



POLICE OVERSIGHT BOARD POLICY AND PROCEDURE REVIEW SUBCOMMITTEE

Thursday, August 17, 2017 – 5:00 p.m.
Plaza Del Sol Building, 600 2nd Street NW
3rd Floor Small Conference Room

Members Present

Dr. William Kass, Chair
Susann Brown
Eric Cruz
Valerie St. John

Others Present

Edward Harness, Exec. Director
Amanda Bustos
Paul Skotchdopole

Minutes

(See appendix A for amendment).

- I. **Welcome and Call to Order:** Subcommittee Chair Kass called the meeting to order at 5:00 p.m.
- II. **Approval of Agenda:** Copies of the agenda were distributed. Subcommittee Member Cruz made a motion to approve the agenda. Subcommittee Member St. John seconded the motion. The motion was not carried for a vote.
- III. **Approval of the Minutes:** Copies of the July 20, 2017 minutes were distributed. Subcommittee Member Cruz made a motion to approve the minutes. Subcommittee Member Brown seconded the motion. The motion was carried by the following vote:
For -1: Cruz
Unconfirmed vote: Brown, Kass, St. John
- IV. **Public Comments**
 - A. Mr. Charles Arasim gave a comment to the subcommittee regarding his IPRA request that he filed on August 7, 2017 in regards to three internal affairs investigations and the response he received. Members and Director Harness discussed Mr. Arasim's request.
- V. **Discussion:**
 - A. **Ordinance Analysis:** Chair Kass analyzed the POB/CPOA Ordinance. See attachment "A."
 - B. **Policy Implementation Process.** Chair Kass distributed and discussed in detail the document titled, "CPOA Policy Recommendation Process." See attachment "B"

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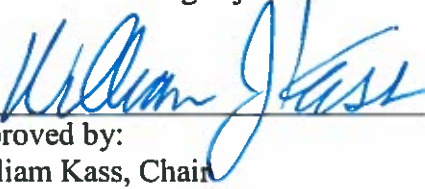
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1. A discussion was had regarding policy 3-52, Policy on polices and why it is taking so long for it to get approved. Member Brown would like to see this passed in order to see what the rules are.
- C. Prioritized List of Policy Recommendations.** Chair Kass distributed and discussed each of the listed policies in detail from the document titled, "Policies for Discussion." See attachment "C."
1. Members discussed the waiver for the POB member ride-a-longs.
 2. Discussed APD's CYFD policy from the list of policy recommendations as recommended by CPOA Assistant Lead Investigator Paul Skotchdopole, which arose from his investigation out of CPC 093-17.
 - i. In order to draft new policy for CYFD investigations given to APD, Director Harness suggested that the Policy members start by looking at the APD policy that addresses child abuse issues.
 - ii. Mr. Skotchdopole recommended that the policy subcommittee start with the APD CYFD policy 2-92.
 - iii. **Action item:** Mr. Skotchdopole will look for some language that can be put into the proposed APD's CYFD policy at the request of Chair Kass.
 - iv. **Action item:** Director Harness will email the Member the APD's policy 2-92.
 - v. Members will look at 2-92 policy and will bring it up at the next regularly scheduled Subcommittee meeting.
 3. **Domestic Violence policy:** Discussed the DV policy.
 - i. **Action item:** Member Brown will work on the Domestic Violence policy and bring it up at the next POB meeting on September 21, 2017.
- VI. Report from CPOA**
- A. Report from CPOA Director Edward Harness.** Director Harness discussed the following
1. **Force Review Board policy**
 - i. Director Harness recently discovered that the APD Union is trying to remove the CPOA seat from the FRB for the reason that there is a confidentiality conflict.
 - ii. Discussed possible solutions.
 2. **Memorandum of Understanding for Mediation.** Director Harness had a conference call/meeting with the APD union, City Attorney and the DOJ to work out the MOU for mediation.
- VII. Other business.** None.
- VIII. Next Meeting:**
- A.** The next Policy and Procedure Subcommittee will be Thursday, September 28, 2017 at 5:00 p.m.

B. After setting up the next meeting date, a discussion was had regarding who will be on the Policy Subcommittee.

- IX. **Adjournment:** Subcommittee Member Brown made a motion to adjourn the meeting. Subcommittee Member ^{Cruz mc} ~~Brown~~ seconded the motion. The motion was not carried for a vote

Meeting adjourned at 6:30 p.m.



Approved by:
William Kass, Chair



Date

Policy Review Subcommittee

CC: Julian Moya, City Council Staff
Natalie Y. Howard, City Clerk
Isaac Benton, City Council President

Minutes drafted and submitted by:
Michelle Contreras, Senior Administrative Assistant

Appendix A

Police Oversight Board

Policy and Procedure Review Subcommittee

Amendment to the Minutes for August 17, 2017

On September 28, 2017 at the regular meeting of the Policy and Procedure Review Subcommittee, Subcommittee member Susanne Brown requested that the minutes for the August 17, 2017 Policy Subcommittee meeting be amended to clarify the approval of the minutes for July 20, 2017 and to clarify the votes of members Brown, St. John and Kass.

The change is as follows:

III. Approval of the Minutes [for July 20, 2017]: Member Brown introduced a new motion to approve the minutes for the July 20, 2017 Policy and Procedure Review Subcommittee meeting. The motion was seconded by Member St. John. The motion was carried by the following vote: For: 3 – Brown, Kass, St. John

Submitted by: Michelle Contreras, Senior Administrative Assistant
Civilian Police Oversight Agency

Attachments

CPOA ordinance analysis docx

Police Oversight Ordinance Analysis

The Police Oversight Ordinance (POO) establishes the purpose of the Civilian Police Oversight Agency and defines its powers. The CPOA was created to be independent of the APD, the Office of the Mayor and the City Council. The CPOA is accountable to the community and must periodically report its activity to city government. While the CPOA is independent from the Albuquerque Police Department, the ordinance requires APD to cooperate with the CPOA in order for the CPOA to carry out its purpose while maintaining its independence and oversight function.

The purpose of this analysis is to identify where APD is mentioned in the Police Oversight Ordinance and the cooperation which the POO requires from APD for the CPOA to function independently.

The establishment and purposes of the CPOA are shown in the table below. Item numbers refer to mentions of APD within the ordinance attached at the end of this document.

Item	Establishment and Purpose of CPOA	Responsible Organization
1	Investigate civilian complaints against APD	CPOA
2	Monitor and report on Internal Affairs	CPOA
3	Provide policy guidance to APD	CPOA
4	Maintain CPOA independence	CPOA
35	APD Obligation to Cooperate	APD

The ordinance defined CPOA responsibilities fall into the categories of Citizen Complaints, Community Outreach, Policy and Access to APD Data and premises. An additional category, Training, defines the required training for POB members before they are eligible to carry out their responsibilities. The POB must rely on APD to provide this training in several cases.

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Attachment "A"

CPOA ordinance analysis docx

Citizen Complaints

The table below groups all mentions in the POO of APD in relation to their role in processing civilian complaints. The 'Action' column contains my suggestions for formalizing the necessary APD cooperation. This is a work in progress and needs discussion within the POB and CPOA. The goal is to have APD develop SOPs with input from the CPOA and/or the POB to formally address each item.

Item	Citizen Complaints	Parties	Action
11, 27	Mediation	Citizen / Officer	CASA controlled? Agreement between citizen and officer
13	Discipline recommendations and Response	CPOA / Chief	Approved director recommendation sent to chief. Requires written response
25	Citizen complaints investigations	APD / CPOA	CPOA access to reports, lapel video, officer activities, Requires APD SOP to describe process.
26	APD refers complaints to director	APD / Director	APD provides identification of APD POC
30	Officer criminal conduct to IA	CPOA / APD-IA	APD provides identification of APD POC
31	Access to information regarding citizen complaints or ongoing CPOA issue	APD / Director	APD provides identification of APD POC, direct access to information, APD provides details of available data set contents
32	Transmit information to CPOA	APD / Director	Written procedure for transmitting information to CPOA
33	Obligation to notify disposition of complaint	APD Chief / POB	Letter from Chief to POB within 30 days detailing response
34	Request for hearing	POB / Chief	POB requests hearing, Chief responds

Community Outreach

Community Outreach (Item 5) is defined as a responsibility of the CPOA and can be conducted independent of APD. Since Item 6 suggest a joint role for the CPOA and APD, we request that APD inform the POB of community outreach activities for POB review and participation.

Item	Community Outreach	Parties	Action
5	Community relations	POB, Staff	POB directly communicates with community
6	Promotion of accountability of APD to community	POB / APD	POB facilitates communication with community and APD

Attachment "A"

Policy

The POO requires that more than half the time of the POB be spent gathering trend data and formulating policy recommendations to APD. Since this role is defined as the major role of the POB, the cooperation of APD is necessary throughout the process. First, to furnish access to data that POB determines is necessary to observe trends. Second, to give full access to the policy/SOP development process that APD has in place and lastly, to respond positively to POB policy recommendations. The success of each of these steps depends on APD acknowledging and accepting the role of the POB in creating policy for APD. We want APD to define their SOP process to include greater than marginal POB membership and participation on the APD policy committee. At the end of the process, APD must give consideration to policy recommendations of the POB or explain why not.

Item	Policy	Parties	Action
14	Review and analyze policy suggestions, make policy recommendations	POB, OPA, PPRB, ...	<p>Full committee participation, formal submission of recommendations, required response by APD, access to APD facilities for meetings with APD.</p> <p>APD furnish list of data sets they collect and other data that they have access to.</p> <p>Provide access to data relating to training, programs, procedures or other matters related to APD</p>
15	Obligation to respond	Chief, POB	Letter describing POB policy recommendation decisions within 45 days

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Access to APD Data and Premises

For the most part, this section can be addressed by identifying the data sets and information that APD has access to or maintains, identifying a point of contact for this data and negotiating which data must be obtained through the APD point of contact and which data can be directly accessed by the CPOA/POB. Access to premises is necessary for POB members to attend meetings with APD personnel and is important to raise the visibility of the POB within APD.

Item	Access to APD/Data/Info	Parties	Information or Action
7	Investigations: civilian complaints, use of force	APD / CPOA	Identification of APD PoC
8	Reasonable access to premises	APD, CPOA, POB	APD to provide reasonable access to premises, files, documents, reports. Identification of APD PoC Defined processes for each kind of access
9	Internal Affairs weekly update	IA / Director	Identification of APD PoC
10	Garrity Material Review	IA / POB	Identification of APD PoC APD defines process for request
12	Audit, Access to Files, subpoena	APD/CPOA / POB	Identification of APD PoC Defined written process for direct reasonable access to documents Defined written process for various kinds of protected information
29	APD related settlements	CABQ / CPOA	CPOA Director ex officio member of Claims Review Board, Director is informed by City of settlements

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POB Training

We also request that the APD provide expedited required training to new POB members. Delaying training which APD controls will be construed to interfere with CPOA independence. The training curriculum for the Citizen Police Academy should be developed in cooperation with the CPOA so that the POB need for educational information to better understand APD is satisfied. Police ride-alongs currently require that the participant sign a waiver of liability against APD and the City on the basis that the civilian participant is doing this voluntarily. This is not the case for POB members and APD needs to recognize the difference. This also serves to raise awareness that the POB has become part of the policing system in Albuquerque and will remain after the DOJ and Monitor leave.

Item	POB Training / Vetting	Parties	
16	Verification of former employment	APD/CPOA	Identification of APD PoC Record of training or action
17	Member background check	APD/CPOA	Identification of APD PoC Record of training or action
18	Unsubstantiated complaints v. APD	APD/CPOA	Identification of APD PoC Record of training or action
19	Citizen Police Academy	APD/CPOA	Schedule, syllabus
21	Annual Firearms Training		
22	Internal Affairs Training		Identification of APD PoC
23	Use of Force Training		Record of training or action
24	Review of APD Training		
20	Ride alongs	APD/CPOA	Identification of APD PoC Record of training or action Change waiver process

Attachment "A"

Police Oversight Ordinance

The 2016 amended POO is copied below. Some recently suggested changes currently being proposed to the Albuquerque City Council are also shown in a distinct color font. For the most part, the potential proposed changes to the ordinance do not change the flavor of this analysis and can be removed for clarity, if necessary.

Mentions of APD are highlighted in the ordinance and are shown in a cross-reference table at the end of the ordinance. These cross-reference numbers are summarized at the end of the ordinance.

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PART 1: CIVILIAN POLICE OVERSIGHT AGENCY

§ 9-4-1-1 SHORT TITLE.

Sections 9-4-1-1 through 9-4-1-14 may be cited as the Police Oversight Ordinance.
(Ord 2014-019)

§ 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 data on trends and potential issues concerning police conduct and practices and the related impacts on the community and individuals, and

(E) Provide policy guidance to the City Council, the Mayor and the Chief of Police

(Provide 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.)

(Ord. 2014-019)

§ 9-4-1-3 LEGISLATIVE FINDINGS.

(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

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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. (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 City Administration or City Council that 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 police¹ conduct, monitor and report on police² 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 Police³ 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 Police⁴ 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 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 the funding for staff, and all necessary operating expenses.

(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.

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(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.

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

(1) *Community Outreach*⁵. 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.

(2) *Promotion of Accountability*⁶. 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.

(3) *Investigations*⁷. 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) 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 APD⁸ premises, files, documents, reports, data including APD raw data, and any other materials that are

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reasonably necessary for the agency to perform thorough, independent investigations of 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 otherwise within the possession of APD that has not yet been processed or analyzed. However, 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.

- c) All complaints filed by police officers will be investigated by Internal Affairs. Internal Affairs⁹ 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 APD¹⁰ 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*¹¹. 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*¹². 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*¹³. 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, with a detailed reason as to why the recommended discipline was not imposed. The Chief shall identify the

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specific findings of the POB that with which the Chief disagrees, or any other basis upon which the Chief declined the POB's disciplinary recommendation.

(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 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) The **POB shall review and analyze policy suggestions**¹⁴, analysis, studies, and trend data collected or developed by the Administrative Office, and shall by majority vote recommend 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) The **Chief of Police**¹⁵ shall respond in writing within 45 days to any such policy recommendations by the CPOA, and indicate whether they 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 not be adopted. [The Chief shall identify the specific findings of the POB that with which the Chief disagrees, or any other basis upon which the Chief declined to follow the POB's policy recommendation(s).
- c) [The Chief of Police or designee shall present policy changes to the POB for review. The POB shall report any concerns it may have to the Chief regarding policy changes.]
- 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.
- 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.]

[(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

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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]

(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 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 enforcement¹⁶ for one year prior to appointment; and
- (2) Successfully pass a background check¹⁷, and
- (3) Personal history lacking any pattern of unsubstantiated complaints against APD¹⁸, 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. 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 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 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. 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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(F) *Orientation and Training* Upon appointment or reappointment POB members shall complete an orientation and training program consisting of the following:

(1) *Required Orientation*. 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).

(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 APD¹⁹ 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;
- (b) 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 APD²⁰ ride-alongs;
- (d) Annual firearms simulation training²¹;
- (e) Internal Affairs training²²;
- (f) Training provided to APD officers on use of force²³, 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) A briefing that identifies and explains the curriculum of all training received or to be received by APD²⁴ officers, including any outside training not provided by the city.

(3) *Required On-Going Training* POB members shall be provided with 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)

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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 attend conferences and workshops relating to police oversight, such as the annual NACOLE conference at city expense depending on budget availability.

(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.

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

[(J) Subpoenas. 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.]

(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,

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(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 Administrative Office will receive and process all civilian complaints directed against the Albuquerque Police Department²⁵ 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 referred²⁶ to the Director for investigation; and

(3) Mediation²⁷ 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 force²⁸. No APD related settlements²⁹ 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 conduct³⁰ 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.

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(D) The Director shall have access to any Police Department³¹ 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 all CPOA staff.

(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 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.

(2) In lieu of recommending three candidates to the Council, the POB may recommend to the Council the reconfirmation of the incumbent Director. 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). 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. If for any reason there is a period of time during which there is no Director, the City

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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.

(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.

(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. 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.

(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 Department³² 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. The POB shall review the proposed findings and recommendations, 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 by the Director. As part of its review, the full investigation file shall be made available to the POB

(D) 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 Police³¹ 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.

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

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

(A) *Requests for Hearing*³⁴. 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. 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 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,
- (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 § 9-4-14(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 § 9-4-14(C)(5) relative to its other activities over the past quarter.

(Ord. 2014-019)

§ 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.

(Ord. 2014-019)

§ 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 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.

(Ord. 2014-019)

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§ 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 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.

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

§ 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 APD¹³ 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.

(Ord. 2014-019)

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Cross reference to CPOA/APD interactions

- ¹ Civilian complaints
- ² Internal affairs
- ³ Policy guidance
- ⁴ **CPOA Independence from APD**
- ⁵ Community Outreach
- ⁶ APD accountability to community
- ⁷ Investigations – complaints, use of force, IA
- ⁸ Reasonable access to APD
- ⁹ IA weekly update
- ¹⁰ Garrity material review
- ¹¹ Mediation first
- ¹² Full Access to investigation files, subpoena power
- ¹³ Discipline recommendations, obligation to respond
- ¹⁴ Policy recommendations
- ¹⁵ Chief obligation to respond to policy recommendations
- ¹⁶ Not employed by APD in last year
- ¹⁷ Pass background check
- ¹⁸ Unsubstantiated complaints against APD
- ¹⁹ APD Citizen Police Academy
- ²⁰ APD Ride alongs
- ²¹ Annual firearms training

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- ²² Internal Affairs training
- ²³ Use of force training
- ²⁴ Briefing of APD training
- ²⁵ Civilian complaints investigations
- ²⁶ APD refer complaints to CPOA
- ²⁷ Mediation
- ²⁸ Officer involved shootings, serious use of force
- ²⁹ APD related settlements
- ³⁰ Criminal conduct referred to AI
- ³¹ CPOA access to APD information
- ³² Transmission of complaints
- ³³ APD obligation to notify citizen and POB of complaint disposition
- ³⁴ Request for hearing
- ³⁵ APD obligation to cooperate with CPOA

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CPOA Policy Recommendations Process

CPOA is to engage in long-term planning to identify major problems or trends, evaluate existing law enforcement practices.

Long Term Planning

ID Problem and Trends

Evaluate existing law enforcement practices

Analyze and evaluate data

Raw data

National Trends

Police best practices

Establish Yearly Program

Suggestions

Recommendations

Studies

Implementation:

POB reviews and analyzes policy suggestions, analysis, studies and trend data

Recommend policies by majority vote of POB related to APD:

Training

Programs

Procedures

Other matters

Submit recommendations and supporting information in writing to APD and City Council

Chief of APD shall respond in writing within 45 days

APD adopts by SOP

Explain reasons why not (id specific findings for disagreement)

City Council adopts policy recommendations

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Policies for discussion

Policy	Description / source	Implementation
CPOA policy process	dr_inger_ltr_re_policy.pdf Ordinance 2014-019 Complaint resolution Old POC CPC flow chart	SOP Process
APD Policy Development Process	Policy\APD Policy Development\3-52 - Policy Development Process.pdf	APD process
Police oversight ordinance	Policy\Ordinance Analysis\CPOA ordinance analysis.docx POB Training Policy recommendations Citizen complaints Access and data access	Ordinance SOP SOP SOP SOP
Human resource promotion policy	Policy\Promotions\finalized_policy_for_apd-promotional_process-7-19-16 (1).pdf Human Resources Promotion policy Changes Version 314565	SOP
Domestic Violence	DV_policy SOP 4-25 Effective 1/14/16 Policy\Domestic Violence\4-25 Domestic Violence Draft 5.22.17 NO TRACK changes (002).docx	SOP
CYFD to APD handoff policy		SOP
Subpoena power	Modify POO	Ordinance

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