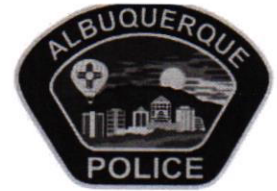




Timothy M. Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Eric J. Garcia
Executive Director of Police Reform

December 7, 2023

Interoffice Memorandum

To: Diane McDermott, Interim Executive Director, CPOA

From: Jimmy Collins, Major, Deputy Director of Police Reform

Subject: Non-Concurrence of Finding re: CPC-216-2023

This memorandum serves to convey the articulation for APD's points of non-concurrence in the above captioned administrative investigation conducted by the Civilian Police Oversight Agency.

Policy	CPOA Finding	APD Finding
1-1-4-A-2-d	Sustained	Exonerated

Rationale for non-concurrence of action for 1-1-4-A-2-d:

After a review of the circumstances of the incident, I do not concur with the CPOA finding of sustained.

Officer R [redacted] was determined by the investigation to have violated City Ordinance 8-3-2-7 by waving to a motorist he had just issued traffic citations to during a traffic stop. The ordinance states *"persons shall maintain control of a motorcycle and should have both hands on the handlebars, except to signal turns, or if needed, for the operation of the vehicle."*

The language in the ordinance comes down to "shall" versus "should". Shall indicates a requirement or a mandatory action where should indicates a suggestion or advice. The indication of a suggestion or advice does not require that action be completed. In this case, the person shall maintain control of the motorcycle (required) and should have both hands on the handlebars (suggested or advised.) Additionally, there was no evidence discovered or presented in the investigation to show Officer R [redacted] failed to maintain control of his motorcycle by waving to the motorist.

Conclusion:

Based on these considerations, I have concluded Officer R [redacted] did not violate the ordinance and find the policy violation to be exonerated.

Respectfully,

Major Jimmy Collins,
Deputy Director of Reform
Albuquerque Police Department

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Cc:

Eric Garcia, Executive Director of Police Reform