

CITY of ALBUQUERQUE

SIXTEENTH COUNCIL

COUNCIL BILL NO. O-04-14 ENACTMENT NO. _____

SPONSORED BY: Brad Winter

1 **ORDINANCE**
2 **AMENDING CHAPTER 9, ARTICLE 4, PART 1 ROA 1994, THE POLICE**
3 **OVERSIGHT ORDINANCE; INCREASING THE NUMBER OF COMMISSIONERS**
4 **TO NINE; INCREASING THE REPRESENTATION OF COMMISSIONERS TO**
5 **INCLUDE A REPRESENTATIVE FROM EACH CITY COUNCIL DISTRICT;**
6 **CHANGING THE MINIMUM QUALIFICATIONS OF COMMISSIONERS;**
7 **CLARIFYING PROCEDURES FOR FINDINGS ON INVESTIGATIONS; CHANGING**
8 **THE TERM OF THE INDEPENDENT REVIEW OFFICER; CREATING A HEARING**
9 **PROCESS FOR NON-CONCURRENCE ISSUES; AND AMENDING THE APPEAL**
10 **PROCESS.**

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

13 **Section 1. Section 9-4-1-4 ROA 1994 is amended as follows:**

14 “ There is hereby created a Police Oversight Commission (POC) to provide
15 oversight of the Albuquerque Police Department and oversee all citizen
16 complaints as follows:

17 (A) The POC shall be composed of nine members who broadly represent
18 the diversity of this community, and who reside within the City of
19 Albuquerque. There shall be one member of the Police Oversight Commission
20 representing each City Council District. This policy shall be implemented as
21 vacancies occur subsequent to the adoption of this ordinance with the
22 exception of Commissioners currently serving on the POC who may be
23 reappointed for a second term by the Mayor regardless of the Council District
24 they represent.

25 (B) The following are the minimum qualifications for members of the Police
26 Oversight Commission:

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- 1 (1) Have not been employed by law enforcement for one year
- 2 prior to appointment; and
- 3 (2) Problem solving and conflict resolution skills; and
- 4 (3) Attend a yearly four-hour civil rights training session to be
- 5 conducted by a civil rights attorney or advocacy group; and
- 6 (4) A willingness to commit the necessary time each month for
- 7 POC hearings and a commitment to prepare and read all materials distributed
- 8 prior to the monthly POC meetings; and
- 9 (5) Participate in a minimum of two ride-a-longs every year with
- 10 APD officers; and
- 11 (6) Attend a yearly Firearms Training Simulator (FATS) training at
- 12 the APD Police Academy.
- 13 (C) When a vacancy on the POC occurs, the Councillor representing the
- 14 District in which the vacating member of the POC resides, or another
- 15 Councillor representing another District which is unrepresented on the POC,
- 16 shall nominate two members to the POC who reside in his or her respective
- 17 Council District. The Mayor shall then appoint one of these recommended
- 18 members to the POC with the advice and consent of the Council.
- 19 (D) The terms of the members of the POC shall be staggered so that no
- 20 more than five of the members are eligible for reappointment or replacement
- 21 each year.
- 22 (E) The appointment of any member of the POC who has been absent
- 23 and not excused from three consecutive regular or special meetings shall
- 24 automatically expire effective on the date the fact of such absence is reported
- 25 by the Commission to the City Clerk. The City Clerk shall notify any member
- 26 whose appointment has automatically terminated and report to the City
- 27 Council that a vacancy exists on said Commission and that an appointment
- 28 should be made for the length of the unexpired term.
- 29 (F) That the POC shall elect one of its members as the Chairperson and
- 30 one as Vice-Chairperson, who shall each hold office for one year and until
- 31 their successors are elected. No officer shall be eligible to succeed himself or
- 32 herself in the same office. Officers shall be elected in the month of March of
- 33 each calendar year.

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1 (G) The POC may appoint such subcommittees as are deemed
2 necessary or desirable for the purposes of §§ 9-4-1-1 through 9-4-1-14,
3 provided that, membership on such subcommittees shall be limited to the
4 Commission members.

5 (H) That the POC and its investigative arm, the IRO, shall be housed in a
6 facility that is separate from any police presence and is located outside of the
7 Albuquerque/Bernalillo Government Center, the Police Department and/or all
8 of the police substations.

9 (I) That the City Council and the Mayor's Office shall jointly provide
10 staff assistance at all regularly scheduled meetings and at special meetings
11 held pursuant to signed petitions. All other staff support shall be provided by
12 the IRO and/or the Independent Review Office staff.

13 § 9-4-1-5 POWERS AND DUTIES OF THE COMMISSION.

14 The Police Oversight Commission shall have the following powers and
15 duties:

16 (A) To promote a spirit of accountability and communication between
17 the citizens and the Albuquerque Police Department while improving
18 community relations and enhancing public confidence.

19 (B) To oversee the full investigation and/or mediation of all citizen
20 complaints; audit and monitor all investigations and/or police shootings under
21 investigation by APD's Internal Affairs; however, the POC will not investigate
22 any complaints other than those filed by citizens. All complaints filed by
23 police officers will be investigated by Internal Affairs.

24 (C) To gain the cooperation of APD and solicit public input by holding
25 regularly scheduled meetings.

26 (D) To review all work of the IRO with respect to quality, thoroughness,
27 and impartiality of investigations.

28 (E) Submit a quarterly report to the Mayor and City Council according to
29 § 9-4-1-10 herein.

30 (F) To submit all findings to the Chief of Police. The Chief will have final
31 disciplinary authority.

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1 (G) To engage in a long-term planning process through which it
2 identifies major problems and establishes a program of policy suggestions
3 and studies each year.

4 (H) To conduct regularly scheduled public meetings with a prepared
5 agenda that is distributed in advance to the Mayor, City Council, Police Chief,
6 and City Attorney, and that complies with the New Mexico Open Meetings Law.
7 Each POC meeting will begin with public comments and only the regularly
8 scheduled monthly meetings and special meetings held pursuant to
9 submission of petitions will be televised live on the appropriate government
10 access channel. All other meetings of the POC will comply with the Open
11 Meetings Law and shall be videotaped and aired on the appropriate
12 government access channel; however, there is no requirement for providing
13 live television coverage.

14 (I) To recommend to the Mayor and City Council during the city's
15 budget process, their proposed budget for provision of such staff as is
16 necessary to carry out the powers and duties under §§ 9-4-1-1 through 9-4-1-
17 14, including the funding for the Independent Review Office, staff, and all
18 necessary operating expenses. The Mayor shall propose the annual budget to
19 the City Council in the annual budget message.

20 (J) To recommend three candidates to the Mayor for consideration as
21 the Independent Review Officer (IRO), and oversee the continuing
22 performance of this individual once selected by the City Council.

23 **§ 9-4-1-6 INDEPENDENT REVIEW OFFICE.**

24 (A) The Independent Review Office is hereby established and shall be
25 directed by an Independent Review Officer (IRO).

26 (B) The IRO shall be given autonomy and shall perform all duties under
27 the direction of the POC. There will be no attorney-client privilege between the
28 IRO and the city.

29 (C) The Independent Review Office will receive all citizen complaints and
30 claims directed against the Albuquerque Police Department and any of its
31 officers. The IRO will review such citizen complaints and assign them for
32 investigation to either the Albuquerque Police Department for an internal
33 administrative investigation or to an independent investigator. The IRO will

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1 oversee, monitor and review all such investigations and make findings for
2 each. All findings relating to citizen complaints and police shootings will be
3 forwarded to the POC. The IRO may review completed IA cases and discuss
4 those cases with the Chief or his designee. In any instance, the Chief of
5 Police will have the sole authority for discipline. For all investigations, the IRO
6 will make recommendations and give advice regarding Departmental policies
7 and procedures to the POC, City Council, and the Mayor as the IRO deems
8 advisable, provided as follows:

9 (1) That investigation of all citizen complaints filed with the
10 Independent Review Office shall begin immediately after complaints are filed
11 and proceed as expeditiously as possible; and

12 (2) That all citizen complaints filed with other offices within the
13 city authorized to accept citizen complaints, including the Police Department,
14 shall be referred to the IRO for investigation; and

15 (3) That at the discretion of the IRO an impartial system of
16 mediation may be considered appropriate for certain complaints. If all parties
17 involved reach an agreement, the mediation is considered successful and no
18 investigation will occur; and

19 (4) To monitor all claims of excessive force and police shootings.
20 No APD related settlements in excess of \$25,000 shall be made for claims
21 without the knowledge of the IRO. The IRO shall be an ex-officio member of
22 the Claims Review Board; and

23 (5) That all investigations shall be thorough, objective, fair,
24 impartial, and free from political influence; and

25 (6) That all information necessary to satisfy the POC's quarterly
26 reporting requirements in § 9-4-1-10 be maintained and compiled; and

27 (7) The process for finalizing findings on police shooting cases shall
28 be the same as the process for finalizing findings on citizen police complaints.

29 (D) The IRO shall have access to any Police Department information or
30 documents that are relevant to a citizen's complaint, or to an issue which is
31 ongoing at the Independent Review Office or the POC; and

32 (E) The IRO may make recommendations to the POC and APD on
33 specific training, changes in policy or duty manuals. APD will respond, in

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1 writing, to all recommendations from the IRO or POC within 60 days. Follow
2 up and monitor all recommendations to verify their adoption and
3 implementation; and

4 (F) The Independent Review Office shall provide staff assistance for the
5 POC and coordinate and provide technical support for all scheduled Police
6 Oversight Commission meetings, publicize all findings and reports,
7 recommendations, and/or suggested policy changes; and

8 (G) Play an active public role in the community, and whenever possible,
9 provide appropriate outreach to the community. Publicize the citizen
10 complaint process, and identify locations within the community that are
11 suitable for citizens to file complaints in a non-police environment; and

12 (H) Neither the City Council nor any of its members, nor the Mayor shall
13 in any manner dictate the appointment or removal of any such employee of the
14 Independent Review Office.

15 **§ 9-4-1-7 INDEPENDENT REVIEW OFFICER.**

16 (A) Qualifications for the position of Independent Review Officer shall be
17 determined by the Police Oversight Commission. The qualifications minimally
18 include the requirement of a law degree and experience in criminal
19 investigations.

20 (B) The position of IRO will be a full-time contractual city employee to be
21 selected as follows:

22 (1) A candidate search will be undertaken by the POC, who will
23 screen, interview, and select three candidates to be considered by the Mayor;
24 and

25 (2) The Mayor will select one of the three candidates and forward
26 his recommendations to the City Council; and

27 (3) The City Council may accept or reject the Mayor's nominee.

28 (4) In the event the City Council rejects the nominee, the Mayor
29 shall submit his second recommendation from the names submitted by the
30 POC, the City Council may accept or reject the Mayor's nominee.

31 (5) In the event that the City Council rejects the second nominee,
32 the process shall begin with a second candidate search by the POC.

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1 (C) The IRO will be provided the necessary professional and/or clerical
2 employees for the Office, and shall prescribe the duties of these staff
3 members after consultation with the members of the POC. Such professional
4 and clerical employees will be classified city employees.

5 (D) The IRO will report directly to the POC and act as Lead Investigator
6 and Manager of the Office; will supervise all investigations of citizen
7 complaints against police officers, will audit all investigations of complaints
8 and/or police shootings, will recommend and participate in mediation of
9 certain complaints, and will supervise all Independent Review Office staff.

10 (E) The term of the IRO shall be for two years, commencing immediately
11 upon approval by the City Council. The Mayor, with the approval of the City
12 Council, shall have the option to renew or extend the contract with the IRO for
13 additional two-year periods. Negotiations to renew or extend the contract
14 shall be completed three months prior to the contract expiring. Should the
15 contract not be renewed or extended, the IRO may continue to serve in the
16 same capacity until a new IRO is selected and approved by the City Council.
17 If the IRO or the Mayor chooses not to renew or extend the contract, the POC
18 shall be immediately notified. The POC will then immediately begin a
19 candidate search, as described in §9-4-1-7 (B)(1). If for some unforeseen
20 reason there is a period of time during which there is no IRO, the Mayor may
21 appoint a temporary IRO, with the consent and approval of the City Council. A
22 temporary IRO shall only serve in that capacity for a period not to exceed 6
23 months.

24 **§ 9-4-1-8 CITIZEN COMPLAINT PROCEDURES.**

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

31 (B) The Mayor shall designate civilian city staff to receive written citizen
32 complaints at various locations throughout the city. The Police Department
33 may also receive written complaints. Such complaints shall be filed with the

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1 civilian city staff no later than 90 days after the action complained of. The
2 party who receives the complaint shall transmit all citizen complaints for
3 further investigation to the IRO. If a citizen complaint is determined to not
4 merit further investigation, the complainant shall be notified of that
5 determination by certified mail.

6 (C) After the investigation is completed, the IRO and the Chief, or his
7 designee, shall consider the investigation and all other relevant and material
8 evidence offered by the person investigated. The IRO and Chief may confer
9 and discuss the investigation and findings. The IRO shall then submit his
10 findings and public record letter to the POC for review and approval. The
11 public record letter to the citizen will only be sent after approval by the POC.

12 (D) If the Chief, or his designee, and the IRO disagree on the IRO's
13 findings, the POC will receive the complaint to review at the next regularly
14 scheduled meeting. The POC will treat the complaint as a Non-Concurrence
15 Issue and after conducting a hearing can keep, modify, or change the original
16 findings and/or recommendations of the IRO. If the POC/IRO and Chief do not
17 agree on the findings of any citizen complaint, the Chief Administrative Officer
18 will review the investigation and render a final decision, acting with the same
19 authority and power as described in §9-4-1-9(B).

20 (E) When the Chief, or his designee, and the IRO agree on the
21 findings of the POC, these findings will be considered final and cannot be
22 changed by the Chief, or his designee, or the IRO at any time without first
23 notifying the POC, the IRO, the complainant, and the individual(s) against
24 whom the complaint was filed, by certified mail. Upon such notification the
25 POC will place the matter on its agenda for a regularly scheduled meeting and
26 decide whether the findings should be changed because (1) of newly
27 discovered evidence which by due diligence could not have been known at the
28 time of the original finding, or (2) the original finding was based on fraud,
29 misrepresentation, or other misconduct.

30 (F) The findings of the POC/IRO shall be placed with the Chief's findings
31 on the Internal Affairs Unit Disciplinary Status Sheet. The form will be filed in
32 the CPC complaint file and the officer's Retention File.

33 (G) The Chief shall take whatever action is necessary,

1 including disciplinary action, to complete the disposition of the complaint.
2 Written notice, by certified mail, of such disposition shall be given to the
3 complainant and to the individual against whom the complaint was filed.

4 **§ 9-4-1-9 APPEALS.**

5 (A) A summary and findings of the investigation conducted pursuant to
6 the direction of the IRO shall be forwarded to the complainant and to the POC.
7 A copy of the IRO's public record letter shall also be forwarded to the
8 complainant and to the POC. Any person who has filed a citizen complaint
9 and who is dissatisfied with the findings of the IRO may appeal that decision
10 to the POC within ten business days of receipt of the public record letter. The
11 POC may upon appeal modify or change the findings and/or recommendations
12 of the IRO and may make further recommendations to the Chief regarding the
13 findings and/or recommendations and any discipline imposed by the Chief or
14 proposed by the Chief. Within 20 days of receipt of the appellate decision of
15 the POC, the Chief shall notify the POC and the original citizen complainant of
16 his decision in this matter in writing, by certified mail.

17 (B) If any person who has filed a citizen complaint under §§ 9-4-1-1
18 through 9-4-1-14 is not satisfied with the final decision of the Chief of Police
19 on any matter relating to his complaint, he may request that the Chief
20 Administrative Officer review the complaint, the findings of the IRO and POC
21 and the action of the Chief of Police by requesting such review in writing
22 within ten business days of receipt of the Chief's letter pursuant to § 9-4-1-9

23 (A). Upon completion of his review, the Chief Administrative Officer shall take
24 any action necessary, including overriding the decision of the Chief of Police
25 regarding disciplinary action, to complete the disposition of the complaint.
26 The Chief Administrative Officer shall notify in writing, by certified mail, the
27 complainant, the individual against whom the complaint was filed, the Chief of
28 Police and the IRO of the results of his review and any action he has taken.

29 **§ 9-4-1-10 REPORTS.**

30 The POC shall be responsible for regularly informing the Mayor, the City
31 Council, and the public by submitting quarterly reports that contain the
32 following types of information:

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- 1 (A) Data relating to the number, kind and status of all complaints
2 received including those complaints sent to mediation;
- 3 (B) Discussion of issues of interest undertaken by the POC which may
4 include suggested policy and/or procedural changes, a listing of complaints
5 and allegations by Council District, statistical ethnicity of subject officers,
6 statistical ethnicity of complainants, and updates on prior issues and/or
7 recommendations;
- 8 (C) The POC's findings and the Police Chief's issuance of discipline on
9 those findings and the ongoing disciplinary trends of the Police Department;
- 10 (D) Information on all public outreach initiatives undertaken by either the
11 POC or the IRO such as speaking engagements, public safety
12 announcements, and/or public information brochures on the oversight
13 process.
- 14 (E) The status of the long-term planning process identifying major
15 problems, policy suggestions, and studies as required by Section 9-4-1-5 of
16 this ordinance.

17 **§ 9-4-1-11 EVALUATION.**

18 Contingent upon funding, in the first six months of 2005 and at least every
19 four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the City
20 Council shall issue a Request for Proposal for an independent consultant to
21 undertake a complete evaluation and analysis of the entire Police Oversight
22 Process, and recommend any necessary changes or amendments that would
23 appropriately improve the process.

24 **§ 9-4-1-12 SPECIAL MEETINGS.**

25 On the petition of 1,000 or more citizens in the City of Albuquerque filed in
26 the Office of the City Clerk, the Commission shall hold a special meeting for
27 the purpose of responding to the petition and hearing and inquiring into
28 matters identified therein as the concern of the petitioners. Copies of the
29 petition shall be filed by the Commission with the City Clerk. Notice of such
30 meeting shall be given in the same manner as notice is given for other
31 meetings of the Commission and shall comply with the State Open Meetings
32 Law.

33 **§ 9-4-1-13 CONFIDENTIALITY.**

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1 The hearing process shall be open to the public to the extent legally
2 possible so that it does not conflict with state or federal law. However, upon
3 the opinion of the City Attorney and IRO, some of the details of the
4 investigations of the IRO, or the designated independent investigator, shall
5 become privileged and confidential. The details of investigations should not
6 be open to the public subject to the opinion of the City Attorney and the IRO.
7 Compelled statements given to the IRO, or the designated independent
8 investigator, will not be made public. The IRO may summarize conclusions
9 reached from a compelled statement for the report to the POC and the Chief,
10 and in the public record letter sent to the complainant. Nothing in §§ 9-4-1-1
11 through 9-4-1-14 shall affect the ability of APD to use a compelled statement in
12 a disciplinary proceeding.

13 **§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.**

14 The City Council believes that full participation and cooperation of all
15 parties involved is essential to the success of the new police oversight
16 process and its IRO, and that APD hereby agrees and understands that their
17 full cooperation is necessary, hereby agrees to mandate that its officers
18 provide honest and truthful responses to all questions by the IRO or the
19 designated independent investigator. If any officer refuses to answer the
20 questions proposed to him or her by the IRO, or the independent investigator,
21 he or she may be subjected to termination or disciplinary action at the
22 discretion of the Police Chief. Compelled statements given to the IRO or the
23 designated independent investigator, by a police officer will be used only for
24 the IRO's investigation. The actual statement will remain confidential and will
25 not be included in a final report or be forwarded to the POC. The IRO may
26 summarize conclusions reached from a compelled statement for the report to
27 the POC and the Chief, and in the public record letter to the complainant.”

28 Section 2. Severability Clause. If any Section, paragraph, word or phrase
29 of this ordinance is for any reason held to be invalid or unenforceable by any
30 court of competent jurisdiction, such decision shall not affect the validity of
31 the remaining provisions of this ordinance. The Council hereby declares that
32 it would have passed this ordinance and each Section, paragraph, sentence,

1 clause, word or phrase thereof irrespective of any provision being declared
2 unconstitutional or otherwise invalid.

3 Section 3. **Compilation.** Section 1 of this ordinance shall be incorporated
4 in and made part of the Revised Ordinances of Albuquerque, New Mexico.

5 Section 4. **Effective Date.** This ordinance shall take effect five days after
6 publication by title and general summary.

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