CITY of ALBUQUERQUE
TWENTY FIRST COUNCIL

COUNCIL BILL NO. FS2 O-14-13 ENACTMENT NO. ________________

SPONSORED BY: Rey Garduño & Brad Winter

ORDINANCE

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

OVERSIGHT ORDINANCE, TO ABOLISH THE POLICE OVERSIGHT

COMMISSION AND ESTABLISH THE CIVILIAN POLICE OVERSIGHT AGENCY

WITH NEW OR AMENDED DUTIES, QUALIFICATIONS AND

RESPONSIBILITIES, AND ADOPTING RELATED AMENDMENTS DEALING

WITH THE CIVILIAN POLICE OVERSIGHT AGENCY AND THE INTERNAL

REVIEW OFFICE

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

ALBUQUERQUE:

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

"PART 1: [CIVILIAN] POLICE OVERSIGHT [COMMISSION 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.

§ 9-4-1-2 PURPOSE.

The purpose of §§ 9-4-1-1 through 9-4-1-14 is to provide a means for

prompt, impartial, and fair investigation of all citizen complaints brought by

individuals against the Albuquerque Police Department, and to provide for

community participation in setting and reviewing police department policies,

practices and procedures:

(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 citizens;

(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 citizens and police officers a fair and impartial system for the investigations and determinations on citizen 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 Police Chief.

§ 9-4-1-3 LEGISLATIVE FINDINGS.

(A) The City of Albuquerque maintains 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 has 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) The Council obtained the services of two nationally known experts in the field of police oversight, Professors Eileen Luna and Sam Walker, who concluded the Albuquerque’s current system was ineffective, risk management settlements involving police were excessive, and the Public Safety Advisory Board was dysfunctional and should be restructured.

(D) The Walker/Luna Study also found that the role of the Independent Counsel has been defined too narrowly and that more use should be made of the authority and expertise of this position.

(E) To further the evaluation process the City Council established an Ad Hoc Public Safety Committee who in turn set up a citizen’s Task Force on Police Oversight. Together these two groups evaluated the city’s current system, studied oversight models from other cities, held two Town Hall Meetings to receive input from the public, and presented their final recommendations.

(F) As a result of the advice of the Council’s expert consultants, recommendations from the Police Oversight Task Force, and testimony and
comments received from the public, the Council believes it is now appropriate
and necessary for the citizens of Albuquerque and its Police Department to
abolished the then-existing Public Safety Advisory Board, and in lieu thereof
establish a Police Oversight Commission (POC).

   (G) The Council further believes that it is beneficial to eliminate
the Independent Counsel as it is presently structured, and in lieu thereof
establish an Independent Review Office to function under the auspices of the
Police Oversight Commission.

   (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.

   (HD) 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 citizens.

   (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 effective December 31, 2014, and simultaneously replaces it with a Civilian Police Oversight Agency
as prescribed by this Article.

§ 9-4-1-4 [ESTABLISHMENT OF A CIVILIAN] POLICE OVERSIGHT

   (COMMISSION AGENCY)

There is hereby created a [Civilian] Police Oversight [Commission
Agency (the “CPOA”) as an independent agency of City Government, not part
of either the City Administration or City Council] ([POC]) to provide [policy
guidance for, and] oversight of the Albuquerque Police Department and [to]
oversee all citizen complaints [relating to police encounters. The CPOA shall]
consist of a Police Oversight Board (the “POC”) and an Administrative Office
directed by a Review Officer that oversees investigations, provides staffing to
the Police Oversight Board, and manages the day to day operations of the
CPOA, as follows:

(A) The POC shall be composed of nine members who broadly represent
the diversity of this community, and who reside within the City of
Albuquerque. There shall be one member of the Police Oversight Commission
representing each City Council District.

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

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

(2) Problem-solving and conflict resolution skills; and

(3) Attend a yearly four-hour civil rights training session to
be conducted by a civil rights attorney or advocacy group; and

(4) A willingness to commit the necessary time each month
for POC hearings and a commitment to prepare and read all materials
distributed prior to the monthly POC meetings; and

(5) Participate in a minimum of two ride-a-longs every year
with APD officers; and

(6) Attend a yearly Firearms Training Simulator (FATS)
training at the APD Police Academy.

(C) When a vacancy on the POC occurs, the Councilor
representing the District in which the vacating member of the POC resides
shall nominate two members to the POC who reside in his or her respective
Council District. The Mayor shall then appoint one of these recommended
members to the POC with the advice and consent of the Council; provided,
however, if a member is eligible for reappointment to the POC and the
Councilor in whose District that member resides desires to reappoint the
member, the Councilor shall so notify the Council and the member shall be
reappointed subject to the advice and consent of the Council. If a member is
not being reappointed, the Mayor shall deliver to the Council the Mayor’s
recommendation from the two names submitted within 30 days of delivery of
the two names to the Mayor. If the Mayor fails to timely make a
recommendation from the two names submitted, the Councilor who submitted
the names may appoint one of the two recommended members subject to the
advice and consent of the Council.

(D) The Mayor may notify a Councilor in writing that his or her
District member's term has expired or the position is otherwise vacant and the
Councilor shall have 60 days to submit two recommended appointments to fill
that position. If the Councilor fails to submit two names within 60 days of
notification, the Mayor shall have the right to make the appointment subject to
the advice and consent of the City Council.

(E) The terms of the members of the POC shall be for three years
and shall be staggered so that no more than five of the members are eligible
for reappointment or replacement each year.

(F) The appointment of any member of the POC 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 Commission 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 on said Commission and that an
appointment should be made for the length of the unexpired term.

(G) That the POC 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
succeed himself or herself in the same office. Officers shall be elected in the
month of March of each calendar year.

(H) The POC 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 the
Commission members.

[(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 this Ordinance.

(1) Facility Location.] T[hat t]he [POCCPOA and its
investigative arm, the IRO,] 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 ½% 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, for provision of such staff and expenses necessary 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 the this Ordinance and the CPOA's duty's, responsibilities, and procedures.

(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.

[(D) **Staff.** That the City Council and the Mayor's Office shall jointly-provide staff assistance at all regularly-scheduled meetings and at special meetings held-pursuant to signed petitions. The CPOA shall employ such staff as necessary to carry out its functions as prescribed by this Article, including but not limited to All other staff support shall be provided by] the [IRO Review Officer (the "RO") and/or the Independent Review Officer other] staff [as may be necessary, subject to budget sufficiency and City personnel policies and procedures].

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

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

[(A) (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 a or designate 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.

[(B) (2) Promotion of Accountability. The CPOA shall] promote a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.

[(C) (3) Investigations. The CPOA shall] oversee the full investigation [of all officer involved shootings, and the investigation] and/or mediation of all citizen complaints; [and] audit and monitor all [use of force] investigations [and/or police shootings] under investigation by APD's Internal Affairs; however, the [POC CPOA] will not [itself] investigate any complaints other than those filed by citizens. All complaints filed by police officers will be investigated by Internal Affairs. [However, Internal Affairs shall provide a weekly update to the RO on open internal investigations.

(a) Mediation First. Whenever possible, and as further described in Section 9-4-1-6(C)(3) of this Ordinance, mediation should be the first option for resolution of Citizen Police Complaints.

(b) POB Investigation Audits; Access to Files. The POB shall periodically audit individual Citizen Police Complaint Investigations 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.

(c) Disciplinary Recommendations. The CPOA may, in its discretion, recommend officer disciplinary action from the Chart of Sanctions for investigations that result in sustained Citizen Police
Complaints or findings of improper use of force. Imposition of the recommended discipline is at the discretion of the Chief of Police, but if the Chief of Police does not follow the disciplinary recommendation of the CPOA, the Chief of Police shall respond to the CPOA in writing, within thirty (30) days, with the reason as to why the recommended discipline was not imposed.

(4) Reports to Mayor & Council. The CPOA shall submit a quarterly report to the Mayor and City Council according to § 9-4-1-10 herein.

(6) 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, and establishes a program of resulting policy suggestions and studies each year. The POB shall review and analyze the policy suggestions, studies, and trend data collected by the RO and staff, and vote upon policy recommendations regarding APD policy, training, programs and procedures to be submitted to APD and to the City Council.

(a) The Police Chief shall respond in writing within forty-five (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 explain any reasons why such policy recommendations will not be followed or should not be adopted.

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

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

(A) Composition. The POB shall be composed of nine members, one from each City Council District, who broadly represent the diversity and demographics of this community, who are representative of the stakeholders of the police oversight process, and who reside within the City of Albuquerque.

(B) Qualifications. 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
Successfully pass a background check; and

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

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

Residency within the City of Albuquerque.

(C) Appointment of Members. Each City Councilor representing the District in which a vacancy exists shall appoint one member to the POB with the advice and consent of the Council; provided, however, if a member is eligible for reappointment and the Councilor in whose District that member resides desires to reappoint the member, the Councilor shall so notify the Council and the member shall be reappointed subject to the advice and consent of the Council. No member of the Police Oversight Commission existing as of the date of the adoption of this amended ordinance shall be appointed to the first board of the POB.

(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. POB members may be removed by a two-thirds majority vote of 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 and that an appointment should be made for the length of the unexpired term.

(F) Orientation and Training. Upon appointment, 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 the APD Civilian Police Academy;
(b) Civil Rights training;
(c) At least two (2) APD ride-alongs;
(d) Annual firearms simulation training;
(e) Internal Affairs training;
(f) Use of Force training, including a review and familiarization with the APD Use of Force Policy;
(g) Equity and Cultural Sensitivity training; and
(f) Periodic additional training on items (b) through (f) above, or other periodic training as determined by the Mayor, City Council or the CPOA.

(3) 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 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.

(D) To select, hire, direct and review all work of the IRO with respect to quality, thoroughness, and impartiality of investigations.
(E) Submit a quarterly report to the Mayor and City Council according to § 9-4-1-10 herein.
To submit all findings to the Chief of Police. The Chief will have final disciplinary authority.

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

(H)(l) Meetings. The POB shall [Te] conduct regularly scheduled public meetings with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney, and that complies with the New Mexico Open Meetings Law. Each [POCPOB] meeting will begin with public comments and 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 [POCPOB] will comply with the Open Meetings Law and 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.]

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

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

§ 9-4-1-6 [INDEPENDENT REVIEW CPOA ADMINISTRATIVE] OFFICE.

(A) The Independent Review Office is hereby established and shall be The staff and administration of the CPOA shall be directed by [an Independent the CPOA] Review Officer ([IRO RO]).

(B) The [IRORO] shall [be-given-autonomy-and-shall oversee CPOA citizen complaint and officer involved shooting investigations, provide
staffing to the Police Oversight Board, 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. Perform all duties under the direction of the POC. There will be no attorney-client privilege between the IRO and the city.]

(C) The [Independent Review Administrative] Office will receive [and process] all citizen complaints and claims directed against the Albuquerque Police Department and any of its officers. The [IRO] will review such citizen complaints and assign them for [investigation to either the Albuquerque Police Department for an internal administrative] investigation [by CPOA staff] or to an [outside] independent investigator. The [IRO] will oversee, monitor and review all such investigations and make findings for each. All findings relating to citizen complaints and police shootings will be forwarded to the [POCPOB]. The [IRO] may review completed IA cases and discuss those cases with the Chief or [his the Chief's] designee. In any instance, the Chief of Police will have the sole authority for discipline. For all investigations, the [IRO] will make recommendations and give advice regarding [Police Department] policies and procedures to the [POCPOB], City Council, and the Mayor as the [IRO] deems advisable [provided as follows:]

(1) [That I ]Investigation of all citizen complaints filed with the [Independent Review Office CPOA] shall begin immediately after complaints are filed and proceed as expeditiously as possible; and

(2) [That a A]ll citizen complaints filed with other offices within the city authorized to accept citizen complaints, including the Police Department, shall be immediately referred to the [IRO] for investigation; and

(3) [Mediation should be the first option for resolution of Citizen Police Complaints. Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. That a A]t the discretion of the [IRO] an impartial system of mediation [may 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) [To **The [IRORO shall]** monitor all claims of excessive
force and police shootings. No APD related settlements in excess of $25,000
shall be made for claims without the knowledge of the [IRORO]. The [IRORO]
shall be an ex-officio member of the Claims Review Board; and

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

(6) [That **The [IRORO shall maintain and compile]** all
information necessary to satisfy the [POC's **CPOA's** quarterly reporting
requirements in § 9-4-1-10[be maintained and compiled]; and

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

(D) The [IRORO] shall have access to any Police Department
information or documents that are relevant to a citizen's complaint, or to an
issue which is ongoing at [the Independent Review Office or] the [POCCPOA];
and

(E) The [IRORO] shall make recommendations to the [POCPOB]
and APD on specific training, changes in policy or duty manuals. APD will
respond, in writing, to all recommendations from the [IRORO] or [POCPOB]
within 60 days. [F The RO shall follow up and monitor all recommendations to
verify their adoption and implementation; and

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

(G) [The **Independent Review Office RO shall P p]lay an active
public role in the community, and whenever possible, provide appropriate
outreach to the community[; **P.p]** publicize the citizen complaint process, and
identify locations within the community that are suitable for citizens to file
complaints in a non-police environment[; and

(H) The RO will 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.

(l) The RO will report directly to the POB and act as Lead
Investigator and Director of the Administrative Office; will supervise all
investigations of citizen complaints against police officers, will audit all IA
investigations of complaints, will recommend and participate in mediation of
certain complaints, and will supervise all CPOA staff.

(H) Neither the City Council nor any of its members, nor the Mayor
shall in any manner dictate the appointment or removal of any such employee

§ 9-4-1-7 [INDEPENDENT] REVIEW OFFICER [QUALIFICATIONS AND
SELECTION].

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

(B) The position of [IRORO] will be a full-time [contractual exempt]
city employee to be selected as follows:

(1) The POB, through its 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 RO and the City
Council shall appoint the RO from the three by adoption of a resolution. 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 RO. Should the Council decline to reconfirm the incumbent RO,
the Council President will notify the POB that it needs to provide the Council
with three alternate candidates pursuant to the provisions of Subsection
(B)(1). Should the RO not be reconfirmed, the current RO may continue to serve in the same capacity until a new RO is selected and approved by the City Council. If for some unforeseen reason there is a period of time during which there is no RO, the City Council may appoint a temporary RO of its choosing by a majority vote. A temporary RO shall serve in that capacity only for a period not to exceed six months.

(3) The term of the RO shall be for three (3) years. Once confirmed, the RO may be removed only upon an affirmative vote of two-thirds (2/3) of the members of the POB or upon expiration of the RO's term. Within five days of removal of the RO, the POB shall report the reasons for that removal to the Council.

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

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

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

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

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

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

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

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

§ 9-4-1-8 CITIZEN 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 [no
later than 120 days after the date of the action complained of]. The POC
shall submit rules and regulations governing citizen 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
citizens' complaints against members of the police department. [Anonymous
complaints may accepted but must contain sufficient detail such as time,
location, date and as much officer information as possible such as badge
number, police unit number, or other descriptive facts, including any footage
or recordings that may have captured the incident. If the RO determines that a
citizen complaint is determined to not merit further investigation, the RO shall
notify the complainant by certified mail within fifteen days of the
determination.]

(B) [In cooperation with the IRORO, T-1] The Mayor shall designate
civilian city staff to receive written citizen complaints at various locations
throughout the city. The Police Department may also receive written
complaints. [Such complaints shall be filed with the civilian city staff no later
than 90 days after the action complained of.] The party who receives the
complaint shall [immediately] transmit all citizen complaints for further
investigation to the [IRO]. [If a citizen complaint is determined to not merit
further investigation, the complainant shall be notified of that determination by
certified mail.] (C) After the investigation is completed, the [IRO and the Chief,
or his designee], shall [consider the investigation and analyze] all [other]
relevant and material [circumstances, facts and] evidence [offered by the
person-investigated gathered under the investigation and formulate findings].
The [IRO may confer with the and] Chief [may confer and to] discuss the
investigation and findings], but the findings of the RO are final unless
appealed. The [IRO] shall [then submit prepare and submit] his [or her]
findings and [a] public record letter [to the citizen complainant] with a copy to
the [Chief and the POCPOB for information purposes. The POB should review
the public record letters and use them to identify any trends and inform its
policy making process. After the expiration of the appeal period, the POB may
audit any investigation that resulted in an un-appealed public record letter, for
review and approval. The public record letter to the citizen will only be sent
after approval by the POC.

———(D)—— If the Chief, or his designee, and the IRO disagree on the IRO’s
findings, the POC will receive the complaint to review at the next regularly
scheduled meeting. The POC will treat the complaint as a Non-Concurrence
issue and after conducting a hearing can keep, modify, or change the original
findings and/or recommendations of the IRO. If the POC/IRO and Chief do not
agree on the findings of any citizen complaint, the Chief Administrative Officer
will review the investigation and render a final decision, acting with the same
authority and power as described in § 9-4-1-0(B).

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

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

(G) The Chief shall take whatever action is necessary, including
disciplinary action, to complete the disposition of the complaint. Written
notice, by certified mail, of such disposition shall be given to the complainant
and to the individual against whom the complaint was filed.

§ 9-4-1-9 APPEALS.

(A) A summary and findings of the investigation conducted
pursuant to the direction of the IRO shall be forwarded to the complainant and
to the POC. A copy of the IRO’s public record letter shall also be forwarded to
the complainant and to the POC]. Any person who has filed a citizen
complaint and who is dissatisfied with the findings of the [IRORO] may appeal
that decision to the [POCPOB] within ten business days of receipt of the
public record letter. [The POB shall hold a hearing on the appeal and provide
the complainant with a reasonable opportunity to be heard.] The [POCPOB]
may [upon appeal] modify or change the findings and/or recommendations of
the [IRORO] and may make further recommendations to the Chief regarding
the findings and/or recommendations and any discipline imposed by the Chief
or proposed by the Chief. Within 20 days of receipt of the [appellate] decision
do the [POCPOB], the Chief shall notify the [POCPOB] and the original citizen
complainant of his [or her final disciplinary] decision in this matter in writing,
by certified mail.

(B) If any person who has filed a citizen complaint under §§ 9-4-1-
1 through 9-4-1-14 is not satisfied with the final decision of the Chief of Police
on any matter relating to his complaint, he may request that the Chief
Administrative Officer review the complaint, the findings of the [IRORO] and
[POCPOB] and the action of the Chief of Police by requesting such review in
writing within ten business days of receipt of the Chief’s letter pursuant to § 9-
4-1-9(A). Upon completion of his 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 IRORO of the results of his [or her] review and
any action [he has] taken.
§ 9-4-1-10 REPORTS.
The POCPOA shall be responsible for regularly informing the
Mayor, the City Council, and the public by submitting quarterly reports that
contain the following types of information:
(A) Data relating to the number, kind and status of all complaints
received including those complaints send to mediation;
(B) Discussion of issues of interest undertaken by the POCPOB
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 POCPOA’s findings and the Police Chief’s issuance of
discipline on those findings and the ongoing disciplinary trends of the Police
Department;
(D) Information on all public outreach initiatives undertaken by
[either] the POCPOB or the [IRORO] 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 Section 9-4-1-5 of
this ordinance.
§ 9-4-1-11 EVALUATION.
Contingent upon funding, in the first six months of [2005 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 citizens in the City of Albuquerque filed in the Office of the City Clerk, the [Commission 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 Commission with] the City Clerk. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the [Commission POB] and shall comply with the State Open Meetings Law.

§ 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 City Attorney and [IRORO], some of the details of the investigations of the [IRORO], 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 City Attorney and the [IRORO]. Compelled statements given to the [IRORO], or the designated independent investigator, will not be made public. The [IRORO] may summarize conclusions reached from a compelled statement for the report to the [POCPOB] and the Chief, and in the public record letter sent to the complainant. Nothing in §§ 9-4-1-1 through 9-4-1-14 shall affect 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 its [IRORO], and that APD hereby agrees and understands that their full cooperation is necessary, hereby agrees to mandate that its officers provide honest and truthful responses to all questions by the [IRORO, CPOA staff] or the designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the [IRORO, CPOA staff], or the independent investigator, he or she may be subjected to termination or disciplinary action at the discretion of the Police Chief. Compelled statements
given to the [IRORO, CPOA staff] or the designated independent investigator, by a police officer will be used only for the [IRORO]'s investigation. The actual statement will remain confidential and will not be included in a final report or be forwarded to the [PDCPOB]. The [IRORO] may summarize conclusions reached from a compelled statement for the report to the [PDCPOB] and the Chief, and in the public record letter to the complainant.

SECTION 2. 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 3. COMPILATION. The ordinance amendment prescribed by SECTION 1 shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall be published in advance in order to take effect on January 1, 2015.