about the outcomes and votes cast at the next regularly scheduled meeting of the POB.]"*** The key to holding appointees accountable to the POB lies in the requirement that they report their votes to the full POB in a timely manner.

APD FORWARD SUPPORTS THIS PORTION OF THE AMENDMENT.

The ordinance should specifically name the two APD policy development committees (OPA and PPRB). POB members should not be required to serve on other working groups or other bodies created at some point in the future to develop APD policy.

APD FORWARD RECOMMENDS REVISING THE AMENDMENT to specify that the POB shall designate a member to serve on the OPA and PPRB.

**P. 9, line 9**: This amendment reduces the POB membership from 9 to 7. This reduction also undoes one of the major recommendations by the Police Oversight Task Force, intended to ensure that the POB has enough person power to carry out its wide scope of responsibilities. The POB should not be criticized for failing to do its job when it has not been given a full membership to do that job.

APD FORWARD OPPOSES THIS CHANGE.

**P. 10, lines 9-12**: On conditions for removing a POB member: ***"[In addition to any other reasonable cause, any conduct inconsistent with the requirements and provisions of this ordinance, any partiality as it relates to the evaluation of civilian police complaints, or an inability to objectively adjudicate civilian police complaints shall constitute cause for removal.]"***

This language is vague and confusing. How does a POB member know when their opinion has strayed from impartiality? What factors establish "partiality" so that POB members may know how to avoid removal? The standard for removal is already established. The additional language muddies the standard.

APD FORWARD OPPOSES THIS CHANGE.

**P. 10, lines 19...:** Regarding training for POB members, the ordinance should lay out the training POB members should receive only ***"upon appointment"*** and not upon "reappointment." Required ongoing training for POB members is already covered starting on page 11, line 32. Also, the section on ***"Orientation and Training"*** should make clear that the City is responsible for providing POB members with this orientation and training, unless the CPOA staff is providing it.

APD FORWARD RECOMMENDS REVISING THIS SECTION.

**P. 10-11, lines 28...:** The civilian police academy contains a lot of unnecessary and inapplicable material. Instead of eliminating the requirement that POB members attend the entirety of the academy, the City and APD should provide a version that can be completed in a single two-day weekend. Training should not be pointlessly lengthy. Instead it should be targeted, meaningful, and accessible for new POB members.

APD FORWARD RECOMMENDS REVISING THIS SECTION to require new POB members to attend a targeted, two-day weekend civilian police academy training.

**P. 11, lines 22:** Striking ***"Equity and Cultural Sensitivity Training"*** is a mistake. Equity, race, and cultural sensitivity issues are fundamental aspects to effective police oversight.

APD FORWARD OPPOSES THIS CHANGE.

**P. 12, lines 7-9:** The portions of the civilian police academy that the POB attends should not be determined solely by APD, but should also be informed by input from past and current POB members, as well as community stakeholders.

APD FORWARD RECOMMENDS THE FOLLOWING REVISION: ***"[complete those portions of the civilian police academy that APD, <u>past and current POB members, and community stakeholders determine</u> are necessary . . . ]"***

**P. 11, lines 8-10:** The amendment should include training on state law relevant to "quasi-judicial procedures" referenced on page 18, lines 16-17.

APD FORWARD RECOMMENDS THE FOLLOWING REVISION: ***"State and local laws regarding public meetings, inspection of public records, governmental transparency, <u>quasi-judicial proceedings,</u> and the conduct of public officials.***

**P. 13, lines 9-19**: The POB's subpoena power is explicitly required in the CASA.

APD FORWARD SUPPORTS THIS CHANGE.

**P. 16-17, lines 5...:** The CASA paragraph 279 states: "The Executive Director will be selected by and work under the supervision of the agency." The draft ordinance states the POB will <u>recommend</u> three candidates for director for the City Council to select. The CASA explicitly requires the POB to have direct authority to select its own director.

APD FORWARD RECOMMENDS REVISING THIS SECTION to provide the POB direct control over selecting its director.

**P. 18, lines 15-17:** The term ***"quasi-judicial"*** is vague. To ensure POB members understand their obligations under this ordinance, the ordinance should define or provide a legal citation for the term ***"quasi-judicial proceedings."***

APD FORWARD RECEOMMENDS REVISING THIS AMENDMENT to include a definition or legal citation for ***"quasi-judicial proceedings."***