

**CITY of ALBUQUERQUE  
TWENTY THIRD COUNCIL**

COUNCIL BILL NO. CS/2 O-18-23 ENACTMENT NO. O-2019-007

SPONSORED BY: Isaac Benton and Brad Winter

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 OF**  
5 **ALBUQUERQUE:**

6 **SECTION 1. SECTION 9-4-1-1 THROUGH 9-4-1-14 ARE HEREBY AMENDED**  
7 **AS FOLLOWS:**

8 **“§ 9-4-1-1 SHORT TITLE.**

9 **Sections 9-4-1-1 through 9-4-1-14 may be cited as the Police**  
10 **Oversight Ordinance.**

11 **§ 9-4-1-2 PURPOSE.**

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

13 **(A) Foster and perpetuate policing policies and practices that**  
14 **effectively maintain social order and which at the same time foster mutual**  
15 **trust and cooperation between police and civilians;**

16 **(B) Ensure that the civilian police oversight body functions as**  
17 **independently as possible from the executive and legislative branches of**  
18 **government of the City of Albuquerque;**

19 **(C) Provide civilians and police officers a fair and impartial system**  
20 **for the investigations and determinations on civilian police complaints;**

21 **(D) Gather and analyze information, reports, and data on trends**  
22 **and potential issues concerning police conduct and practices and the related**  
23 **impacts on the community and individuals; and**

24 **(E) Provide input, guidance and recommendations to the City**  
25 **Council, the Mayor and the Chief of Police for the development of policy for**  
26 **the Albuquerque Police Department.”**

27 **§ 9-4-1-3 LEGISLATIVE FINDINGS.**

1           (A)    The City of Albuquerque deserves a highly professional well  
2 trained Police Department; however, an effective oversight function has not  
3 yet evolved to the satisfaction of the community's needs.

4           (B)    In 1996 the City Council initiated a process to independently  
5 review the City's mechanisms of police oversight since the system had not  
6 been independently evaluated since 1988. As a result of that process, the City  
7 Council abolished the then existing Public Safety Advisory Board, and in lieu  
8 thereof established the current Police Oversight Commission (POC).

9           (C)    In 2013 the City Council initiated a new process aimed at  
10 evaluating potential improvements to the POC and its processes by  
11 establishing an Ad Hoc Police Oversight Task Force (POTF). The POTF  
12 evaluated the City's current system, studied oversight options, held three  
13 Town Hall Meetings to receive input from the public, and presented their final  
14 recommendations.

15           (D)    On April 10, 2014, the City also received findings from the  
16 United States Department of Justice that in part concluded that the City's  
17 external oversight system contributed to overall systemic problems with the  
18 Police Department's use of force in encounters with civilians.

19           (E)    The Council understands that a properly conceived and  
20 functioning police oversight system is necessary to promote accountability of  
21 the police officers and protect the rights of civilians, and finds that adopting  
22 the recommendations of the POTF will advance these goals and will help  
23 respond to the shortcomings identified by the Department of Justice.

24           (F)    The Council hereby abolishes the POC and replaces it with a  
25 Civilian Police Oversight Agency as prescribed by this Article.

26       § 9-4-1-4 CIVILIAN POLICE OVERSIGHT AGENCY.

27           There is hereby created a Civilian Police Oversight Agency (the  
28 "CPOA") as an independent agency of City Government, not part of either the  
29 City Administration or City Council consists of the Civilian Police Oversight  
30 Agency Board (the "Board") and an Administrative Office led by the CPOA  
31 Executive Director. In addition to any other duties, the Administrative Office,  
32 through the Executive Director and staff, shall investigate all civilian  
33 complaints relating to police conduct, monitor and report on police internal

1   affairs matters, provide staffing to the Board, and manage the day to day  
2   operations of the CPOA. The Board shall provide policy guidance for, and  
3   civilian oversight of the Albuquerque Police Department and review and  
4   approve or amend the findings and conclusions of all investigations  
5   completed by the Administrative Office. Board members shall rely on the  
6   CPOA professional investigative staff to perform the investigations called for  
7   under this ordinance, and shall not independently investigate any matters  
8   before the Board.

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

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

17           (2)   Budget. The CPOA shall have a dedicated and  
18   independent source of funding, administer its own budget in compliance with  
19   state and local laws, and supervise its own staff in compliance with the City's  
20   Merit Ordinance and contractual services policies and procedures. The CPOA  
21   shall recommend and propose its budget to the Mayor and City Council during  
22   the City's budget process to carry out the powers and duties under §§ 9-4-1-1  
23   through 9-4-1-14, including itemized listings for the funding for staff and all  
24   necessary operating expenses.

25           (3)   Professional Legal Services. The CPOA may retain or  
26   employ independent legal counsel on a contractual basis to advise and  
27   represent the CPOA. If so retained, the CPOA's legal counsel shall represent  
28   the CPOA in the courts, and shall advise the CPOA as to any legal matters  
29   relating to §§ 9-4-1-1 through 9-4-1-14 and the CPOA's duties, responsibilities,  
30   and procedures except for CPOA personnel matters which shall remain under  
31   the authority of the City Attorney's Office.

32           (4)   Applicability of City Policies and Ordinances. The CPOA  
33   shall comply with all City ordinances and policies dealing with administrative

1 functions including but not limited to those dealing with personnel, the merit  
2 system, and procurements.

3 (B) Staff. The CPOA shall employ such staff as necessary to carry  
4 out its functions as prescribed by this Article, including but not limited to an  
5 executive director, professional investigative staff and other staff as may be  
6 necessary, subject to budget sufficiency and City personnel policies and  
7 procedures.

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

11 (1) Community Outreach. The CPOA shall develop,  
12 implement, and from time to time amend as necessary, a program of  
13 community outreach aimed at soliciting public input from the broadest  
14 segment of the community in terms of geography, culture, ethnicity, and  
15 socio-economics. The CPOA shall employ or designate a full time staff  
16 member within the Administrative Office dedicated to community outreach  
17 efforts. The CPOA shall report its community outreach efforts to the City  
18 Council as part of its reporting under § 9-4-1-10.

19 (2) Promotion of Accountability and Impartiality. The CPOA  
20 shall promote a spirit of accountability and communication between the  
21 civilians and the Albuquerque Police Department while improving community  
22 relations and enhancing public confidence. The CPOA shall also promote a  
23 spirit of impartiality in its review of police conduct, and shall ensure that  
24 officer conduct is judged fairly and objectively.

25 (3) Investigations. The Administrative Office shall  
26 independently investigate all civilian complaints; shall audit and monitor all  
27 incidences of use of force by police and all matters under investigation by  
28 APD's Internal Affairs (IA) or other APD personnel tasked with conducting  
29 administrative investigations related to a use of force incident; and shall  
30 prepare proposed findings and recommendations on all officer involved  
31 shootings and serious uses of force as defined by Article III, Paragraph 12,  
32 Subsection (qq) (or as subsequently amended) of the court-approved DOJ  
33 Settlement Agreement with the City of Albuquerque ("Serious Uses of Force").

1 (a) Where an officer has engaged in conduct that may  
2 reasonably lead to a criminal charge against the officer, IA and the CPOA have  
3 a shared interest in exercising care to avoid interfering with the criminal  
4 process while simultaneously maintaining the integrity of the disciplinary  
5 process for officers. Consistent with this shared interest, IA and the CPOA will  
6 regularly confer and take reasonable steps to coordinate the handling of  
7 investigations into matters that reasonably may lead to a criminal charge  
8 against an officer. Before taking action related to a serious use of force or  
9 officer involved shooting, the Director shall confer with the relevant  
10 prosecuting agency and/or federal law enforcement agency to assess the  
11 likelihood of an officer being criminally prosecuted based on the incident. The  
12 Director may delay or decline to proceed with any action related to a serious  
13 use of force or officer involved shooting until completion of the criminal  
14 investigation unless, after consultation with the prosecuting agency, the  
15 Director determines that proceeding is appropriate and will not compromise a  
16 criminal investigation. If the Director seeks to proceed with investigating or  
17 presenting to the Board a serious use of force or officer involved shooting  
18 despite a prosecuting agency or federal law enforcement agency indicating  
19 that doing so would interfere with a criminal investigation, the Director may  
20 proceed only after obtaining approval to do so through a 2/3 vote of the Board.  
21 The Board shall provide notice of any such vote permitting the Director to  
22 proceed in such circumstances to APD and the police officer involved.

23 (b) APD shall provide Board members, the Director,  
24 and CPOA staff with reasonable access to APD premises, files, documents,  
25 reports and other materials that are reasonably necessary for the agency to  
26 perform thorough, independent investigations of civilian complaints and  
27 reviews of serious uses of force and officer-involved shootings. However any  
28 material protected from disclosure by law shall remain within the custody and  
29 control of APD at all times and will be handled in accordance with the  
30 applicable legal restrictions.

31 (c) All complaints filed by police officers will be  
32 investigated by Internal Affairs. Internal Affairs shall provide a weekly update  
33 to the Director on all open internal investigations. The Director's investigation

1 report and findings shall indicate whether within the past year there were any  
2 IA investigations or supervisor generated complaints against the officer(s)  
3 involved in the incident being investigated or that are otherwise relevant to the  
4 subject matter of the investigation, the general nature of the prior  
5 investigations or complaints, and whether they resulted in any discipline.  
6 Redacted personnel records including those of the Internal Affairs Unit shall  
7 be made available to the Board on demand.

8 (d) Information that is covered by Garrity will be  
9 treated as confidential to the extent permitted by law and may only be  
10 reviewed by members of the Board by application in writing, and by majority  
11 vote of the Board. If the Board votes to review Garrity material, members of  
12 the Board may only do so on APD property. The Board may not remove or  
13 make copies of such statements. If the Board desires to discuss the specific  
14 content of statements protected by Garrity, such discussion will occur only in  
15 closed session as permitted under the New Mexico Open Meetings Act, NMSA  
16 1978, § 10-15-1(H)(2). The Board shall only summarize conclusions reached  
17 after a review of a Garrity statement, but shall not disclose the statement. The  
18 Board shall maintain the confidentiality of any Garrity material or records that  
19 are made confidential to the extent permitted by law and is subject to the same  
20 penalties as the custodian of those records for violating confidentiality  
21 requirements. In addition to any other penalty, any Board member or other  
22 person who violates the confidentiality provisions of this section shall be  
23 removed from the Board, and shall be subject to prosecution for a  
24 misdemeanor subject to the penalty provisions set forth in § 1-1-99. This  
25 provision shall apply to all aspects of the Board's work.

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

29 (f) Board Audits; Access to Files. The Board may, by  
30 majority vote, perform an annual audit, or direct that an audit be performed, on  
31 a random sample of up to 10% of individual civilian police complaint  
32 investigations involving allegations of use of force, or in exceptional  
33 circumstances, for the purpose of promoting an enhanced measure of quality

1 assurance in the most challenging cases the Board may, by a vote of two-  
2 thirds (2/3) of the members of the Board, perform an audit, or direct that an  
3 audit be performed, on any individual Citizen Police Complaint Investigation  
4 completed by the Administrative Office. For purposes of its audit function, the  
5 Board shall have full access to investigation files and may subpoena such  
6 documents and witnesses as relevant to its audit function.

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

20 (4) Reports to Mayor & Council. The CPOA shall submit a  
21 semi-annual written report to the Mayor and City Council according to § 9-4-1-  
22 10 herein. The CPOA Executive Director shall provide a quarterly oral report to  
23 the City Council at a regular or special meeting. The oral report shall at a  
24 minimum address community outreach efforts, agency progress and  
25 initiatives, together with any of the agency's issues or concerns.

26 (5) CPOA Policy Recommendations. The CPOA shall  
27 engage in a long-term planning process through which it identifies major  
28 problems or trends, evaluates the efficacy of existing law enforcement  
29 practices in dealing with the same, analyzes and evaluates data (including  
30 APD raw data), innovative practices, national trends, and police best practices,  
31 and establishes a program of resulting policy suggestions, recommendations,  
32 and studies each year. APD shall provide Board members, the Director, and  
33 CPOA staff with reasonable access to APD premises, files, documents,

1 reports, data (including APD raw data), and any other materials that are  
2 reasonably necessary for this purpose. For purposes of this ordinance, “APD  
3 raw data” includes but is not limited to any facts and statistics or other data  
4 gathered, obtained, or that are otherwise within the possession of APD before  
5 being processed or analyzed; “police best practices” refers to law  
6 enforcement methods or techniques based upon the experiences and  
7 outcomes in other police departments or law enforcement agencies that have  
8 documented superior results compared to other practices, and to  
9 recommendations by recognized research and policy development groups,  
10 forums, consortiums, or similar. The CPOA shall redact any personal  
11 identification information from any APD raw data within its possession as  
12 permitted by law prior to its release to the public. The CPOA's policy  
13 recommendation process shall be as follows:

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

24 (b) Policy Proposals by APD. APD shall provide all  
25 policy proposals passed by the APD Policy and Procedures Review Board to  
26 the Board for its review, comment, and recommendations prior to final  
27 adoption.

28 (c) The Chief of Police or designee shall respond to  
29 policy recommendations made by the CPOA pursuant to paragraphs ‘a’ or ‘b’  
30 above in writing within 45 days of final action on a policy by APD. As part of  
31 this response, APD shall indicate whether the Board’s policy recommendation  
32 will be followed through standard operating procedures or should be adopted  
33 as policy by the City Council, or specifically explain any reasons why such



1 policy recommendations will not be followed or were not adopted.

2 (d) Within six months of its appointment, the Board  
3 shall draft and approve policies, rules and procedures that ensure that the  
4 Board is effectively accomplishing its duties under this Article.

5 (e) The chair of the Board shall designate one Board  
6 member to serve on each APD policy development committee. The Director  
7 and the Board member designated by the Chair shall each serve as voting  
8 members and representatives of the Board on such committees, and shall  
9 report back to the board about the outcomes and votes cast at the next  
10 regularly scheduled meeting of the Board.

11 § 9-4-1-5 THE CPOA POLICE OVERSIGHT BOARD.

12 (A) Composition. The Board shall be composed of nine at-large  
13 members who broadly represent the diversity and demographics of the City by  
14 way of, including but not limited to, cultural, gender and geographic diversity;  
15 and who are representative of the stakeholders of the police oversight  
16 process, and who reside within the City of Albuquerque.

17 (B) Qualifications. In addition to the composition standards set  
18 forth above, the following are the minimum qualifications for members of the  
19 Board:

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

22 (2) Successfully pass a background check; and

23 (3) Personal history lacking any pattern of unsubstantiated  
24 complaints against APD; and

25 (4) A demonstrated ability to engage in mature, impartial  
26 decision making; and

27 (5) A commitment to transparency and impartial decision  
28 making; and

29 (6) Residency within the City of Albuquerque.

30 (C) Appointment of Members. The City Council shall establish a  
31 well-publicized, fair and equitable application process for appointment to the  
32 Board, and for filling vacancies. The City Council, through its staff, shall  
33 accept applications from prospective Board members. Staff shall formulate

1 recommendations for appointments based on evaluation of the qualification  
2 criteria listed in subsections (A) and (B) above and submit recommendations  
3 for appointment(s) to the City Council for its approval. If a member is eligible  
4 for reappointment, that member may request reappointment without a formal  
5 application process and the City Council may reappoint accordingly. The City  
6 Council shall report out its progress on filling CPOA Board vacancies on a  
7 quarterly basis.

8 (D) Membership Term. Board members shall serve a maximum of  
9 two three-year terms on a staggered basis so that no more than three of the  
10 members are eligible for reappointment or replacement each year.

11 (E) Removal of Members. Any Board member may be removed for  
12 cause by a two-thirds majority vote of either the Board itself or the City  
13 Council. In addition to any other reasonable cause, any conduct inconsistent  
14 with the requirements and provisions of this ordinance, or a demonstrated  
15 inability to objectively adjudicate civilian police complaints shall constitute  
16 cause for removal. The appointment of any member who has been absent and  
17 not excused from three consecutive regular or special meetings shall  
18 automatically expire effective on the date the fact of such absence is reported  
19 by the Board to the City Clerk. The City Clerk shall notify any member whose  
20 appointment has automatically terminated and report to the City Council that a  
21 vacancy exists requiring an appointment for the length of the unexpired term.

22 (F) Orientation and Training. Upon initial appointment Board  
23 members shall complete an orientation and training program consisting of the  
24 following:

25 (1) Required Orientation. Prior to participation in any  
26 meeting of the Board, a newly appointed member must first:

27 (a) Be trained by the CPOA staff or CPOA legal  
28 counsel on CPOA policies, and procedures; and

29 (b) Attend at least one Board meeting as an observer  
30 (except for reappointed members).

31 (2) Required Training. The City shall provide, and each POB  
32 member shall complete, a training program within the first six months of the  
33 member's initial appointment that consists, at a minimum, of the following:

- 1 (a) Training on the 2014 DOJ Settlement Agreement  
2 with the City of Albuquerque (or any subsequent agreements), and Findings  
3 Letter of April 10, 2014 (or any subsequent findings letters);
- 4 (b) Training on this ordinance and the duties,  
5 obligations, and responsibilities that it imposes on Board members and the  
6 CPOA;
- 7 (c) Training on State and local laws regarding public  
8 meetings and the conduct of public officials, including but not limited to  
9 inspection of public records, governmental transparency, ethics;
- 10 (d) Training on civil rights, including the Fourth  
11 Amendment right to be free from unreasonable searches and seizures,  
12 including unreasonable uses of force;
- 13 (e) Training on all APD policies related to use of  
14 force, including policies related to APD's internal review of force incidents;
- 15 (f) Training provided to APD officers on use of force;
- 16 (g) Completion of those portions of the APD Civilian  
17 Police Academy that APD determines are necessary for the POB to have a  
18 sound understanding of the Department, its policies, and the work officers  
19 perform - for purposes of this training requirement, APD shall identify those  
20 portions of the standard APD Civilian Police Academy Program that are  
21 optional for POB members and shall make other aspects of the program  
22 available for POB members to complete independently;
- 23 (h) At least two APD ride-alongs;
- 24 (i) Annual firearms simulation training;
- 25 (j) Internal Affairs training;
- 26 (k) Equity and Cultural Sensitivity training; and
- 27 (l) A briefing that identifies and explains the  
28 curriculum of all training currently received or anticipated to be received by  
29 APD officers, including any outside training not provided by the city.
- 30 (3) Required On-Going Training. Board members shall  
31 receive eight hours of annual training on any changes in law, policy, or  
32 training in the areas outlined under subsection (2) above, as well as  
33 developments in the implementation of the 2014 DOJ Settlement Agreement

1 (or any subsequent agreements) until such time as the terms of the agreement  
2 are satisfied. Board members shall also participate in at least two police ride-  
3 alongs for every six-months of service on the Board.

4 (4) Recommended Training. Board members are  
5 encouraged to attend conferences and workshops relating to police oversight,  
6 such as the annual NACOLE conference at city expense depending on budget  
7 availability.

8 (5) The Director shall track training progress for each Board  
9 member, verify completion of the initial and on-going training requirements for  
10 each Board member, and include this information for each Board member as  
11 part of the semi-annual reports required by this ordinance.

12 (G) Chair. The Board shall elect one of its members as the  
13 Chairperson and one as Vice-Chairperson, who shall each hold office for one  
14 year and until their successors are elected. No officer shall be eligible to  
15 immediately succeed himself or herself in the same office. Officers shall be  
16 elected in the month of March of each calendar year or upon vacancy of an  
17 office to fill the remaining term.

18 (H) Subcommittees. The Board may appoint such subcommittees  
19 as are deemed necessary or desirable for the purposes of §§ 9-4-1-1 through  
20 9-4-1-14, provided that, membership on such subcommittees shall be limited  
21 to Board members and no Board member shall serve on any more than two (2)  
22 committees at any given time.

23 (I) Meetings. The Board shall conduct regularly scheduled public  
24 meetings in compliance with the New Mexico Open Meetings Act, with a  
25 prepared agenda that is distributed in advance to the Mayor, City Council,  
26 Police Chief, and City Attorney. Each Board meeting will begin with public  
27 comments. Only the regularly scheduled monthly meetings and special  
28 meetings held pursuant to submission of petitions will be televised live on the  
29 appropriate government access channel. All other meetings of the Board shall  
30 be videotaped and aired on the appropriate government access channel;  
31 however, there is no requirement for providing live television coverage.

32 (1) Public Comment. The Board shall allow general public  
33 comment at each of its meetings, and the Board shall also allow comment on

1 each of its agenda items other than Citizen Police Complaints. The  
2 complainant or complainant's authorized representative in a Citizen Police  
3 Complaint will be provided with a minimum of five minutes to address the  
4 Board relating to the complaint and investigation.

5 (J) Subpoenas.

6 (1) The CPOA is authorized to issue subpoenas only as  
7 necessary to investigate civilian complaints, or to audit and monitor  
8 incidences of use of force by police.

9 (2) Prior to seeking a subpoena, the Executive Director must  
10 make a reasonable attempt to exhaust all other avenues for obtaining the  
11 information sought.

12 (3) In order to issue an administrative subpoena, the Executive  
13 Director must ensure that:

14 (a) the inquiry is within the authority of the CPOA;

15 (b) the demand is not too indefinite;

16 (c) the information is relevant to the purpose of the  
17 investigation; and

18 (d) all other criteria for the issuance of an administrative  
19 subpoena as set forth by New Mexico law are met.

20 (4) The Executive Director must obtain authorization from the  
21 Board in order to issue a subpoena. A simple majority vote of the membership  
22 of the Board in favor is required before a subpoena may be issued.

23 (5) Subpoenas shall be served in a manner that complies with  
24 all requirements for administrative subpoenas under New Mexico Law.

25 (6) A subpoena must provide at least 14 calendar days' notice  
26 prior to the deadline for responding to the subpoena to:

27 (a) the subpoenaed person or entity;

28 (b) any individual or entity that is the subject of  
29 subpoenaed records; and

30 (c) the City Attorney for the City of Albuquerque.

31 (7) The subpoena and notice to third parties must include a  
32 citation to this section and state that the recipient has the opportunity to

1 challenge the subpoena to the Board or in the district court having  
2 jurisdiction.

3 (8) The summoned person or entity or any person or entity that  
4 is the subject of subpoenaed records may petition the Board or the district  
5 court of the county where he or she resides to vacate or modify the  
6 administrative subpoena.

7 (9) In the case of a refusal to obey a subpoena issued to any  
8 person, the Director may make application to the District Court in the state  
9 having jurisdiction to order the witness to appear before the Board and to  
10 produce evidence if so ordered, or to give testimony touching on the matter in  
11 question.

12 (10) Any summoned person may, at his or her own expense,  
13 be represented by legal counsel during all CPOA or Board proceedings.

14 (11) The CPOA and Board shall not disclose any record  
15 obtained as a result of a subpoena that is protected or confidential by law,  
16 ordinance, policy, or the CASA.

17 § 9-4-1-6 CPOA ADMINISTRATIVE OFFICE.

18 (A) The staff and administration of the CPOA shall be directed by  
19 the CPOA Executive Director (the "Director").

20 (B) In addition to any other duties expressed or implied by this  
21 ordinance the Director shall:

22 (1) Independently investigate, or cause to be investigated,  
23 all civilian police complaints and prepare findings and recommendations for  
24 review by the Board;

25 (2) Review and monitor all Internal Affairs investigations  
26 and other administrative investigations related to officer involved shooting  
27 investigations and serious uses of force investigations. The Director shall  
28 prepare and submit findings and recommendations to the Board relating to  
29 officer involved shootings and serious uses of force, and shall report on  
30 general trends and issues identified through monitoring or auditing of Internal  
31 Affairs;

32 (3) Provide staffing to the Board and ensure that the duties  
33 and responsibilities of the CPOA are executed in an efficient manner, and

1 manage the day to day operations of the CPOA.

2 (C) The Administrative Office will receive and process all civilian  
3 complaints directed against the Albuquerque Police Department and any of its  
4 officers. The Director shall independently investigate and make findings and  
5 recommendations for review by the Board for such civilian complaints, or  
6 assign them for independent investigation by CPOA staff or an outside  
7 independent investigator. If assigned to staff or an outside investigator, the  
8 Director shall oversee, monitor and review all such investigations and findings  
9 for each. All findings relating to civilian complaints, officer involved  
10 shootings, and serious uses of force shall be forwarded to the Board for its  
11 review and approval. For all investigations, the Director shall make  
12 recommendations and give advice regarding Police Department policies and  
13 procedures to the Board as the Director deems advisable.

14 (1) Investigation of all civilian complaints filed with the  
15 CPOA shall begin immediately after complaints are filed and proceed as  
16 expeditiously as possible, and if an investigation exceeds a timeframe of nine  
17 months the Director must report the reasons to the Board; and

18 (2) All civilian complaints filed with other offices within the  
19 city authorized to accept civilian complaints, including the Police Department,  
20 shall be immediately referred to the Director for investigation; and

21 (3) Mediation should be the first option for resolution of  
22 civilian police complaints. Mediators should be independent of the CPOA,  
23 APD, and the City, and should not be former officers or employees of APD. At  
24 the discretion of the Director an impartial system of mediation should be  
25 considered appropriate for certain complaints. If all parties involved reach an  
26 agreement, the mediation is considered successful and no investigation will  
27 occur; and

28 (4) The Director shall monitor all claims of officer involved  
29 shootings and serious uses of force. No APD related settlements in excess of  
30 \$25,000 shall be made for claims without the knowledge of the Director. The  
31 Director shall be an ex-officio member of the Claims Review Board; and

32 (5) All investigations shall be thorough, objective, fair,  
33 impartial, and free from political influence; and

1                   **(6) The Director shall maintain and compile all information**  
2 **necessary to satisfy the CPOA's semi-annual written reporting requirements in**  
3 **§ 9-4-1-10; and**

4                   **(7) If at any point during an investigation the investigator**  
5 **determines that there may have been criminal conduct by any APD personnel,**  
6 **the investigator shall immediately notify the APD Internal Affairs Bureau**  
7 **commanding officer and transfer the administrative investigation to the**  
8 **Internal Affairs Bureau. The CPOA may review the IA investigation and**  
9 **continue processing the complaint at any time upon the conclusion of any**  
10 **criminal proceeding.**

11                   **(D) The Director shall have access to any Police Department**  
12 **information or documents that are relevant to a civilian's complaint, or to an**  
13 **issue which is ongoing at the CPOA.**

14                   **(E) The Administrative Office shall staff, coordinate and provide**  
15 **technical support for all scheduled Board meetings, publicize all findings and**  
16 **reports, recommendations, and/or suggested policy changes.**

17                   **(F) The Director shall play an active public role in the community,**  
18 **and whenever possible, provide appropriate outreach to the community,**  
19 **publicize the civilian complaint process, and identify locations within the**  
20 **community that are suitable for civilians to file complaints in a non-police**  
21 **environment.**

22                   **(G) The Director shall be provided the necessary professional**  
23 **and/or clerical employees for the effective staffing of the Administrative Office,**  
24 **and shall prescribe the duties of these staff members. Such professional and**  
25 **clerical employees will be classified city employees. All CPOA staff with**  
26 **investigative duties shall be professional investigators trained in professional**  
27 **investigation techniques and practices.**

28                   **(H) The Director shall report directly to the Board and lead the**  
29 **Administrative Office; independently investigate or supervise all**  
30 **investigations of civilian complaints, audit all IA investigations of complaints,**  
31 **recommend and participate in mediation of certain complaints, and supervise**  
32 **all CPOA staff.**

33                   **(I) The Director shall complete the initial and ongoing training**



1 requirements for Board members as prescribed by Section 9-4-1-5(F) and  
2 report completion of training activities to the Chair of the Board.

3 § 9-4-1-7 CPOA DIRECTOR QUALIFICATIONS, SELECTION, RETENTION  
4 AND EVALUATION.

5 (A) Qualifications for the position of Director shall minimally  
6 include the requirement of a law degree and experience in criminal  
7 investigations.

8 (B) The Director will be a full-time at will city employee directly  
9 responsible only to the Board, to be selected, removed, or reviewed as  
10 follows:

11 (1) The Board, through CPOA staff, shall accept  
12 applications from candidates. The Board shall review the applications and  
13 interview candidates, and submit to the City Council the candidate that it finds  
14 to be the best qualified to be the Director. The Board's recommendation to  
15 Council shall be based on the candidates' integrity, capability for strong  
16 management and abilities in investigations, law, management analysis, public  
17 administration, criminal justice administration or other closely related fields.  
18 The Board's transmittal of its recommendation to the Council shall, at a  
19 minimum, include an evaluation of all the candidates against the provisions  
20 and requirements of this subsection 9-4-1-7 and identify in writing the basis  
21 for its selection as compared to other candidates. The City Council may  
22 decline to confirm the Board's recommended candidate only for reasonable  
23 cause, including but not limited to lack of a reasonable evaluation process, or  
24 lack of a substantive basis for the Board's recommendation.

25 (2) In lieu of recommending a new candidate to the Council,  
26 the Board may recommend to the Council the reconfirmation of the incumbent  
27 Director. Together with any recommendation for reconfirmation by the Board,  
28 the Board shall submit to the City Council a written basis for its  
29 recommendation to include a formal evaluation of the Director's past  
30 performance, including an evaluation against the duties established for the  
31 Director by this ordinance. Should the Council decline to reconfirm the  
32 incumbent Director, the Council President shall notify the Board that it needs  
33 to provide the Council with an alternate candidate pursuant to the provisions

1 of subsection (B)(1), and the Board shall so submit within 90 days of such  
2 notice. The City Council may decline to reconfirm the incumbent Director only  
3 for reasonable cause, including but not limited to any failure to fulfill all the  
4 requirements obligations of this ordinance, or ineffective leadership of the  
5 organization in its mission toward civilian police oversight. Should the  
6 Director not be reconfirmed or should any confirmation vote be delayed or  
7 postponed for any reason, the current Director may continue to serve in the  
8 same capacity until a new Director is selected and confirmed by the City  
9 Council. If for any reason there is a period of time during which there is no  
10 Director, the City Council may appoint a temporary Director by a majority vote.  
11 A temporary Director shall serve in that capacity only for a period not to  
12 exceed six months, during which time the Board shall work diligently to select  
13 a permanent Director. The Director's compensation shall be established by the  
14 Board in consultation with the City Human Resources Department, and shall  
15 be commensurate and competitive with salaries for comparable positions  
16 within the City and other equivalent agencies in peer municipalities.

17 (3) The term of the Director shall be for three years. Once  
18 confirmed, the Director may be removed only upon: 1) a recommendation of  
19 removal to the City Council by the affirmative vote of two-thirds of the  
20 members of the Board; and 2) acceptance of the Board's recommendation by  
21 a simple majority vote of the City Council.

22 (C) The Board shall annually review the performance of the  
23 Director taking into consideration the obligations and duties prescribed by  
24 this ordinance and the performance of the Administrative Office. A summary  
25 of these performance evaluations shall be delivered to the Chief of Police, the  
26 Mayor, and the President of the City Council for receipt by the Council.

27 § 9-4-1-8 CIVILIAN COMPLAINT PROCEDURES.

28 (A) Any person claiming to be aggrieved by actions of the Police  
29 may file a written complaint against the department or any of its officers.  
30 Neither the Board nor any of its members shall file or initiate a complaint on  
31 behalf of a member of the public. Any Board member who files or otherwise  
32 initiates a complaint shall recuse from taking any action on the complaint,  
33 including evaluating the complaint and voting on its disposition. The Board

1 shall submit rules and regulations governing civilian complaint procedures to  
2 the City Council for approval, including rules and regulations relative to time  
3 limits, notice and other measures to insure impartial review of civilians'  
4 complaints against members of the police department. Anonymous  
5 complaints shall be accepted.

6 (B) In cooperation with the Board, the Mayor shall designate  
7 civilian city staff to receive written civilian complaints at various locations  
8 throughout the city. The Police Department may also receive written  
9 complaints. The party who receives the complaint shall immediately transmit  
10 all civilian complaints for further investigation to the Director.

11 (C) After the investigation of a civilian complaint is completed, the  
12 Director shall analyze all relevant and material circumstances, facts and  
13 evidence gathered under the investigation. For each investigation, the Director  
14 shall prepare investigation reports with proposed findings and  
15 recommendations and submit them to the Board for its review and  
16 consideration. In addition to the findings and recommendation, each  
17 investigation report shall at a minimum also include: 1) a section outlining any  
18 relevant background and facts relating to the matter, 2) a listing of any  
19 relevant policies, procedures, or practices that are at issue, and 3) an analysis  
20 of the issues in the case. The Director may share any disciplinary  
21 recommendations with the Chief of Police in advance of their submission to  
22 the Board only as necessary to help ensure timeliness pursuant to any  
23 applicable personnel or union contract requirements.

24 (D) The Board shall review the proposed findings and  
25 recommendations at any properly noticed regular or special meeting. The  
26 Board shall adopt and follow rules for such reviews that implement the  
27 requirements of this ordinance and ensure fairness and completeness in its  
28 reviews. For purposes of these reviews, the Board members shall, at a  
29 minimum, adhere to the following standards of conduct:

30 (1) Remain impartial in deliberations and decisions and  
31 abstain from any independent investigation or review of information not  
32 presented by the investigation report or within the investigation file;

33 (2) Refrain from any ex-parte communication relating to the

1 matters and parties under consideration other than at a properly noticed  
2 meeting, and recuse from any related hearings as may be necessary based on  
3 any improper ex parte communication; any ex-parte correspondence that is  
4 inadvertently received by a member shall be referred to or otherwise disclosed  
5 to the Director and, when appropriate, made available for review by the  
6 relevant complaint and APD officer or their representatives; and

7 (3) Refrain from prejudgment on complaints coming before  
8 the board until such time as all relevant information has been reviewed and  
9 considered at a properly noticed meeting, and recuse from any hearing in  
10 which he or she has a direct or indirect personal conflict of interest or cannot  
11 otherwise accord a fair and impartial review, or in which such member's  
12 participation would create the appearance of impropriety or partiality.

13 (E) After the Board has completed its review, it shall by majority  
14 vote of members present: 1) approve the findings and recommendations as  
15 proposed; 2) approve other findings and recommendations as determined by  
16 the Board and supported by the investigation file; or 3) defer action on the  
17 matter to allow for further investigation or analysis on specifically identifiable  
18 matters by the Director. As part of its review, the full investigation file shall be  
19 made available to the Board.

20 (F) Upon approval of findings and recommendations by the  
21 Board, the Director shall prepare and submit a public record letter to the  
22 civilian complainant, with a copy to the Chief of Police, that outlines the  
23 findings and recommendations as approved. Unless a hearing is requested by  
24 the civilian complainant, within 30 days of receipt of the decision of the Board  
25 the Chief of Police shall notify the Board and the original civilian complainant  
26 of his or her final disciplinary decision in this matter in writing, by certified  
27 mail and as otherwise prescribed by subsection 9-4-1-4(C)(3)(g) of this  
28 ordinance.

29 § 9-4-1-9 REQUESTS FOR HEARING; APPEALS OF DISCIPLINARY  
30 DECISIONS.

31 (A) Requests for Hearing. Any person who has filed a civilian  
32 complaint and who is dissatisfied with the findings and/or recommendations  
33 approved by the Board may request reconsideration by the Board within 30

1 days (inclusive of weekends and holidays) of receipt of the public record  
2 letter. The Board may grant a request for reconsideration only upon a showing  
3 by the complainant that: 1) a policy was misapplied in the evaluation of the  
4 complaint; 2) that the findings or recommendations were arbitrary, capricious  
5 or constituted an abuse of discretion, or 3) that the findings and  
6 recommendations were not consistent with the record evidence. The Board  
7 shall notify the Chief of Police of the request for hearing and hold a hearing on  
8 the matter at its next regularly scheduled meeting provided that there is a  
9 period of at least ten days between the receipt of the request for hearing and  
10 the next Board meeting. Any such appeals shall be reviewed in accordance  
11 with standards of conduct prescribed by section 9-4-1-8(D). Upon close of the  
12 hearing the Board may modify or change the findings and/or  
13 recommendations of the public record letter and may make further  
14 recommendations to the Chief of Police regarding the findings and/or  
15 recommendations and any discipline imposed by the Chief of Police or  
16 proposed by the Chief of Police. Within 20 days of receipt of the decision of  
17 the Board, the Chief of Police shall notify the Board and the original civilian  
18 complainant of his or her final disciplinary decision in this matter in writing, by  
19 certified mail.

20 (B) Appeals of the Disciplinary Decision. If any person who has  
21 filed a civilian complaint under §§ 9-4-1-1 through 9-4-1-14 is not satisfied with  
22 the final disciplinary decision of the Chief of Police or any matter relating to  
23 the Chief of Police's handling of his or her complaint, he or she may request  
24 that the Chief Administrative Officer review the complaint, the findings of the  
25 Board and the action of the Chief of Police by requesting such review in  
26 writing within 30 days (inclusive of weekends and holidays) of receipt of the  
27 Chief of Police's letter pursuant to § 9-4-1-9(A). Upon completion of his or her  
28 review, the Chief Administrative Officer shall take any action necessary,  
29 including overriding the decision of the Chief of Police regarding disciplinary  
30 action, to complete the disposition of the complaint. The Chief Administrative  
31 Officer shall notify in writing, by certified mail, the complainant, the individual  
32 against whom the complaint was filed, the Chief of Police and the Director, of  
33 the results of his or her review and any action taken.

1           **§ 9-4-1-10 REPORTS.**

2           The CPOA shall be responsible for regularly informing the Mayor, the  
3 City Council, and the public by submitting semi-annual written reports that  
4 include but are not limited to the following information:

5           (A) Data relating to the number, kind and status of all complaints  
6 received including those complaints sent to mediation;

7           (B) Discussion of issues of interest undertaken by the Board  
8 which may include suggested policy and/or procedural changes, a listing of  
9 complaints and allegations by Council District, statistical ethnicity of subject  
10 officers, statistical ethnicity of complainants, and updates on prior issues  
11 and/or recommendations;

12           (C) The CPOA's findings and the Chief of Police's issuance of  
13 discipline on those findings and the ongoing disciplinary trends of the Police  
14 Department;

15           (D) Information on all public outreach initiatives undertaken by the  
16 Board or the Director such as speaking engagements, public safety  
17 announcements, and/or public information brochures on the oversight  
18 process;

19           (E) The status of the long-term planning process identifying major  
20 problems, policy suggestions, and studies as required by § 9-4-1-4(C)(5);

21           (F) Identification of any matters that may necessitate the City  
22 Council's consideration of legislative amendments to this Police Oversight  
23 Ordinance; and

24           (G) The amount of time that the Board dedicated to the policy  
25 activities prescribed by § 9-4-1-4(C)(5) relative to its other activities over the  
26 past quarter.

27           **§ 9-4-1-11 EVALUATION.**

28           Contingent upon funding, in the first six months of 2016 and at least  
29 every four years thereafter, from adoption of §§ 9-4-1-1 through 9-4-1-14, the  
30 City Council shall issue a Request for Proposal for an independent consultant  
31 to undertake a complete evaluation and analysis of the entire police oversight  
32 process, and recommend any necessary changes or amendments that would  
33 appropriately improve the process.

1           **§ 9-4-1-12 SPECIAL MEETINGS.**

2           On the petition of 1,000 or more civilians in the City of Albuquerque  
3 filed in the Office of the City Clerk, the Board shall hold a special meeting for  
4 the purpose of responding to the petition and hearing and inquiring into  
5 matters identified therein as the concern of the petitioners. Copies of the  
6 petition shall be filed with the Board by the City Clerk. Notice of such meeting  
7 shall be given in the same manner as notice is given for other meetings of the  
8 Board and shall comply with the State Open Meetings Act.

9           **§ 9-4-1-13 CONFIDENTIALITY.**

10           The Board hearing process shall be open to the public to the extent  
11 legally possible so that it does not conflict with state or federal law. However,  
12 upon the opinion of the CPOA Attorney that the law permits such action, some  
13 of the details of the investigations of the Director, or the designated  
14 independent investigator, shall become privileged and confidential. The  
15 details of investigations should not be open to the public subject to the  
16 opinion of the CPOA Attorney and the Director. Compelled statements given to  
17 the Director, or the designated independent investigator, will not be made  
18 public. The Director may summarize conclusions reached from a compelled  
19 statement for the report to the Board and the Chief of Police, and in the public  
20 record letter sent to the complainant. Nothing in this ordinance affects the  
21 ability of APD to use a compelled statement in a disciplinary proceeding.

22           **§ 9-4-1-14 MANDATORY COOPERATION AGREEMENT.**

23           The City Council believes that full participation and cooperation of all  
24 parties involved is essential to the success of the new police oversight  
25 process, and that APD hereby agrees and understands that its full cooperation  
26 is necessary, hereby agrees to mandate that its officers provide honest and  
27 truthful responses to all questions by the Director, CPOA staff or the  
28 designated independent investigator. If any officer refuses to answer the  
29 questions proposed to him or her by the Director, CPOA staff, or the  
30 independent investigator, he or she may be subject to termination or  
31 disciplinary action at the discretion of the Chief of Police. Compelled  
32 statements given to the Director, CPOA staff or the designated independent  
33 investigator, by a police officer will be used only for the Director's

1 investigation and the closed session review of the investigation file by the  
2 Board, if any. The actual statement will remain confidential and will not be  
3 included in a final report. The Director may summarize conclusions reached  
4 from a compelled statement for the investigation report and in the public  
5 record letter to the complainant.

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

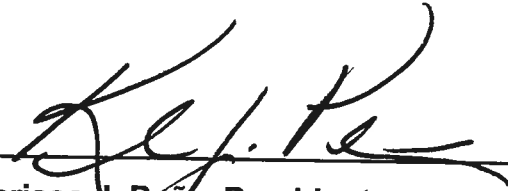
13 SECTION 6. COMPILATION. The ordinance amendment prescribed by  
14 SECTIONS 1, 2, 3, and 4 shall amend, be incorporated in and made part of the  
15 Revised ordinances of Albuquerque, New Mexico, 1994.

16 SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five days  
17 after publication by title and general summary.

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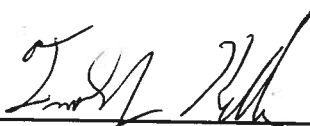


1 PASSED AND ADOPTED THIS 1<sup>st</sup> DAY OF April, 2019  
2 BY A VOTE OF: 9 FOR 0 AGAINST.


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10 Klarissa J. Peña, President  
11 City Council

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14 APPROVED THIS 19 DAY OF April, 2019  
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17 Bill No. C/S(2) O-18-23

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21 Timothy M. Keller, Mayor  
22 City of Albuquerque  
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25 ATTEST:

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28 Katy Duhigg, City Clerk  
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