CITY OF ALBUQUERQUE

CIVILIAN POLICE OVERSIGHT BOARD
Thursday, July 12, 2018 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:
Leonard Waites, Chair
Chantal M. Galloway, Vice-Chair
Joanne Fine
Dr. William Kass
Valerie St. John
Chelsea Van Deventer

Members Absent: None

Others Present
Edward Harness, CPOA
Katrina Sigala, CPOA
Tina Muscarello Gooch, POB Atty
Chief Mike Geier
Sarita Nair, CAO
Cdr. Michael Miller, APD
Cdr. Michelle Campbell, APD
Cdr. Paul Duran, APD
Lindsay Van Meter, Asst. City Atty
Jeramy Schmehl, Asst. City Atty
Chris Sylvan, CPC

Meeting Minutes

I. Welcome and call to order. Chair Waites called to order the regular meeting of the Police Oversight Board at 5:01 p.m.

II. Pledge of Allegiance. Member Fine led the meeting in the Pledge of Allegiance.

III. Mission Statement. Chair Waites read the Police Oversight Board’s mission statement.

IV. Approval of the Agenda.
   a) A motion was made by Member Fine to approve the agenda as written. Member St. John seconded the motion. The motion was carried by the following vote:

      For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

V. Public Comments

   1. Pete Dinelli (see attachment) A document was distributed to the POB members titled Police Oversight Board, ABQ Crime members.

VI. Review and Approval of Minutes. For more information about minutes from prior POB meetings, please visit our website here: http://www.cabq.gov/cpna/police-oversight-board/pob-agenda-meeting-minutes

Civilian Police Oversight Board
Minutes – July 12, 2018
a) Approval of the Minutes from June 14, 2018
   1. Copies of the draft minutes from the June 14, 2018 POB meeting were distributed to each member in their packets.
   2. A motion was made by Member Van Deventer to approve the minutes as written. Vice-Chair Galloway second the motion. The motion was carried by the following vote:
      For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

VII. Reports from City Staff
  a) APD – Commander Michael Miller with Internal Affairs gave the following report for APD:
     1. Statistical Data. Commander Miller read the Statistical Date for the month of July 2018. A document titled Police Oversight Board, APD Internal Affairs: Statistical Data for the Month of July 2018 was distributed to the POB members.
     2. Commander Miller will look into quarterly report of officer involved accidents and report back to POB.
  b) City Council
     1. There was no one from City Council’s Office present to give a report.
  c) Mayor’s Office
     1. Chief Administrative Officer. Sarita Nair presented her report
  d) City Attorney
     1. Asst. City Atty. – Lindsay Van Meter presented her report
  e) Community Policing Councils
     1. CPC Manager. – Chris Sylvan presented his report
  f) Civilian Police Oversight Agency
     1. Executive Director – Edward Harness presented his report
     2. Example of Office of Police Accountability for Seattle (see attached)

VIII. Reports from Subcommittees
  a) Community Outreach Subcommittee – Chantal Galloway-
     1. Met on June 26, 2018 at 2:30pm
     2. POB Spokesperson. A motion was made by Vice-Chair Galloway that Director Harness be responsible for responding to any and all communication that comes to the POB via email, and that you follow up POB Members within a timely manner, within a week of what happens. Member St. John second the motion. The motion was carried by the following vote:
      For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer
     3. Next meeting July 24, 2018 at 2:30pm
b) **Policy and Procedure Review Subcommittee – William Kass –**
   1. Member Kass gave an overview of his involvement with the Use of Force process and has been attending monthly meetings
   2. Vice-Chair Galloway and Member Van Deventer volunteered to be on the Policy and Procedure Subcommittee
   3. Next meeting July 19, 2018 at 3:00pm

c) **Case Review Subcommittee – Valerie St. John –**
   1. Met June 25, 2018 at 3:00pm
   2. Next meeting July 31, 2018 at 1:30pm

d) **Personnel Subcommittee –**
   1. No report given by board members

IX. **Discussion**
   a) **Oversight Ordinance Amendments.**
      1. Board Choose no further amendments.
   b) **APD Detective Selection / Training.**
      2. Chief Geier and Commander Duran gave a report on APD Detective Selection / Training and answered questions.
   c) **Motion to adjourn for ten minute break.** Member Fine motioned to adjourn break. Member St. John seconded the motion. The motion was carried by the following vote:
      For: 6 – Waites, Galloway, Fine, Kass, St. John, Van Deventer

   ---- 10 minute break began at 7:00 p.m. and the meeting reconvened at 7:13 p.m. ----

d) **Motion to Resume.** Member Fine Motioned to resume the meeting. Vice-Chair Galloway seconded the motion. The motion was carried by the following vote:
   For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer

X. **Consent Agenda Cases:** The CPOA’s findings in each case listed on the consent agenda are reviewed and approved by the POB. The findings become part of the officer’s file, if applicable. Copies of the full findings letters to the citizens are located at [http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings](http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings).
a) Administratively Closed Cases
   014-18  083-18  095-18  111-18  116-18
   017-18  124-18  131-18  133-18  136-18
   137-18  138-18

b) Not Sustained
   041-18

c) Unfounded
   077-18

 1. Motion. Member Fine motioned to approve the Administratively Closed cases presented. Chair Waites seconded the motion and there was no discussion of any cases. The motion was carried by the following vote:

   For: 5 - Waites, Galloway, Fine, St. John, Kass
   Against: 1 - Van Deventer

XI. Non-Consent Agenda.
   a) There was no Non-Consent Cases to present

XII. Non-Concurrence Cases.
   a) There was no Non-Concurrence Cases to present

XIII. Review of Appeals
   a) Received response on case 038-18 and will be on the agenda for Case Review Committee

XIV. Serious Use of Force/Officer Involved Shooting Cases.
   a) Case I-50-17 will be presented next POB.
   b) City Attorney Jeramy Schmehl will provide an update on backlog of cases to Director Harness.

   a) There were no Garrity Materials to discuss.

XVI. Meeting with Counsel re: Pending Litigation or Personnel issues:

   Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues
   a) Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978. Section 10-15-1(H)(7); and
   b) Limited personnel matters pursuant to NMSA 1978; Section 10-15-1(H)(2)
XVII. Other Business.

a) Voting requirements for new board members. Orientation and Trainings are separate from voting requirements in the policy and procedures. The timeline should work together, given the six month deadline for initial training.

b) Attendance of Counsel. POB decided that representation of Counsel is not needed for monthly POB meetings and is available to meet outside of POB meetings to address any issues the board may have.

c) Policy and Procedures. Changes for Policy and Procedures will be on August 9, 2018 POB Agenda. Member Van Deventer volunteered to be the point of contact to receive all responses from board members by July 31, 2018 and present them to Chair Waites.

XVIII. Adjournment – A motion was made by Vice Chair Galloway to adjourn the meeting. Chair Waites second the motion. The motion was carried by the following vote:

For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer

The meeting adjourned at 7:43 p.m.

Next Regularly scheduled POB meeting will be on August 9, 2018 at 5:00 p.m. in the Vincent E. Griego Chambers.
Attachments
POLICE OVERSIGHT BOARD

PUBLIC COMMENT
SIGN IN

DATE: 11/2/20

NAME (PLEASE PRINT)

1. PETE DINELLI

2. __________________________

3. __________________________

4. __________________________

5. __________________________

6. __________________________

7. __________________________

8. __________________________

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10. __________________________

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21. __________________________

22. __________________________

23. __________________________

24. __________________________
## ABQ CRIME DECREASE
first 3 months of the year

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENFORCEMENT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Traffic Stops</td>
<td>7,940</td>
<td>13,586</td>
<td>+71%</td>
</tr>
<tr>
<td><strong>CRIME</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auto Burglary</td>
<td>3,256</td>
<td>2,234</td>
<td>-31%</td>
</tr>
<tr>
<td>Auto Theft</td>
<td>1,904</td>
<td>1,668</td>
<td>-12%</td>
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<tr>
<td>Commercial Burglary</td>
<td>506</td>
<td>477</td>
<td>-6%</td>
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<tr>
<td>Residential Burglary</td>
<td>1,102</td>
<td>1,022</td>
<td>-7%</td>
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<tr>
<td><strong>VIOLENT CRIME</strong></td>
<td></td>
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</tr>
<tr>
<td>Homicide</td>
<td>12</td>
<td>18</td>
<td>+50%</td>
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<tr>
<td>Rape</td>
<td>111</td>
<td>98</td>
<td>-12%</td>
</tr>
<tr>
<td>Robbery</td>
<td>722</td>
<td>393</td>
<td>-46%</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>926</td>
<td>840</td>
<td>-9%</td>
</tr>
<tr>
<td>Nonfatal Shootings</td>
<td>27</td>
<td>27</td>
<td>No change</td>
</tr>
</tbody>
</table>

*Source: City of Albuquerque*
April 18, 2018 (www.PeteDinelli.com)

MURDER RATE IS ALARMING

There were 6 more murders in the first quarter of 2018 compared with 2017 which is a 50% increase. Property crimes by far are more common than murders.

The fact is, murders do not drive property crime trends, but it is the other way around.

A murder is usually committed when another crime is being committed such as armed robbery or domestic violence or it’s a crime committed in the heat of anger and a gun is readily available.

It’s difficult at best to bring down homicide rates, but it can be done when you bring down other violent crime such as armed robbery, aggravated assaults, illicit drug offenses and domestic violence.

In March of this year, 5 homicides were reported in six days!

Albuquerque has had twenty (21) homicides reported in 4 months thus far and counting! Albuquerque had 12 murders in the first quarter last year.

In 2017, violent crime rose by 18% over the previous year.

Since 2012, violent crime has dramatically increased in Albuquerque by 77%. The 77% increase in violent crime in 2017 was still significantly less than “nonfatal shootings” which increased by a whopping 148%.

According to APD statistics released for 2017, homicides increased by 23%, robberies increase by 43%, rapes increased by 21% and aggravated assaults increased 4.2%.

The dramatic increase in crime in 2017 followed a 15.5 percent increase in violent crime in 2016.

CONCLUSION

The good news is that Albuquerque's property crime rates for the first time in a number of years are declining.

The bad news is that our violent crime rates are still way too high.

In other words, your property may be safe, but you may want to carry a gun.
POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTH OF JUNE 2018

APD 911 Communications Center
Dispatched calls for Service for JUNE 2018: 44,774 (decrease from MAY (1,756)

INTERNAL CASES FOR THE MONTH OF JUNE 2018

I’s

Total Internal Cases Completed the Month of JUNE: 6
Comprised of:
- 6-Internal Affairs Investigations
- 0-Area Command Investigated case

Internal Cases Administratively Closed: 0

Internal Cases Mediated: 0

Discipline imposed for Internal Cases/ JUNE 2018:

1: Training- Custody of Prisoners, Canine Unit Searches
1: Verbal Reprimand-Procedure
1: Suspension (8 hrs.)- Conduct
1: Suspension (160hrs.)-Compliance with laws, rules & regulations

EIRS FOR JUNE 2018: 69 alerts distributed

Pending IA Cases for the Month of JUNE 2018: 14

IA/IAC Cases opened in the month of JUNE 2018: 5
July 2, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – SECOND QUARTER 2018

Dear Chief Best:

I write to inform you of the Management Action Recommendations (MAR) that have been recently issued by OPA. The MARs contained herein are for the following cases: 2017OPA-0511, 2017OPA-0980, 2017OPA-1008, 2017OPA-1091, 2017OPA-1132, 2017OPA-1196, 2017OPA-1301, 2017OPA-1289, 2018OPA-0553, and 2018OPA-0101.

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**Case Number**
- 2017OPA-0511

**Summary**
- The Named Employee allegedly violated SPD policy when he posted a message on his personal Facebook account that concerned an open investigation, included confidential criminal information, and identified a minor.

**Analysis**
- **Policy 1.110 - Public Information** addresses the release of information to the media and specifically prohibits the release of much of what was contained in the Named Employee’s Facebook post.
- Although the Named Employee had Facebook friends that he knew were active members of the media and who had access to his page, it is unclear whether his posting of sensitive and confidential material constituted a “release” to the media as contemplated by the policy.

**Recommendation**
- Modify policy *1.110 - Public Information – POL-1 General Policy (2)* to define “release” as it pertains to SPD employees disseminating information to the media via social media. The definition should clarify that a “release” includes posting law enforcement information on social media.

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**Case Number**
- 2017OPA-1301
- 2018OPA-0101

**Summary**
- In both cases, the Named Employee allegedly failed to properly activate/log-in to both his In-Car Video (ICV) and Body Worn Video (BWV) systems when responding to incidents.
Analysis
- The Named Employee felt he met the requirements of the BWV policy because he interpreted it as requiring an officer to record on ICV or BWV, but not necessarily on both.
- OPA interprets the policy as requiring that, when equipped with both ICV and BWV, both systems must be activated for each call response. The Named Employee’s understanding of this policy is inconsistent with the reasoning behind equipping officers with BWV in addition to ICV, which is to have a second mechanism to more fully record law enforcement activity, not to have discretion to choose which camera to utilize.

Recommended Action
- Modify 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity to clarify that if officers are equipped with both ICV and BWV, they shall record on both systems. The new policy subsection could read: “Officers equipped with both ICV and BWV shall utilize both systems simultaneously when recording is required under 16.090-POL-1(5)(b). The failure to activate one or both systems constitutes a violation of policy and must be documented and reported consistent with 16.090-POL-1(4) and 16.090-POL-1(7).”

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Case Number
- 2017OPA-1132
- 2018OPA-0053

Summary
- In the first case, prior to searching a residence for a suspect, the Named Employees failed to provide the subject with--and have her execute--a Consent to Search form. They also did not provide Ferrier warnings.
- In the second case, the Named Employees may have violated the Complainant’s constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence.

Analysis
- Officers receive little training in search and seizure law and consent to search after the post-Basic Law Enforcement Academy phase of their employment. The failure to understand how to obtain consent and what constitutes consent can result in violations of the constitutional rights of individuals and the sanctity of their homes. OPA believes the officers’ errors in these cases constitute ignorance of the law and mistakes rather than misconduct.

Recommended Action
- Provide Department-wide training on search and seizure law and policy 6.180 - Searches-General. The training should specifically discuss the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.

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Case Number
- 2017OPA-1091

Summary
- The Named Employees conducted a Terry stop, but failed to document it using a Terry Template, as is required by SPD policy.
Analysis
- The Named Employees said a Terry Template was unnecessary because they had probable cause to arrest based on open warrants.
- Law, policy, and the Consent Decree state that officers must document each time they stop and detain someone, regardless of whether they believe they have probable cause to make an arrest.

Recommended Action
- Modify policy 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops to state that when officers perform a Terry stop, a Terry template is always required (SMC 14.11.060(C)), regardless of whether the officers had probable cause to arrest at the time of the Terry stop.

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Case Number
- 2017OPA-1196

Summary
- In reviewing a failure of an officer to carry a Taser during an incident, OPA evaluated whether the officer's supervisor failed to ensure the officer was carrying a Taser and/or that the Taser was in working condition.

Analysis
- SPD policy 5.100(III) sets forth the general responsibilities of patrol sergeants, including: “Check the personal appearance of assigned officers and ensure officers’ equipment is in good condition.” OPA’s investigation of this case found that such inspections are rarely carried out, and sergeants are not held accountable for not doing so.

Recommended Action
- Modify policy 5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision to clarify the frequency with which a patrol sergeant shall perform inspections to ensure that their officers are carrying the appropriate equipment and determine that the equipment is functioning properly.
- Train patrol sergeants on their responsibility to perform inspections, including how to conduct an inspection and the frequency with which to conduct them.

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Case Number
- 2017OPA-1008
- 2017OPA-0980

Summary
- The Named Employees failed to properly enter a firearm into evidence as required by Department policy and the unit manual.
- Another Named Employee failed to properly supervise the previously mentioned Named Employee.

Analysis
- SPD policy 7.010-POL-1 requires that employees secure collected evidence and place it into the Evidence Unit or an authorized evidence storage area before they end their shift. During their OPA
interview, one of the Named Employees contended that SPD policy did not define what an “authorized evidence storage area” was.

- Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. Although it instructs officers to comply with the SPD Manual, published directives/special orders, and Department training, it does not state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy.
- The FIT Manual lacks clarity regarding the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence.
- FIT previously did not take custody of rifles or shotguns; rather, such weapons were processed by CSI. OPA suggested that FIT institute this same process for handguns, as it may result in more consistent treatment of and processing standards for all firearms. FIT has since made this change.

Recommended Action
- Modify policy 7.010 - Submitting Evidence to define what an authorized evidence storage location is and clarify that personal offices are not such authorized locations.
- Modify the FIT Manual to:
  - Clarify that officers will, as soon as feasible, take case evidence to the Evidence Unit.
  - Indicate what, if any, other authorized evidence storage locations exist in the FIT unit, noting that evidence should never be stored in personal offices.
  - Provide more detail on expectations for evidence handling.
  - More clearly define the expectations for the FIT Sergeant (such as memorializing the requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms)
- Train FIT Detectives and supervisors in evidence handling.
- Modify policy 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy to include unit manuals as one of the types of regulations to which officers are responsible for adhering.
- Reevaluate the current FIT practice of taking possession and maintaining custody of handguns. (OPA recognizes that this has been implemented since initial conversations about this case occurred, but is noting it here nonetheless.)

Case Number
- 2017OPA-1289

Summary
- The Named Employee failed to conduct a preliminary inquiry into a bias allegation and to generate a Bias Review.

Analysis
- SPD policy 5.140-POL-7 requires that Department supervisors conduct preliminary inquiries into biased policing. The Named Employee told OPA he did not know how to do a Bias Review and was not familiar with the Bias policy, even though he had served as an acting sergeant for about 20 to 25 days per year over several years. He further told OPA that he was not familiar with the policies concerning the investigation and reporting of force, as well as the policy concerning the reporting of misconduct. Lastly, the Named Employee told OPA that he had not attended SPD’s First Line Supervisor Training nor any other type of supervisor training during his over 25 years with the Department.
- The Named Employee was placed in a position where he was expected to supervise his fellow employees without any training on how to do so, per policy 4.020, which states that “Captains will
send officers to Department sergeant training for acting sergeant assignments over 60 consecutive days." Since the Named Employee’s assignment as acting sergeant was for less than 60 consecutive days, training was not mandated.

**Recommended Action**
- Modify policy 4.020 – Reporting and Recording Overtime/Out of Classification Pay 17. Officers Assigned as Acting Sergeants Receive Training to require that Captains send officers to sergeant training prior to any acting sergeant assignment.

Thank you very much for your prompt attention to these matters. I look forward to receiving your written responses to these recommendations and, should you decide to act as a result, the progress of these actions. Alternatively, to the extent that the above recommendations are not feasible, or a different policy modification may be more fitting, OPA would appreciate the opportunity to help you find a workable solution through an in-person discussion.

Please feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg
Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boattright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Lisa Judge, Inspector General for Public Safety
Tito Rodriguez, Office of Police Accountability Interim Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney’s Office
Anne Bettesworth, Senior Policy Advisor, Office of Police Accountability
CITY of ALBUQUERQUE
TWENTY SECOND COUNCIL

COUNCIL BILL NO. _____________ ENACTMENT NO. __________________

SPONSORED BY:

1

ORDINANCE

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

3 OVERSIGHT ORDINANCE

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

5 OF ALBUQUERQUE:

6 SECTION 1. SECTION 9-4-1-2 IS HEREBY AMENDED AS FOLLOWS:

7 "§ 9-4-1-2 PURPOSE.

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

9 (A) Foster and perpetuate policing policies and practices that

10 effectively maintain social order and which at the same time foster mutual

11 trust and cooperation between police and civilians;

12 (B) Ensure that the civilian police oversight body functions as

13 independently as possible from the executive and legislative branches of

14 government of the City of Albuquerque;

15 (C) Provide civilians and police officers a fair and impartial system

16 for the investigations and determinations on civilian police complaints;

17 (D) Gather and analyze [information, reports, and] data on trends

18 and potential issues concerning police conduct and practices and the related

19 impacts on the community and individuals; and

20 (E) Provide [policy input] guidance [and recommendations] to the

21 City Council, the Mayor and the Chief of Police [for the development of policy

22 for the Albuquerque Police Department]."

SECTION 2. SECTION 9-4-1-4 IS HEREBY AMENDED AS FOLLOWS:

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

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

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

(2) Budget. The CPOA shall have a dedicated and
independent source of funding equal to, at a minimum, [1/2 0.8]% 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.

(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. 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. 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. 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 APD premises, files, documents,
reports[, data (including APD raw data),] and [any] other materials that are
reasonably necessary for the agency to perform thorough, independent
investigations of 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 Affairs shall provide a weekly update
to the Director on all open internal investigations. The Director's investigation
report and findings shall indicate whether within the past year there were any
IA investigations or supervisor generated complaints against the officer(s)
involved in the incident being investigated or that are otherwise relevant to the
subject matter of the investigation, the general nature of the prior
investigations or complaints, and whether they resulted in any discipline.
Redacted personnel records including those of the Internal Affairs Unit shall
be made available to the POB on demand.

(d) Information that is covered by Garrity will be
treated as confidential to the extent permitted by law and may only be
reviewed by members of the POB by application in writing, and by majority
vote of the POB. If the POB votes to review Garrity material, members of the
POB may only do so on APD property. The POB may not remove or make
copies of such statements. If the POB desires to discuss the specific content
of statements protected by Garrity, such discussion will occur only in closed
session as permitted under the New Mexico Open Meetings Act, NMSA 1978, §
10-15-1(H)(2). The POB shall only summarize conclusions reached after a
review of a Garrity statement, but shall not disclose the statement. The POB
shall maintain the confidentiality of any Garrity material or records that are
made confidential to the extent permitted by law and is subject to the same
penalties as the custodian of those records for violating confidentiality
requirements. In addition to any other penalty, any POB member or other
person who violates the confidentiality provisions of this section shall be
removed from the POB, and shall be subject to prosecution for a misdemeanor
subject to the penalty provisions set forth in § 1-1-99. This provision shall
apply to all aspects of the POB's work.

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

(f) POB Audits; Access to Files. The POB may, by
majority vote, perform an annual audit, or direct that an audit be performed, on
a random sample
of up to 10% of individual civilian police complaint investigations involving
allegations of use of force, or in exceptional circumstances, for the purpose of
promoting an enhanced measure of quality assurance in the most challenging
cases the POB may, by a vote of two-thirds (2/3) of the members of the POB,
perform an audit, or direct that an audit be performed, on any individual
Citizen Police Complaint Investigation completed by the Administrative Office.
For purposes of its audit function, the POB shall have full access to
investigation files and may subpoena such documents and witnesses as
relevant to its audit function.

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

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

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

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

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

[(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
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.)

SECTION 3. SECTION 9-4-1-5, “THE CPOA POLICE OVERSIGHT BOARD”
IS HEREBY AMENDED TO ADD A NEW SUBSECTION “J” AS FOLLOWS:

“[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.]”

SECTION 4. SECTION 9-4-1-8 IS HEREBY AMENDED AS FOLLOWS:

“§ 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 Department may also receive written
complaints. The party who receives the complaint shall immediately transmit
all civilian complaints for further investigation to the Director.
(C) After the investigation of a civilian complaint is completed, the Director shall analyze all relevant and material circumstances, facts and evidence gathered under the investigation. For each investigation, the Director shall prepare investigation reports with proposed findings and recommendations and submit them to the POB for its review and consideration. The Director may share any disciplinary recommendations with the Chief of Police in advance of their submission to the POB only as necessary to help ensure timeliness pursuant to any applicable personnel or union contract requirements. 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[1], the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail [and as otherwise prescribed by subsection 9-4-1-4(C)(3)(q) of this ordinance.]

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

SECTION 6. COMPILATION. The ordinance amendment prescribed by SECTIONS 1, 2, 3, and 4 shall amend, be incorporated in and made part of the Revised ordinances of Albuquerque, New Mexico, 1994.
SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.